

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 22, 2009 6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Gaghen

ROLL CALL

ROLL CALL

COURTESIES – Army Community Covenant Signing Ceremony

PROCLAMATIONS – Juvenile Arthritis Awareness Month – July 2009

PROCLAMATIONS – Juvenile Arthritis Awareness Month ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: 1 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. Mayor Tussing recommends that Council confirm the following appointment:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Marieanne Hanser	Yellowstone Conservation District Board	07/01/09	06/30/12

B. Bid Awards:

- (1) **W.O. 09-07, Water Treatment Facility Chemical Building MCC Replacement 2009.** Recommend Ace Electric; \$42,390.
- (2) **Passenger Facility Charge Funded Terminal Emergency Generator Replacement Project.** Recommend General Contractors; \$861,781.
- (3) **Airport Terminal Building Roof Replacement Project.** (All bids rejected on 5/26/09). Recommend Commercial Roofing; \$157,565.

C. Contract with Montana Department of Transportation for FY 2010 Operating Assistance through the Federal Transit Administration Section 5316 JARC Grant Program, for paratransit operating assistance; \$120,096.50 grant revenue.

D. Contract with Montana Department of Transportation for FY 2010 Operating Assistance through the Federal Transit Administration, Section 5317 New Freedom Grant Program, for paratransit operating assistance; \$60,001 grant revenue.

E. Contract with Montana Department of Transportation for Paratransit Operating Assistance through the Federal Transit Administration TransADE Grant Program; \$60,098.82 grant revenue.

F. Annual Agreements for Landfill Use with Bighorn County, Carbon County, Musselshell County, Stillwater County, Treasure County, Town of Columbus, Town of Fromberg, Town of Hysham, Town of Bridger, Town of Joliet, City of Laurel, and City of Red Lodge (7/1/09 – 6/30/10); and **3-year Landfill Use Agreement** with Yellowstone County (7/1/09 – 6/30/12, with annual amendments).

G. Amendment No. 1, W.O. 04-26, Zone 4 Reservoir and Facilities, Professional Services Contract, HDR Engineering, Inc.; \$594,700.

H. Acknowledge receipt of petition to vacate a portion of Clark Avenue within the 2300 block; Paul and Renae Parkins, owners; and setting a public hearing date of July 13, 2009.

I. Street Closure:

- (1) The Billings Depot 100-year celebration, 7/10/09–7/12/09, 7:00 a.m. to 8:00 p.m., closure of the south lane of Montana Avenue from North 25th Street to the Underpass for train rides from Thomas the Train™.
- (2) Carpet One Relay for Life Fundraiser, 6/27/09, 11:00 a.m. to 4:00 p.m.; Canyon Drive east of 24th Street West between Carpet One on the south side of Canyon Drive and Connelly's, Big Horn Fly & Tackle, and Badge West Awards on the north side of Canyon Drive.

J. Acceptance of Donation to the Billings Police Department Crime Prevention Center from the Breakfast Exchange Club; \$1,000.

K. Approval of the Energy Efficiency & Conservation Block Grant Application and Energy Efficiency & Conservation Strategy; up to \$1,003,000 in funding.

L. Approval of hourly rate increase with Guardian Security for Library guard service from \$16.25 to \$16.75; 3-year agreement approved on 6/23/08 included annual hourly rate negotiation.

M. Resolution closing Special Improvement/Sidewalk Bond Debt Funds to the SID Revolving Fund - \$10,200.

N. Rescind Tax Incentive for RSP Holding, LLC, Carrie's Quilts and Iron located at 1737 King Avenue West; approved by Council in November 2008.

O. Amended Plat of Dedicated Park, Block 2, Twin Oaks Subdivision, connecting Sioux Lane from Whitetail Subdivision to Twin Oaks Drive, \$2,055 to PRPL.

P. Preliminary Plat of Mont Vista Subdivision; 122 lots on approximately 63.88 acres of land generally located on the southeast corner of the intersection of Rimrock Road and 54th Street West; conditional approval of the plat and adoption of the Findings of Fact; Krutzfeldt Ranch, LLC, applicant; C & H Engineering and Land Design, Inc., agents.

Q. Cancellation of Checks and Warrants, \$6,122.78

R. Bills and Payroll

- (1) May 22, 2009
- (2) May 29, 2009

S. Amended Resolution of Intent to Create #09-18841 for SILMD 307- Shiloh Road from Rimrock Road to Pierce Parkway. (Councilmember Veis moved to add the Resolution of Intent to Create SILMD 307 as Item S of the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION APPROVING AND ADOPTING FOURTH QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2008/2009.** Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

3. **PUBLIC HEARING AND RESOLUTION EXPANDING DOWNTOWN BUSINESS IMPROVEMENT DISTRICT NO. 0001** to include the new MET Transfer Center located at 2nd Avenue North and North 25th for an estimated annual assessment of \$2,645. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
4. **PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #CC-09-09:** A variance from Section 1208(h)(5) pertaining to the number of curb cuts allowed for property located on Lot 1-A-1, Block 2 of Southgate Subdivision, 1st Filing; Mark Rite Lines Holding Company, LLC, owner and petitioner. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
5. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #851:** A zone change from Residential 9600 and Public to Planned Development with underlying zoning districts of Residential 9600, Residential 7000, Residential 7000 Restricted, Residential 6000, Residential Multi-Family Restricted, Residential Multi-Family, and Public on a 60.4 acre parcel of land described as Tracts 1 and 2 of C/S 2054 with the exception of 4.29 acres in the northwest corner of Tract 1; generally located on the southeast corner of the intersection of Rimrock Road and 54th Street West. Krutzfeldt Ranch, LLC, owner; William Krutzfeldt, agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (**Action:** approval or disapproval of Zoning Commission recommendation.)
6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #855:** A zone change from Controlled Industrial to Central Business District on Lots 18-24, Billings Original Town, located at 2123 1st Avenue North; Robert D. Schaak, applicant; Jay Shearer, agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (**Action:** approval or disapproval of Zoning Commission recommendation.)
7. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

Council Initiatives

ADJOURN

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

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

A1



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 22, 2009

TITLE: Boards & Commissions –Appointment

DEPARTMENT: City Administrator's Office

PRESENTED BY: wynnette Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of appointment for a Board and Commission position that is vacant.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointment:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Marieanne Hanser	Yellowstone Conservation District Board	07/01/09	06/30/12

Approved By: City Administrator _____ City Attorney _____

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, June 22, 2009**

TITLE: WO 09-07 Water Treatment Facility Chemical Building MCC Replacement 2009

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 09-07 Water Treatment Facility Chemical Building MCC Replacement 2009 on June 9, 2009. This project generally consists of demolition and replacement of aging motor control centers in the Chemical Building at the Water Treatment Facility

ALTERNATIVES ANALYZED:

1. Award the contract for W.O. 09-07 to Ace Electric in the amount of \$42,390.00; or
2. Reject all bids and do not award contract for W.O. 09-07

FINANCIAL IMPACT: Funding for this project has been approved in the CIP (FY' 10) and will be out of the 2008 Wastewater Revenues. We received three bids for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 100,000.00
Ace Electric	\$ 42,390.00
CEI	\$ 148,500.00
Yellowstone Electric	\$ 44,890.00

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

<u>Work Order 09-07 Water Treatment Facility Chemical Building MCC Replacement 2009</u>	
2009 Water Revenue	\$ \$182,000.00
Contract Amount (This Memo)	\$(- 42,390.00)
Remaining Funds	\$ 139,610.00

RECOMMENDATION

Staff recommends that Council award Ace Electric's bid for Work Order 09-07 Water Treatment Facility Chemical Building MCC Replacement 2009 in the amount of \$42,390.00.

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 2009

TITLE: Approval of the Award for the Passenger Facility Charge (PFC) Funded Terminal Emergency Generator Replacement Project

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Terminal Emergency Generator Replacement Project, included in the City's Capital Improvement Program, will replace the existing emergency generator with a significantly larger generator system. The existing generator is only large enough to maintain the Airport's security access control system and some emergency lighting; leaving the airlines and TSA unable to perform their duties during a full power outage. Unfortunately, the Airport has experienced three total power losses during the last five years, one of which lasted over eight hours. The new generator system will provide enough power for the Terminal Building to operate during a power outage. This project will include up to three emergency generator units that are capable of supplying electrical power needed for all functions of the Airport Terminal, including ticketing counters, security screening, security systems and CCTV, passenger loading bridges, and ramp and building lighting. The existing generator will be removed, and the new generator system will be connected at the main electrical vault. The project will also include a new building needed to house the new generators and associated equipment. This project was advertised in the *Billings Times* for three weeks, and was posted on the City's Web Site. On June 9, 2009, the following bids on this project were received:

<u>CONTRACTOR</u>	<u>BID</u>
General Contractors, Inc.	\$ 861,781
Hardy Construction	\$ 887,000
Cucanic Construction	\$ 888,709
Fisher Construction	\$ 890,362
Yellowstone Electric	\$ 916,458
Ace Electric	\$ 933,025
ESTIMATE	\$1,000,000

FINANCIAL IMPACT: The total cost of this project is \$861,781. The source of the funds for this project is the Department's budgeted Passenger Facility Charge fund.

RECOMMENDATION

Staff recommends that City Council approve the award of the Passenger Facility Charge Funded Terminal Emergency Generator Replacement Project to the low bidder, General Contractors, Inc., for the amount of \$861,781.

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

AGENDA ITEM:

B3



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, June 22, 2009

TITLE: Award of the Airport Terminal Building Roof Replacement Project

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Included in the City's Capital Improvement Program is the Airport Terminal Building Roof Replacement project. As recommended in the Airport Terminal Roofing Survey completed in 2004, a number of identified roof areas will eventually be removed and replaced on the Terminal Building, encompassing 45,000 square feet that are regularly leaking or nearing the end of the roofing material's life cycle. Due to the anticipated high cost to replace all roof sections that were identified in the 2004 study, the first phase of the roof replacement was bid in 2007, and completed in early 2008. This year's project is the second phase of roof replacement, which will include 13,500 square feet of roof area over the restaurant, kitchen, and Concourse A of the Terminal Building.

The new roofing system will be an Ethylene Propylene Diene Monomer (EPDM) roof membrane installed over a new tapered insulation roof system. This new system will have a higher insulation value than the old roof, and will reduce heating and cooling costs. Additionally, there will be fewer maintenance costs, as there will be significantly less water leakage into the Terminal once the new roofing is in place. This project was previously bid on May 12, 2009, and rejected at the May 26, 2009 City Council meeting since two of the contractor's bids were considered non-responsive, and the third bid was determined to be excessive based on square foot costs of past roofing work. Subsequently, the project was re-advertised in the *Billings Times*, at the Billings Builders Exchange, and on the City's Web Site. On June 9, 2009, the Airport received the following bids for this project:

CONTRACTOR	BID
Commercial Roofing	\$157,565
Empire Roofing	\$165,936
ESTIMATE	\$200,000

FINANCIAL IMPACT: The total cost of the project is \$157,565. The source of funding for this project is the Department's Capital Budget.

RECOMMENDATION

Staff recommends that the City Council approve the award of the Airport Terminal Building Roof Replacement project to the low bidder, Commercial Roofing, for the amount of \$157,565.

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

Agenda Item **C**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 2009

TITLE: Acceptance of Contract with Montana Department of Transportation for FY 2010 Operating Assistance through the Federal Transit Administration Section 5316 JARC Grant Program

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: The City of Billings MET Transit Division was eligible for the second year to apply through the State of Montana for federal grant operating assistance funds (Section 5317 JARC – Job Access Reverse Commute) to help supplement operating expenses for paratransit service to the low-income disabled citizens of Billings. In past years the MET has contracted with the Department of Public Health and Human Services (DPHHS) and other social service agencies to provide transportation to and from work sites and training programs for the disabled low-income/welfare residents of Billings. However, due to recent funding changes from DPHHS, the MET has sought to receive supplemental funding to help continue to provide this valuable transportation service. The acceptance of this contract with the Montana Department of Transportation will provide reimbursement of \$120,096.50 of operating expenses to the MET on a 50% grant, 50% local basis for FY 09/10. Sufficient eligible operating expenses are contained in the budget to offset any required match amounts.

The MET will pursue this grant revenue again next year; however, these funds are allocated by the State on a year by year basis so continued funding is unknown at this time.

FINANCIAL IMPACT: This contract will allow the MET to access \$120,096.50 in grant revenue to help offset paratransit operating expenses for the disabled low-income citizens of Billings.

RECOMMENDATION

Staff recommends that Council approve and the Mayor execute the attached Section 5316 Operating Contract with the Montana Department of Transportation for paratransit operating assistance through the Federal Transit Administration JARC Program.

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

ATTACHMENTS

A – Section 5316 Operating Contract

Contract #104578

SECTION 5316 OPERATING CONTRACT
CFDA #20.516 – Job Access Reverse Commute

THIS Contract is entered into between the State of Montana, DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana (State) and City of Billings-Aviation and Transit Dept. Met Transit Division, 1705 Monad Road, P.O. Box 1178, Billings, MT. 59103 (Grantee). Liaison for the State is Audrey Allums, Transit Supervisor. Liaison for the Grantee is Ron Wenger.

The State, having been allocated grant monies from the Federal Transit Administration (FTA), through Section 5316 of the Federal Transit Act for the Federal Fiscal Year of 2009 (October 1, 2008 – September 30, 2009), as amended, and desiring to assist the Grantee, enters into the following Contract with Grantee. Actual award is contingent upon the availability of FTA funding.

ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This Contract provides assistance for the Grantee to implement Job-Access Reverse Commute (JARC) transit services.

SECTION 1.2 Scope of Project. Grantee shall implement a JARC system in accordance with the budget, goals and plans outlined in its FY of application Operating Application, Transportation Development Plan (TDP) and in accordance with the regulations of the Section 5316 program. The Grantee shall use its best efforts to efficiently and economically complete the Project.

SECTION 1.3 Project Description. Reimbursement of operating expenses described in Grantee's Application for the period July 1, 2009 through June 30, 2010.

SECTION 1.4 Period of Performance. This Contract will be effective from July 1, 2009 to June 30, 2010.

SECTION 1.5 Cost of Project. The total cost of the Project shall be \$240,193.00. The cost of the Project shall be shared as follows:

50% Federal Share	\$120,096.50
50% Local Match	<u>\$120,096.50</u>
	\$240,193.00

The Grantee agrees to provide matching funds to assure payment of Project costs. Grantee shall provide these funds when necessary to meet Project costs. The Grantee will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State.

Up to one-half of the Grantee share for capital, administrative, and operating expenses may be provided from unrestricted federal funds. At least one-half of the Grantee share must be from sources other than federal funds.

State will make quarterly grant payments to Grantee based upon the State's approval of reports and invoices submitted by the Grantee.

SECTION 1.6 Purchase of Project Equipment. The State, on behalf of the Grantee, or the Grantee with the State's prior approval, shall purchase all Project equipment in accordance with applicable State law and the standards set forth by the Uniform Administration Requirement for Grant and Cooperative Agreement to State and Local Government (49 CFR PART 18). PROJECT equipment shall be purchased in conformity with the latest approved Cost of Project as shown in Section 1.5.

SECTION 1.7 Title to Project Equipment. The Grantee shall hold title to Project equipment. The State shall be the first secured party. The State may enforce this provision through legal action to protect its security interests in Project equipment.

SECTION 1.8 Use of Project Equipment. The Grantee shall use Project equipment for transportation service described in the Project Application and in compliance with FTA Circular 9050.1. If any Project equipment is no longer needed for this service, the Grantee shall immediately notify the State and the State shall dispose of such Project equipment.

SECTION 1.9 Maintenance. During the contract period Grantee shall maintain the Project equipment and facilities at a high level of cleanliness, safety and mechanical soundness. In addition, all accessible features and equipment used by persons with disabilities must be maintained in operating condition. This includes but is not limited to lifts, securing devices, elevators and signage. Equipment must be repaired promptly, and reasonable steps must be taken to continue serving persons with disabilities while the repairs are being made (reference 49 CFR, Subpart G, 37.161 and 37.163). The State reserves the right to rehabilitate any Project vehicle covered under this agreement, after proper application by Grantee and approval by the State.

SECTION 1.10 Insurance. During the Contract term, the Grantee shall maintain insurance or self-insurance (property damage and liability) adequate to protect the federal share portion of Project facilities and equipment. Grantee will furnish proof of such insurance for the State's approval.

SECTION 1.11 Records, Reports and Information Access.

1.11.1 Recordkeeping. The Grantee shall keep records regarding the use of Project property, compliance with the provisions of this Contract, the federal assurances, and such records as the State and the Federal Transit Administration (FTA) may require, including financial statements, program operation data, contracts and other Project-related documents. If a third party has exclusive possession of any required information and refuses or fails to provide that information, the Grantee shall inform the State and set forth its efforts to obtain this information. Grantee shall maintain these records for at least three

years after any final payment and all other matters pending under this Contract are closed.

1.11.2 Reporting. Grantee shall advise the State in writing of Project progress at such times and in such manner as the State and FTA may require, but not less than on a quarterly basis.

1.11.3 Information Access. The Grantee shall permit the State, FTA, or their authorized representatives, to inspect all vehicles, facilities and equipment purchased for the Project, and all transportation services provided through the Project. The Grantee shall also permit the above-named persons to examine the books, records, data and accounts pertaining to the Project.

ARTICLE 2. DEFAULT AND TERMINATION

SECTION 2.1 Default. Nonperformance by the Grantee of any obligation imposed by this Contract, including noncompliance with the federal assurances in Articles 3 and 4, or reduction of local project cost funding, will constitute default.

SECTION 2.2 Termination. This Contract may be terminated by the State by serving a notice of termination on the Grantee. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the Grantee thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of the Grantee's default, and offer the Grantee an opportunity to explain its nonperformance. If the State finds that the Grantee has a reasonable excuse for nonperformance, which is beyond the control of the Grantee, the State may set up a new work schedule and allow the completion of this Contract.

In any termination, the State will make its contractual payments proportionate to the work properly performed in accordance with this Contract to the time of termination. Grantee shall account for any Project property in its possession.

SECTION 2.3. Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

SECTION 2.4 Venue. In the event of litigation concerning this Agreement, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County.

ARTICLE 3. MISCELLANEOUS

SECTION 3.1 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 3.2 Assignment and Subcontracting. The Grantee shall not assign any portion of the work to be performed under this Agreement, or execute any contract,

amendment or change order thereto, or obligate Grantee in any manner with any third party with respect to Grantee's rights and responsibilities under this Agreement, without the prior written concurrence of the State.

SECTION 3.3 Subcontracts. The Grantee shall include in all subcontracts entered into pursuant to this Agreement a copy of this Contract, and the subcontract will make the provisions of this Contract a specific part of the subcontract. In addition, the Grantee shall include the following provisions in any advertisement or invitation to bid for any procurement under this Agreement:

Statement of Financial Assistance

This agreement is subject to a financial assistance contract between the Montana Department of Transportation, the U. S. Department of Transportation, and the Federal Transit Administration.

SECTION 3.4 Indemnification. The Grantee shall indemnify, defend, and hold harmless the State of Montana, Department of Transportation, its employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising or resulting from the performance of this Contract.

SECTION 3.5 Settlement of Third Party Contract Disputes or Breaches. The term "third-party contract," as used in this Agreement, is defined as a contract between the Grantee and its subcontractor in which the Grantee has procured a good and/or service commercially from the subcontractor. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contracts. FTA retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the Grantee shall avail itself of all legal rights available under any third party contract. The Grantee shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FTA reserves the right to concur in any compromise or settlement of the Grantee's claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FTA permits otherwise.

SECTION 3.6 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 3.7 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of State.

SECTION 3.8 Severability and Integration. If any part, or parts, of this Contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, and exhibits, represent the complete

and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 3.9 Prohibited Interest. No employee, officer, board member or agent of the Grantee shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer, board member or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner; or
- (4) An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award. The Grantee's employees, officers, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

SECTION 3.10 Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

SECTION 3.11 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

SECTION 3.12 Ineligible Bidders. Bidders or Suppliers whose names appear on the U. S. Comptroller General's List of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this agreement. Submission of a bid by any bidder constitutes certification that he or any subcontractor or suppliers to him, on this proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by FTA that a bidder knowingly made any misstatement of facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.13 Prohibition Against Use of Federal Funds for Lobbying. The Grantee or its subcontractor shall not use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation or appropriations pending before Congress or a state legislature.

SECTION 3.14 Employee Political Activity. The provisions of 5 U.S.C. 1501-1508, 7324-7326 (the "Hatch Act"), and implementing regulations set forth in 5 C.F.R. Part 151 are applicable to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by Federal loans, grants, or cooperative agreement.

SECTION 3.15 False or Fraudulent Statements or Claims. The Grantee acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government in connection with this project, FTA reserves the right to pursue the procedures and impose on the Grantee the penalties of 18 U.S.C. 1001, 31 U.S.C. 3801, et seq., and/or 49 U.S.C. 5307(n)(1), as may be deemed by FTA to be appropriate.

SECTION 3.16 Debarment and Suspension. The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations.

SECTION 3.17 No State Obligations to Third Parties. The State shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without the specific written consent of the State and FTA. Neither the concurrence in nor the approval of the award of this contract or any subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.18 Elderly and Handicapped. The Grantee agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age. The Grantee also agrees to comply with the requirements of 49 U.S.C. 5301(d), 29 U.S.C. 794, the Americans with Disabilities Act, as amended (42 U.S.C. 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws.

SECTION 3.19 Buy America Provision. The Grantee agrees that, in its execution of this Contract, it will comply with the requirements of 49 U.S.C. 5323(j), with the FTA regulations "Buy America Requirements at 49 CFR part 661, and with any implementing guidance that the FTA may issue.

SECTION 3.20 Pre-award and Post-delivery Audit. The Grantee shall comply with any regulations that may be issued to implement 49 U.S.C. 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.

SECTION 3.21 School Bus Operations. The Grantee, or any operator of mass transportation acting on its behalf, shall not engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as provided under 49 U.S.C. 5323(f) and applicable regulations, "School Bus Operations," set forth at 49 C.F.R. Part 605, as amended. Any school bus agreement entered into under these regulations is incorporated into this Contract by reference.

SECTION 3.22 Charter Service Operations. The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, “Charter Service,” 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

SECTION 3.23 Air Pollution. No facilities or equipment shall be acquired, constructed, or improved as a part of the Project unless the grantee obtains satisfactory assurances that they are (or will be) designed and equipped to limit air-pollution as provided in accordance with EPA regulations, applicable federally-approved State Implementation Plan(s), appropriate FTA directives and all other applicable standards.

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SECTION 3.25 Federal Changes. Grantee shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the State and FTA, as they may be amended or promulgated from time to time during the term of this contract. Grantee’s failure to so comply shall constitute a material breach of this contract.

SECTION 3.26 Authority. The Grantee warrants that it has the lawful authority to enter this Agreement, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering this Agreement, and that the undersigned signatory for Grantee has been lawfully delegated the authority to sign this Agreement on behalf of Grantee.

SECTION 3.27 Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Grantee shall not perform any act, fail to perform any act, or refuse to comply with any State requests which would cause the State to be in violation of the FTA terms and conditions.

SECTION 3.28 Compliance with Laws. Some of the clauses contained in this Contract are not governed solely by Federal law, but are significantly affected by State law. The laws and regulations cited in this Contract are not all-inclusive of those which may apply to the successful completion of this Contract. The Grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this Contract, and that Grantee is solely responsible for its lawful compliance with them.

SECTION 3.29 Drug and Alcohol Compliance. The Grantee shall comply with USDOT Federal Transit Administration drug and alcohol rules as established in the "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit," set forth in 49 CFR Part 40, and Part 655; Drug-Free Workplace act. Grantee understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.1.

SECTION 3.30 Privacy Act. The Grantee agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Grantee agrees to obtain the express consent of the Federal Government before the Grantee or its employees operate a system of records on behalf of the Federal Government. The Grantee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

SECTION 3.31 Audit Requirement. The Grantee shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The Grantee will provide the MDT Transit Section with a copy of the audit report for each fiscal year FTA funds are received by the Grantee.

SECTION 3.32 Coordination. The recipient of any capital project purchased through this program certifies: (1) the projects selected were derived from a locally developed and coordinated public transit and human services transportation plan; (2) the plan was developed through a process that included representatives of public, private and nonprofit transportation and human services providers as well as the general public; and (3) vehicle use and location is identified in the planning document and will not be altered without the prior written permission of the Montana Department of Transportation. Should the recipient of any capital project withdraw from the coordinated plan, the ownership of any vehicle purchased under the plan shall revert back to the State or the State will be reimbursed full cost of the capital.

SECTION 3.33 FTA Master Agreement The Grantee understands that this contract includes requirements specifically prescribed by Federal law or regulation and does not encompass all Federal laws, regulations, and directives that may apply to the Grantee or its

project. A comprehensive list of those Federal laws, regulations and directives is contained in the current FTA Master Agreement MA(12) at the FTA website <http://www.fta.dot.gov/documents/13-Master.doc>. The clauses in this contract have been streamlined to remove most provisions not covered by statutory or regulatory certification and assurance requirements.

The Grantee also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 4. NON-DISCRIMINATION NOTICE

During the performance of this Agreement, City of Billings-Aviation and Transit Dept. Met Transit Division (hereafter in this Section “the Party”), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) **Compliance with Regulations:** The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) **Nondiscrimination:** The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) **Information and Reports:** The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Transit

Administration (FTA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FTA as requested, setting forth what efforts it has made to obtain the information.

- (5) **Sanctions for Noncompliance:** In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FTA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FTA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.

- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "**The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party.**"
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CITY OF BILLINGS-AVIATION AND TRANSIT DEPT. MET TRANSIT DIVISION

BY: _____

DATE: _____

MONTANA DEPARTMENT OF TRANSPORTATION

BY:

Lynn Zanto, Administrator

DATE: _____

Approved for Legal Content by: _____

Approved for Civil Rights Content by: _____

AGENDA ITEM:

D



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: Acceptance of Contract with Montana Department of Transportation for FY 2010 Operating Assistance through the Federal Transit Administration Section 5317 New Freedom Grant Program

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: The City of Billings MET Transit Division was eligible this year to apply through the State of Montana for federal grant operating assistance funds (Section 5317 New Freedom) to help supplement operating expenses for paratransit service that we provide above and beyond our federally regulated ADA service including providing transportation to newly annexed areas of the City. The acceptance of this contract with the Montana Department of Transportation will provide reimbursement of \$60,001 of operating expenses to the MET on a 50% grant, 50% local basis for FY 09/10. Sufficient eligible operating expenses are contained in the budget to offset required match amounts.

The MET will pursue this grant revenue again next year; however, these funds are allocated by the State on a year by year basis so continued funding is unknown at this time.

FINANCIAL IMPACT: This contract will allow the MET to access \$60,001 in grant revenue to help offset paratransit operating expenses.

RECOMMENDATION

Staff recommends that Council approve the execution by the Mayor of the attached Section 5317 Operating Contract with the Montana Department of Transportation for paratransit operating assistance through the Federal Transit Administration New Freedom Program.

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

ATTACHMENTS

A – Section 5317 Operating Contract

**SECTION 5317 OPERATING CONTRACT
CFDA #20.521 – New Freedom Program**

THIS Contract is entered into between the State of Montana, DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana (State) and City of Billings-Aviation and Transit Dept. Met Transit Division, 1705 Monad Road, P.O. Box 1178, Billings, MT, 59103 (Grantee). Liaison for the State is Audrey Allums, Transit Supervisor. Liaison for the Grantee is Ron Wenger.

The State, having been allocated grant monies from the Federal Transit Administration (FTA), through Section 5317 of the Federal Transit Act for the Federal Fiscal Year of 2009 (October 1, 2008 – September 30, 2009), as amended, and desiring to assist the Grantee, enters into the following Contract with Grantee. Actual award is contingent upon the availability of FTA funding.

ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This Contract provides assistance for the Grantee to implement New Freedom services.

SECTION 1.2 Scope of Project. Grantee shall implement a New Freedom service in accordance with the budget, goals and plans outlined in its FY10 Operating Application and in accordance with the regulations of the Section 5317 program. The Grantee shall use its best efforts to efficiently and economically complete the Project.

SECTION 1.3 Project Description. Reimbursement of operating expenses described in Grantee's Application for the period July 1, 2009 through June 30, 2010.

SECTION 1.4 Period of Performance. This Contract will be effective from July 1, 2009 to June 30, 2010.

SECTION 1.5 Cost of Project. The total cost of the Project shall be \$120,002.00. The cost of the Project shall be shared as follows:

50% Federal Share	\$ 60,001.00
50% Local Match	\$ 60,001.00
	\$120,002.00

The Grantee agrees to provide matching funds to assure payment of Project costs. Grantee shall provide these funds when necessary to meet Project costs. The Grantee will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State.

Up to one-half of the Grantee share for capital, administrative, and operating expenses may be provided from unrestricted federal funds. At least one-half of the Grantee share must be from sources other than federal funds.

State will make quarterly grant payments to Grantee based upon the State's approval of reports and invoices submitted by the Grantee.

SECTION 1.6 Purchase of Project Equipment. The State, on behalf of the Grantee, or the Grantee with the State's prior approval, shall purchase all Project equipment in accordance with applicable State law and the standards set forth by the Uniform Administration Requirement for Grant and Cooperative Agreement to State and

Local Government (49 CFR PART 18). PROJECT equipment shall be purchased in conformity with the latest approved Cost of Project as shown in Section 1.5.

SECTION 1.7 Title to Project Equipment. The Grantee shall hold title to Project equipment. The State shall be the first secured party. The State may enforce this provision through legal action to protect its security interests in Project equipment.

SECTION 1.8 Use of Project Equipment. The Grantee shall use Project equipment for transportation service described in the Project Application and in compliance with FTA Circular 9045.1. If any Project equipment is no longer needed for this service, the Grantee shall immediately notify the State and the State shall dispose of such Project equipment.

SECTION 1.9 Maintenance. During the contract period Grantee shall maintain the Project equipment and facilities at a high level of cleanliness, safety and mechanical soundness. In addition, all accessible features and equipment used by persons with disabilities must be maintained in operating condition. This includes but is not limited to lifts, securement devices, elevators and signage. Equipment must be repaired promptly, and reasonable steps must be taken to continue serving persons with disabilities while the repairs are being made (reference 49 CFR, Subpart G, 37.161 and 37.163). The State reserves the right to rehabilitate any Project vehicle covered under this agreement, after proper application by Grantee and approval by the State.

SECTION 1.10 Insurance. During the Contract term, the Grantee shall maintain insurance or self-insurance (property damage and liability) adequate to protect the federal share portion of Project facilities and equipment. Grantee will furnish proof of such insurance for the State's approval.

SECTION 1.11 Records, Reports and Information Access.
1.11.1 **Recordkeeping.** The Grantee shall keep records regarding the use of Project property, compliance with the provisions of this Contract, the federal assurances, and such records as the State and the Federal Transit Administration (FTA) may require, including financial statements, program operation data, contracts and other Project-related documents. If a third party has exclusive possession of any required information and refuses or fails to provide that information, the Grantee shall inform the State and set forth its efforts to obtain this information. Grantee shall maintain these records for at least three years after any final payment and all other matters pending under this Contract are closed.

1.11.2 **Reporting.** Grantee shall advise the State in writing of Project progress at such times and in such manner as the State and FTA may require, but not less than on a quarterly basis.

1.11.3 **Information Access.** The Grantee shall permit the State, FTA, or their authorized representatives, to inspect all vehicles, facilities and equipment purchased for the Project, and all transportation services provided through the Project. The Grantee shall also permit the above-named persons to examine the books, records, data and accounts pertaining to the Project.

ARTICLE 2. DEFAULT AND TERMINATION

SECTION 2.1 Default. Nonperformance by the Grantee of any obligation imposed by this Contract, including noncompliance with the federal assurances in Articles 3 and 4, or reduction of local project cost funding, will constitute default.

SECTION 2.2 Termination. This Contract may be terminated by the State by serving a notice of termination on the Grantee. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the Grantee thirty days to wind down its activities under this Contract. If termination occurs

due to default, the notice shall state the nature of the Grantee's default, and offer the Grantee an opportunity to explain its nonperformance. If the State finds that the Grantee has a reasonable excuse for nonperformance, which is beyond the control of the Grantee, the State may set up a new work schedule and allow the completion of this Contract.

In any termination, the State will make its contractual payments proportionate to the work properly performed in accordance with this Contract to the time of termination. Grantee shall account for any Project property in its possession.

SECTION 2.3. Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

SECTION 2.4. Venue. In the event of litigation concerning this Agreement, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County.

ARTICLE 3. MISCELLANEOUS

SECTION 3.1 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 3.2 Assignment and Subcontracting. The Grantee shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate Grantee in any manner with any third party with respect to Grantee's rights and responsibilities under this Agreement, without the prior written concurrence of the State.

SECTION 3.3 Subcontracts. The Grantee shall include in all subcontracts entered into pursuant to this Agreement a copy of this Contract, and the subcontract will make the provisions of this Contract a specific part of the subcontract. In addition, the Grantee shall include the following provisions in any advertisement or invitation to bid for any procurement under this Agreement:

Statement of Financial Assistance

This agreement is subject to a financial assistance contract between the Montana Department of Transportation, the U. S. Department of Transportation, and the Federal Transit Administration.

SECTION 3.4 Indemnification. The Grantee shall indemnify, defend, and hold harmless the State of Montana, Department of Transportation, its employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising or resulting from the performance of this Contract.

SECTION 3.5 Settlement of Third Party Contract Disputes or Breaches. The term "third-party contract," as used in this Agreement, is defined as a contract between the Grantee and its subcontractor in which the Grantee has procured a good and/or service commercially from the subcontractor. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contracts. FTA retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the Grantee shall avail itself of all legal rights available under any third party contract. The Grantee shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FTA reserves the right to concur in any compromise or settlement of the Grantee's claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FTA permits otherwise.

SECTION 3.6 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 3.7 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of State.

SECTION 3.8 Severability and Integration. If any part, or parts, of this Contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, and exhibits, represent the complete and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 3.9 Prohibited Interest. No employee, officer, board member or agent of the Grantee shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer, board member or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner; or
- (4) An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award. The Grantee's employees, officers, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

SECTION 3.10 Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

SECTION 3.11 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

SECTION 3.12 Ineligible Bidders. Bidders or Suppliers whose names appear on the U. S. Comptroller General's List of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this agreement. Submission of a bid by any bidder constitutes certification that he or any subcontractor or suppliers to him, on this proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by FTA that a bidder knowingly made any misstatement of facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.13 Prohibition Against Use of Federal Funds for Lobbying. The Grantee or its subcontractor shall not use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation or appropriations pending before Congress or a state legislature.

SECTION 3.14 Employee Political Activity. The provisions of 5 U.S.C. 1501-1508, 7324-7326 (the "Hatch Act"), and implementing regulations set forth in 5 C.F.R. Part 151 are applicable to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by Federal loans, grants, or cooperative agreement.

SECTION 3.15 False or Fraudulent Statements or Claims. The Grantee acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government in connection with this

project, FTA reserves the right to pursue the procedures and impose on the Grantee the penalties of 18 U.S.C. 1001, 31 U.S.C. 3801, et seq., and/or 49 U.S.C. 5307(n)(1), as may be deemed by FTA to be appropriate.

SECTION 3.16 Debarment and Suspension. The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations.

SECTION 3.17 No State Obligations to Third Parties. The State Government shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without the specific written consent of the State and FTA. Neither the concurrence in nor the approval of the award of this contract or any subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.18 Elderly and Handicapped. The Grantee agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age. The Grantee also agrees to comply with the requirements of 49 U.S.C. 5301(d), 29 U.S.C. 794, the Americans with Disabilities Act, as amended (42 U.S.C. 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws.

SECTION 3.19 Buy America Provision. The Grantee agrees that, in its execution of this Contract, it will comply with the requirements of 49 U.S.C. 5323(j), with the FTA regulations "Buy America Requirements at 49 CFR part 661, and with any implementing guidance that the FTA may issue.

SECTION 3.20 Pre-award and Post-delivery Audit. The Grantee shall comply with any regulations that may be issued to implement 49 U.S.C. 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.

SECTION 3.21 School Bus Operations. The Grantee, or any operator of mass transportation acting on its behalf, shall not engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as provided under 49 U.S.C. 5323(f) and applicable regulations, "School Bus Operations," set forth at 49 C.F.R. Part 605, as amended. Any school bus agreement entered into under these regulations is incorporated into this Contract by reference.

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assurances that they are (or will be) designed and equipped to limit air-pollution as provided in accordance with EPA regulations, applicable federally-approved State Implementation Plan(s), appropriate FTA directives and all other applicable standards.

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SECTION 3.28 Compliance with Laws. Some of the clauses contained in this Contract are not governed solely by Federal law, but are significantly affected by State law. The laws and regulations cited in this Contract are not all-inclusive of those which may apply to the successful completion of this Contract. The Grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this Contract, and that Grantee is solely responsible for its lawful compliance with them.

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SECTION 3.30 Privacy Act. The Grantee agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Grantee agrees to obtain the express consent of the Federal Government before the Grantee or its employees operate a system of records on behalf of the Federal Government. The Grantee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

SECTION 3.31 Audit Requirement. The Grantee shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and

OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The Grantee will provide the MDT Transit Section with a copy of the audit report for each fiscal year FTA funds are received by the Grantee.

SECTION 3.32 Coordination. The recipient of any capital project purchased through this program certifies: (1) the projects selected were derived from a locally developed and coordinated public transit and human services transportation plan; (2) the plan was developed through a process that included representatives of public, private and nonprofit transportation and human services providers as well as the general public; and (3) vehicle use and location is identified in the planning document and will not be altered without the prior written permission of the Montana Department of Transportation. Should the recipient of any capital project withdraw from the coordinated plan, the ownership of any vehicle purchased under the plan shall revert back to the State or the State will be reimbursed full cost of the capital.

SECTION 3.33 FTA Master Agreement The Grantee understands that this contract includes requirements specifically prescribed by Federal law or regulation and does not encompass all Federal laws, regulations, and directives that may apply to the Grantee or its project. A comprehensive list of those Federal laws, regulations and directives is contained in the current FTA Master Agreement MA(12) at the FTA website <http://www.fta.dot.gov/documents/13-Master.doc>. The clauses in this contract have been streamlined to remove most provisions not covered by statutory or regulatory certification and assurance requirements.

The Grantee also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 4. NON-DISCRIMINATION NOTICE

During the performance of this Agreement, City of Billings-Aviation and Transit Dept. Met Transit Division (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) **Compliance with Regulations:** The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) **Nondiscrimination:** The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential

subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.

- (4) **Information and Reports:** The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FTA as requested, setting forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FTA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FTA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."

(3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CITY OF BILLINGS-AVIATION AND TRANSIT DEPT. MET TRANSIT DIVISION

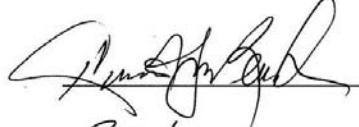
BY: _____

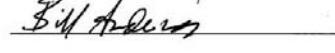
DATE: _____

MONTANA DEPARTMENT OF TRANSPORTATION

BY: _____
Lynn Zanto, Administrator

DATE: _____

Approved for Legal Content by: 

Approved for Civil Rights Content by: 



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: Acceptance of Contract with the Montana Department of Transportation (MDOT) for Paratransit Operating Assistance through the Federal Transit Administration TransADE Grant Program

DEPARTMENT: Aviation and Transit Department

PRESENTED BY: Thomas H. Binford, Director of Aviation/Transit

PROBLEM/ISSUE STATEMENT: The City of Billings MET Transit Division was advised by the Montana Department of Transportation – Transit Section, of the availability of State grant funds that can be used for paratransit operating assistance. The intent of this funding is to encourage agencies to provide coordinated transit service to the elderly and disabled citizens. The rising cost of transporting these individuals has a significant impact on operating budgets and the State is recognizing that its assistance is vital to continuing this needed service.

The acceptance of this contract with the Montana Department of Transportation will provide reimbursement of \$60,098.82. This grant will fund a portion of MET Special Transit's operating, administrative and maintenance costs for FY 09/10. Sufficient eligible operating expenses are contained in the budget to offset required match amounts.

The MET will pursue this grant revenue again next year; however, these funds are allocated by the State on a year by year basis so continued funding is unknown at this time.

FINANCIAL IMPACT: This contract will allow the MET to access \$60,098.82 in grant revenue to help offset paratransit operating expenses for transporting elderly and disabled citizens.

RECOMMENDATION

Staff recommends that Council approve and the Mayor execute the attached Operating Assistance Contract with the Montana Department of Transportation for paratransit operating assistance through the Federal Transit Administration TransADE grant program.

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

ATTACHMENTS

A – TransADE Operating Contract

TransADE OPERATING CONTRACT

This Contract is entered into between the State of Montana, DEPARTMENT OF TRANSPORTATION, Transportation Planning Division, 2701 Prospect Avenue, PO Box 201001, Helena, Montana (State) and City of Billings-Aviation and Transit Dept. Met Transit Division, 1705 Monad Road, P.O. Box 1178, Billings, MT. 59103. Liaison for the State is Audrey Allums, Transit Supervisor. Liaison for the Grantee is Ron Wenger.

The State, having received revenues in accordance with §§61-3-321 and 7-14-112, MCA, and desiring to assist the Grantee (a county, incorporated city or town, transportation district, or private, nonprofit organization), enters into the following Contract with Grantee. Actual award is contingent upon the availability of FTA funds.

ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This Contract provides assistance for the Grantee's elderly persons and persons with disabilities transportation services (Project), consistent with the purposes described in 49 U.S.C. §§ 5310 and 5311.

SECTION 1.2 Scope of Project. Grantee shall implement a transportation system in accordance with the budget, goals and plans outlined in its FY10 TransADE application and in accordance with the guidelines of the TransADE Program. The Grantee shall use its best efforts to efficiently and economically complete the Project.

SECTION 1.3 Project Description. Reimbursement of operating expenses described in Grantee's Application for the period July 1, 2009 through June 30, 2010.

SECTION 1.4 Period of Performance. This Contract will be effective from July 1, 2009 to June 30, 2010.

SECTION 1.5 Cost of Project. The total cost of the Project shall be \$105,919.00. The cost of the Project shall be shared as follows:

Operating:	
54.11% State Share	\$ 48,314.82
45.89% Local Match	<u>\$ 40,975.18</u>
	\$ 89,290.00
Administrative:	
70% State Share	\$ 10,634.40
30% Local Match	<u>\$ 4,557.60</u>
	\$ 15,192.00
Maintenance:	
80% State Share	\$ 1,149.60
20% Local Match	<u>\$ 287.40</u>
	\$ 1,437.00
Total State Share	\$ 60,098.82
Total Local Share	<u>\$ 45,820.18</u>
Total Grant Amount	\$105,919.00

The Grantee agrees to provide matching funds to ensure payment of Project costs. Grantee shall provide these funds when necessary to meet Project costs. The Grantee will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State.

State will make quarterly grant payments to Grantee based upon the State's approval of reports and invoices submitted by the Grantee.

SECTION 1.6 Purchase of Project Equipment. No equipment will be purchased under this Project.

SECTION 1.7 Maintenance. During the contract period Grantee shall maintain any required equipment and facilities at a high level of cleanliness, safety and mechanical soundness. In addition, all accessible features and equipment used by persons with disabilities must be maintained in operating condition. This includes but is not limited to lifts, securement devices, elevators and signage. Equipment must be repaired promptly, and reasonable steps must be taken to continue serving persons with disabilities while the repairs are being made (reference 49 CFR, Subpart G, 37.161 and 37.163). The State reserves the right to rehabilitate any Project vehicle covered under this agreement, after proper application by Grantee and approval by the State.

SECTION 1.8 Insurance. During the Contract term, the Grantee shall maintain insurance or self-insurance (property damage and liability) adequate to protect the state share portion of Project facilities. Grantee will furnish proof of such insurance for the State's approval.

SECTION 1.9 Records, Reports and Information Access.

1.9.1 **Record-keeping.** The Grantee shall keep records regarding the use of Project property, compliance with the provisions of this Contract, and such records as the State may require, including financial statements, program operation data, contracts and other Project-related documents. If a third party has exclusive possession of any required information and refuses or fails to provide that information, the Grantee shall inform the State and set forth its efforts to obtain this information. Grantee shall maintain these records for at least three years after any final payment and all other matters pending under this Contract are closed.

1.9.2 **Reporting.** Grantee shall advise the State in writing of Project progress at such times and in such manner as the State may require, but not less than on a quarterly basis.

1.9.3 **Information Access.** The Grantee shall permit the State, or their authorized representatives, to inspect all transportation services provided through the Project. The Grantee shall also permit the above-named persons to examine the books, records, data and accounts pertaining to the Project.

ARTICLE 2. DEFAULT AND TERMINATION

SECTION 2.1 Default. Nonperformance by the Grantee of any obligation imposed by this Contract, including noncompliance with the federal assurances in Articles 3 and 4, or reduction of local project cost funding, will constitute default.

SECTION 2.2 Termination. This Contract may be terminated by the State by serving a notice of termination on the Grantee. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the Grantee thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of the Grantee's default, and offer the Grantee an opportunity to explain its nonperformance. If the State finds that the Grantee has a reasonable excuse for nonperformance,

which is beyond the control of the Grantee, the State may set up a new work schedule and allow the completion of this Contract.

In any termination, the State will make its contractual payments proportionate to the work properly performed in accordance with this Contract to the time of termination.

SECTION 2.3. Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. This Contract will be governed by Montana law.

SECTION 2.4 Venue. In the event of litigation concerning this Agreement, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County.

ARTICLE 3. MISCELLANEOUS

SECTION 3.1 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 3.2 Assignment and Subcontracting. The Grantee shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate Grantee in any manner with any third party with respect to Grantee's rights and responsibilities under this Agreement, without the prior written concurrence of the State.

SECTION 3.3 Subcontracts. The Grantee shall include in all subcontracts entered into pursuant to this Agreement a copy of this Contract, and the subcontract will make the provisions of this Contract a specific part of the subcontract. In addition, the Grantee shall include the following provisions in any advertisement or invitation to bid for any procurement under this Agreement:

Statement of Financial Assistance
This agreement is subject to a financial assistance contract between the Montana Department of Transportation.

SECTION 3.4 Indemnification. The Grantee shall indemnify, defend, and hold harmless the State of Montana, Department of Transportation, its employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising or resulting from the performance of this Contract.

SECTION 3.5 Settlement of Third Party Contract Disputes or Breaches. The term "third-party contract," as used in this Agreement, is defined as a contract between the Grantee and its subcontractor in which the Grantee has procured a good and/or service commercially from the subcontractor. Therefore, the Grantee shall avail itself of all legal rights available under any third party contract. The Grantee shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved.

SECTION 3.6 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 3.7 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of State.

SECTION 3.8 Severability and Integration. If any part, or parts, of this Contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, and exhibits, represent the complete and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 3.9 Prohibited Interest. No employee, officer, board member or agent of the Grantee shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer, board member or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner; or
- (4) An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award. The Grantee's employees, officers, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

SECTION 3.10 Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

SECTION 3.11 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

SECTION 3.12 Ineligible Bidders. Bidders or Suppliers whose names appear on the U.S. Comptroller General's List of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this agreement. Submission of a bid by any bidder constitutes certification that he or any subcontractor or suppliers to him, on this proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by the State that a bidder knowingly made any misstatement of facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.13 Debarment and Suspension. The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 CFR Part 29, and otherwise comply with the requirements of those regulations.

SECTION 3.14 No State Obligations to Third Parties. The State shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without the specific written consent of the State. Neither the concurrence in nor the approval of the award of this contract or any subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.15 Air Pollution. No facilities or equipment shall be acquired, constructed, or improved as a part of the Project unless the grantee obtains satisfactory assurances that they are (or will be) designed and equipped to limit air-pollution as provided in accordance with EPA regulations, applicable federally-approved State Implementation Plan(s) and all other applicable standards.

SECTION 3.16 Authority. The Grantee warrants that it has the lawful authority to enter this Agreement, and that it has taken all actions and complied with all procedures necessary to

execute the authority lawfully in entering this Agreement, and that the undersigned signatory for Grantee has been lawfully delegated the authority to sign this Agreement on behalf of Grantee.

SECTION 3.17 Compliance with Laws. Some of the clauses contained in this Contract are not governed solely by Federal law, but are significantly affected by State law. The laws and regulations cited in this Contract are not all-inclusive of those which may apply to the successful completion of this Contract. The Grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this Contract, and that Grantee is solely responsible for its lawful compliance with them.

SECTION 3.18 Drug and Alcohol Compliance. The grantee shall comply with USDOT Federal Transit Administration drug and alcohol rules as established in the "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit," set forth in 49 CFR Part 40, and Part 655; Drug-Free Workplace act. Grantee understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.1.

ARTICLE 4. NON-DISCRIMINATION NOTICE

During the performance of this Agreement, City of Billings-Aviation and Transit Dept. Met Transit Division (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FTA as requested, setting forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FTA determines appropriate, including, but not limited to,

- (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
- (b) Cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FTA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CITY OF BILLINGS-AVIATION AND TRANSIT DEPT. MET TRANSIT DIVISION

BY: _____

DATE: _____

MONTANA DEPARTMENT OF TRANSPORTATION

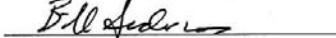
BY: _____
Lynn Zanto, Administrator

DATE: _____

Approved for Legal Content by:



Approved for Civil Rights Content by:



AGENDA ITEM: **F**



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: **FISCAL YEAR 2010 LANDFILL USE AGREEMENTS**

DEPARTMENT: Public Works Department

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Billings Regional Landfill currently accepts waste from adjoining counties and the cities and towns within those counties. This is accomplished via 1-year or 3-year agreements (with annual amendments) with those entities. The current agreements expire June 30, 2009. The renewal of these agreements is recommended to continue the current practice.

ALTERNATIVES ANALYZED:

- 1) Renew 1-year or 3-year agreements (with annual amendments) with each entity.
- 2) Do not renew agreements with each entity.

FINANCIAL IMPACT: These agreements specify a rate of \$13.75 per ton of waste for Yellowstone County and \$15.00 per ton of waste for all other entities. These are the rates that were approved at the June 8, 2009 Council meeting and include the 10% surcharge for Yellowstone County and 20% surcharge for all other entities. These agreements will generate approximately \$1,400,000 in revenue in fiscal year 2010.

RECOMMENDATION

Staff recommends that the City Council approve, and the Mayor sign the 3-year agreement with Yellowstone County and the one-year Landfill Use Agreements with:

Bighorn County	Town of Fromberg	Musselshell County
Town of Bridger	Town of Hysham	City of Red Lodge
Carbon County	Town of Joliet	Stillwater County
Town of Columbus	City of Laurel	Treasure County

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

ATTACHMENTS

A - Example of "Standard" Landfill Use Agreement
B - 3-Year Agreement with Yellowstone County

A G R E E M E N T

ATTACHMENT A

THIS AGREEMENT made and entered into this _____ day of _____, 20 _____, by and between «ORGANIZATIO» and the CITY OF BILLINGS, MONTANA, a municipal corporation, herein called the CITY,

WITNESSETH:

WHEREAS, «TheOrganization» is desirous of using the landfill facilities of the CITY for the disposal of solid waste generated within «TheOrganization».

WHEREAS, the CITY is willing to allow «TheOrganization» use of its landfill facilities during normal published operating times which currently are seven (7) days a week between the hours of 8:00 A.M. and 5:30 P.M. during the period of March through November and six (6) days a week between the hours of 8:00 A.M. and 5:30 P.M. Monday through Saturday during the period of December through February.

NOW, THEREFORE, in consideration of the mutual covenants and agreements between the parties hereto, it is mutually agreed as follows:

1. That the CITY will permit the disposal of solid waste, except industrial wastes, collected by «TheOrganization» at the landfill facility operated by the CITY at such times as said landfill shall be open for disposal of solid waste pursuant to all rules, regulations, and limitation of Billings Municipal Code, Chapter 21.

2. That «TheOrganization» agrees to pay the CITY for the use of said landfill facilities at the rate of \$15.00 per ton as weighed on the landfill scale. Should the scale be inoperable, the rate will be \$1.92 per cubic yard of non-compact solid waste and \$5.10 per cubic yard of compacted solid waste as determined by the load capacity of the vehicle used to haul said solid waste regardless of the actual size of the load.

3. The Billings City Council has adopted a policy for separate Landfill charges for the disposal of special waste, dead animals, non-processed tires, and asbestos. Said charges will apply in addition to, or in lieu of, the amount specified in paragraph two above, but it is further understood that the CITY will not hold «TheOrganization» liable for these additional charges but will bill said charges direct to the individual company or entity physically depositing said special waste, dead animals, non processed tires and asbestos at the landfill.

4. Only solid waste generated within the political jurisdiction of «TheOrganization» can be disposed of in the City of Billings landfill.

5. No liquid waste or hazardous waste as defined by the E.P.A. and the State of Montana Solid Waste Bureau will be accepted. By law, any hazardous waste is the responsibility of all parties involved from the time it is generated until its final disposal.

6. It is further understood and agreed that this agreement shall be effective for Twelve (12) Months from and after the 1st day of July 2009, unless terminated by the CITY. The CITY may terminate this agreement at any time, with or without cause, upon thirty (30) days written notice to «TheOrganization».

7. «TheOrganization» waives any and all claims and recourse against the CITY OF BILLINGS, including the right to contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incidental to performance of this agreement.

Further, «TheOrganization» shall indemnify, hold harmless and defend the CITY OF BILLINGS against any and all claims, demands, causes of action, damages, costs, expenses, liability, or judgments against the CITY OF BILLINGS which may arise as a result of the CITY OF BILLINGS entering into this agreement.

Indemnity under this agreement shall commence on the date of execution hereof and shall continue for the entire term this agreement is in effect and for any applicable period of limitations thereafter. The CITY OF BILLINGS agrees to notify «TheOrganization» in writing, within ten (10) days of any claim made against the CITY OF BILLINGS on the obligations indemnified against.

8. It is further understood and agreed that «TheOrganization» may terminate this agreement at any time upon payment in full of any monies owing under this agreement and upon written notice Ninety (90) days in advance to the CITY.

DATED THIS ____ day of _____, 20 ____.

«ORGANIZATION»

CITY OF BILLINGS

RON TUSSING, MAYOR

CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

Billings City Attorney

AGREEMENT

ATTACHMENT B

The YELLOWSTONE COUNTY SOLID WASTE DISPOSAL DISTRICT (the District) and THE CITY OF BILLINGS, MONTANA, a municipal corporation (the City) agree as follows:

1. The City agrees to allow the District and all of its residents to use its Class Two Landfill Facility (Facility) for disposal of solid waste generated within the area of the District during all of the normal operating times of the Facility.
2. Use of the Facility by the District shall be pursuant to all rules, regulations and limitations of Billings Municipal Code Chapter 21, and to all federal and state laws and regulations.
3. The effective date of this Agreement shall be from July 1, 2009 through June 30, 2012.
4. For the period from July 1, 2009 through June 30, 2010, the District agrees to pay the City the sum of four hundred thirty-four thousand eight hundred dollars (\$434,800) for the District's use of the Facility. One-half of this amount shall be paid by December 15, 2009, and the other half shall be paid by June 15, 2010.
5. For the remaining two years of this Agreement, the District and the City shall agree to an annual payment which shall be handled by an amendment to this agreement, with the amendment being approved by the Chairman of the Yellowstone County Solid Waste Disposal District and the City Clerk of the City of Billings. In the event the District and the City cannot agree to an annual payment before the conclusion of the previous fiscal year, this Agreement shall thereafter be null and void. In each year one-half of the annual payment shall be due on December 15 of that year, and the second half shall be due on June 15 of the following year.
6. It is agreed that the City collects a separate landfill charge for the disposal of construction and demolition refuse, dead animals, non-process tires, and asbestos. The City will continue to collect such charges in addition to the amounts paid under the terms of this Agreement, but will not hold the District liable for these additional charges, instead directly charging the individual company or person physically depositing said refuse at the Facility.
7. Either party may terminate this Agreement at any time with or without cause, upon six months written notice to the other party. In the event of such termination, a pro rata payment shall be paid or refunded, depending upon the termination date.
8. Each party shall indemnify, hold harmless and defend the other party against any and all claims, demands, causes of action, damages, costs, expenses, liability, or judgments against the party that may arise as a result of the other party's negligence.

Dated this _____ day of _____, 2009

YELLLOWSTONE COUNTY
SOLID WASTE DISPOSAL DISTRICT

CITY OF BILLINGS

By: _____
Chairman

By: _____
Ron Tussing, Mayor

By: _____
Cari Martin, City Clerk

Approved As To Form:

By: _____
City Attorney

G



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: W.O. 04-26—Zone 4 Reservoir and Facilities, Amendment No. One to the Professional Services Contract with HDR Engineering, Inc.

DEPARTMENT: Public Works Department

PRESENTED BY: David Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The City of Billings is recommending an amendment to the Professional Services Contract with HDR Engineering, Inc. for W.O. 04-26—Zone 4 Reservoir and Facilities. The original contract, dated March 26, 2007, is for design services. Amendment No. One will encompass additional tasks including, but not limited to, bidding, construction administration, inspection, and services to meet SRF (State Revolving Fund) requirements, as depicted in the attachment. The necessity for these additional tasks, and the corresponding Amendment, was discussed at the time of the original contract approval. Amendment No. 1 will also extend the Contract termination date to March 31, 2012.

FINANCIAL IMPACT: This project is being funded by a State Revolving Fund (SRF) loan. Amendment No. 1 represents an increase in the amount of the contract by \$594,700.00. The FY 2010 budget includes ample funds for this increase.

Approved Funding Amount: \$ 8,097,885.00

Previously encumbered for original contract: \$ (497,885.00)

Amount being requested for Amendment No. 1: \$ (594,700.00)

Remaining Funding: \$ 7,005,300.00

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 1 to the Professional Services Contract with HDR Engineering, Inc. for W.O. 04-26—Zone 4 Reservoir and Facilities, in the amount of \$594,700.00.

Approved By: City Administrator City Attorney

ATTACHMENT

A. Contract Amendment No. 1 (6 pages)

ATTACHMENT 'A'

**AMENDMENT NUMBER ONE
TO THE
AGREEMENT FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES
BY AND BETWEEN THE CITY OF BILLINGS, MONTANA
AND HDR ENGINEERING, INC.
FOR PROJECT: W.O. 04-26 – ZONE 4
RESERVOIRS AND FACILITIES**

THIS AMENDMENT NUMBER ONE, made and entered into this ____ day of _____, 2009, modifies the Agreement for Professional Services, W.O. 04-26, by and between the City of Billings, Montana, and HDR Engineering, Inc., dated March 26, 2007. The Agreement is modified as follows:

Item 1: Section 3. Time for Performance

Change the Contract Termination Date from July 1, 2009 to December 31, 2011.

Item 2: Section 4. Compensation Method of Payment

Increase the amount of compensation by \$594,700 to One Million Ninety Two Thousand Five Hundred Eighty Five and no/100 DOLLARS (\$1,092,585.00).

Item 3: Appendix A – Basic Engineering Services

Delete Task Series 500 and 600 under the DETAILED SCOPE OF SERVICES and add the following:

Phase III

Task Series Description

500	Bid Phase
600	Construction Phase
700	Operation and Maintenance Manual
800	State Revolving Fund Coordination

Item 4: Appendix A – Basic Engineering Services

Add the Task Series descriptions in Attachment 1 to the DETAILED SCOPE OF SERVICES.

All provisions of the Agreement dated March 26, 2007, shall remain in full force and effect except as amended herein.

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

CONSULTANT

HDR Engineering, Inc.

BY: _____
Amanda B. McInnis, P.E.

TITLE: Vice President

DATE:

City of Billings

BY: _____
Mayor (or Council Designee)

DATE: _____

ATTEST:

Cari Martin, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

Attachment 1

PHASE III SCOPE OF WORK

TASK SERIES 500 – BID PHASE

501 – Bidding Administrative Assistance

Prepare bid documents and distribute to prospective bidders. Answer bidder questions and prepare addendum as needed. Schedule and conduct pre-bid meeting.

502 – Post-Bid Administrative Assistance

Receive, evaluate and tabulate bids. Assess completeness of bid. Make recommendations to the City on award of contract. Assist in preparation and distribution of contract documents.

TASK SERIES 600 – CONSTRUCTION PHASE

Construction Phase scoping is based on a 24 month construction period at which time only minor punch list items would need to be completed. There will be two phases of construction: Phase 1 is the construction of the composite water tower, which is anticipated to take 20 months. Phase 2, in general, is the waterlines, pump station and site work. The waterlines can be constructed simultaneously with the water tower. Some of the pump station and site work can be constructed simultaneously with the water tower, but the majority of the work will need to be completed after Phase 1 is substantially complete.

601 – Construction Initiation Services

After award of the construction contract, the Consultant shall prepare a construction initiation memorandum, schedule and conduct a preconstruction conference and prepare a memo summarizing the conference. The Consultant will provide the contractor with a reasonable number of “for construction” plans and specifications. The Consultant will prepare and issue the Notice to Proceed (signed by the City) to the contractor.

602 – Office Assistance and Administration

During the construction phase of the project, the Consultant will provide office assistance to the City on the administration of the project (both phases of construction). This effort will include review and response to RFIs, review and preparation of change orders, shop drawing review, interpretation of drawings and specifications, monitoring of compliance with procedural requirements on the project, coordinating with the contractor, preparation of pay estimates,

confirmation of certified payrolls, conducting periodic construction meetings, and preparing and distributing meeting minutes.

603 – Field Services

The Consultant will provide on-site construction observation services. A resident project representative (RPR) will be provided full time for 24 months at 40 hours per week. This is considered an average with some slower periods at less than 40 hours per week and some extended periods requiring 50 hours a week or potentially two residents. The RPR will monitor the project for compliance with project plans and specifications. Consultant will provide field staking for proposed site, the proposed pipelines and the new structures, and as-built surveying of uncovered utilities in locations not indicated on the drawings. Consultant will provide periodic trips to the site beyond construction meetings. Allowance is included for geotechnical consultation. No testing services are included as these will be provided by the contractor.

604 – Construction Wrap-Up and Acceptance

Upon completion of the construction of the improvements of both phases, the Consultant will schedule and hold a Substantial Completion walk-through and assist the City in the wrap-up of the project, including preparing record drawings, preparation of a punchlist, start-up of facilities, and review of operations and maintenance information. The Consultant will then schedule and hold a final project walk-through to ensure completion of punch list items, assist the City in the final wrap-up, and recommend final acceptance.

605 – Post-Construction Warranty Services

Upon final acceptance, the Consultant will provide warranty item consultation, will assist in the eleven-month warranty inspection, and provide warranty follow-up with the contractor.

TASK SERIES 700 – OPERATIONS AND MAINTENANCE MANUAL

701 – Operations and Maintenance Manual

To achieve compliance with State Revolving Fund (SRF) loan requirements, prepare Operations and Maintenance (O & M) Manual for equipment and operations associated with this project. Manual will include process description of components for pump station and overall water system. Manual will not include Standard Operating Procedures (SOPs). Details of existing equipment and components that have not been modified will not be included but will be referenced when applicable in an existing O & M Manual. Two drafts of the manual will be submitted to the City and one to DEQ in Helena for comments. Drafts will be submitted approximately one month prior to startup for a two week

review period. Comments will be incorporated within two weeks and (2) two final manuals will be submitted to DEQ in Helena and (2) two final manuals will be submitted to the City. The document will be produced in the latest version of Microsoft Word and the graphics will be produced in the latest version of AutoCAD. Manual to include:

1. **Table of Contents**
2. **Chapter 1 - Manual Introduction**
 - a. A description of this manual includes and references existing manuals.
 - b. Brief description of overall water system including diagram indicating what components are new and included in this manual.
 - c. Operation and managerial responsibilities. Reference existing manual and update as required.
 - d. Operator certification. Reference existing manual and update as required.
3. **Chapter 2 - Operating Requirements**
 - a. Include summary table of latest operating criteria.
4. **Chapter 3 - Description, Operation and Control of Water System**
 - a. General operation
 - 1) Unit/process description.
 - 2) Relationship to other units including reference to existing O & M Manuals related to these other units.
 - 3) Control procedures.
 - 4) Major equipment.
 - 5) Troubleshooting.
 - b. Specific plant operation
 - 1) Normal operation.
 - 2) Alternate operation.
 - 3) Emergency operations.
5. **Chapter 4 - Laboratory Testing**
 - a. Describe new sampling location(s).
 - b. Reference existing manual for other information related to Laboratory Testing.
6. **Chapter 5 - Records**
 - a. List new equipment which should have maintenance records.
 - b. List items that should be recorded to facilitate O & M cost records.
 - c. Reference existing O & M for existing procedures related to records.
7. **Chapter 6 - Maintenance**
 - a. Briefly describe importance of maintenance and reference additional information in existing manual.
 - b. Provide list of maintenance tasks and frequencies for all new equipment including lubrication.
 - c. Provide list of spare parts provided by the project and additional spare parts that should be maintained in inventory.

- d. Indicate any special tools required for new equipment.
- e. Provide warranty information including start and stop dates.

8. Chapter 7 - Safety

- a. Describe pertinent safety cautions related to new equipment and chemical feed systems.
- b. Reference existing manual and other plant procedures manuals for additional information.

9. Chapter 8 - Utilities

- a. Generally describe utilities associated with the new pump station and water system including:
 - 1) Electrical.
 - 2) Instrumentation.
 - 3) Telephone.
 - 4) Natural Gas.
 - 5) Potable, non-potable and plant water.
 - 6) Sewer (Holding Tank).
 - 7) Standby power operation.

10. Equipment O & M Manuals

- a. Include specific equipment O & M Manuals.

The existing O & M manual(s) and plant procedures will be reviewed for applicable reference from the new manual.
DEQ checklist for review will be completed.

TASK SERIES 800 – STATE REVOLVING FUND

801 – State Revolving Fund Loan Design, Bidding and Construction Requirements

- Submit Design Drawings to DEQ in Helena.
- Submit Addendum Items to DEQ in Helena.
- Supply required bidding information to DEQ in Helena.
- Coordinate with and submit Change Orders to DEQ in Helena.
- Attend construction walkthroughs with DEQ.
- Submit As-Built Drawings to DEQ in Helena.

Provide other information as requested to the City for meeting the requirements of SRF Loan Application.

802 – One Year Performance Standards Certification

Establish Performance Criteria for project components based upon the requirements instituted in the Contract Documents. Upon project components being in service one year, evaluate project components for established criteria and provide certification of meeting the performance standards.

AGENDA ITEM:

H



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: Acknowledge Receipt of Petition to Vacate a Portion of Clark Avenue within the 2300 Block and Set a Public Hearing Date

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Paul and Renae Parkins, owners of the property at 2334 Clark Avenue, have requested to vacate Clark Avenue in front of their property which is approximately 80 feet by 60 feet. Currently, Clark Avenue runs from 23rd Street West to a dead end at their property. Clark Avenue will not be extended to 24th Street West due to the fact that a building is constructed on 24th Street West. Both property owners on the other side of the street and the west side of the street have signed off on the Parkins vacating this street for themselves. There is a water line in Clark Avenue that dead ends at the Parkins property. If the Parkins ever decide to build a structure over the vacated property, they will be responsible to move the water line as approved by the City Engineer's Office.

ALTERNATIVES ANALYZED:

1. Approve acknowledgement of petition to vacate the above-mentioned right-of-way and set a public hearing for July 13, 2009.
2. Do not approve acknowledgement of petition to vacate the right-of-way.

FINANCIAL IMPACT: A comparison land sales report was done by Kendal Mayer, a realtor with Century 21, which valued the right-of-way between \$2,200 and \$2,600. Paul and Renae Parkins are offering \$2,200 for the proposed vacated right of way.

RECOMMENDATION

Staff recommends that Council acknowledge the receipt of petition to vacate a portion of Clark Avenue within the 2300 Block and set a public hearing for July 13, 2009.

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

ATTACHMENT

- A. Map Depicting Area to be Vacated
- B. Comparison Sale Letter



2-18-2009

To whom it may concern,

I was contacted by Mr. Paul Parkins and was asked to give a value opinion of a vacant lot at the end of the 2300 block of Clark Ave. It is my understanding that the vacant lot in question borders Mr. Parkins' property at 2334 Clark Ave. and is approximately 2,058 square feet in size. I was later contact by Chris Hertz from the city of Billings and he explained to me that Mr. Parkins was wanting to the city to vacate the vacant lot in question, as well as the street in front of his home for a total area equal to 4,800 square feet.

It is my opinion that the vacant lot and requested street area in front of Mr. Parkins' property at 2334 Clark Ave. has little or no value, except to Mr. Parkins and his property. It is also my opinion that the added market value or benefit Mr. Parkins could reasonably see by adding these pieces of land to his property is \$2,200-\$2,600. \$2,200-\$2,600 is my value opinion of the vacant lot and the street in front of 2334 Clark Ave.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kendal Mayer'.

Kendal Mayer

Kendal Mayer • Cell: (406) 321-1353 • Office: (406) 294-2145 • Fax: (406) 294-2192 • Website:
kendalmayer.com • Email: kendal.mayer@century21.com



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: The Billings Depot Street Closure

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The Billings Depot Inc. requests a full lane closure on July 10th, 11th, and 12th from 7:00 a.m. July 10 until 8:00 p.m. July 12, 2009 for their 100 Celebration that would include 30 minute train rides from Thomas the Train. The lane closure would be the south lane of Montana Avenue from 25th to the underpass. This would accommodate the attendance and would allow drop-offs safely.

Recommended conditions of approval include The Billings Depot:

1. The southern-most eastbound traffic lane on Montana Avenue shall only be used for the following:
 - A. Passenger loading/unloading in designated zones
 - B. Access to/from the designated event parking areas
2. A detailed traffic control plan shall be submitted to the City Engineer's office at least two weeks prior to the event
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide a certificate of insurance naming the City of Billings as additional insured
5. Contact all businesses and make them aware of the event two weeks in advance
6. Clean the area to be used and provide and empty waste cans after the event

ALTERNATIVES ANALYZED:

1. Approve street closure for the event
2. Deny the street closure

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

RECOMMENDATION

Staff recommends that Council approve the closure as outlined in the attached document.

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

ATTACHMENTS

- A. Right of Way Activity Permit
- B. Certificate of insurance
- C. Map of street closure



**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 Tim Goodridge 670-2329.

ORGANIZATION MAKING APPLICATION Billings Depot Inc.

PHONE 656-7273

ADDRESS 2310 Montana Ave.

EMAIL ADDRESS billingsdepot@180.com.net.

APPROXIMATE TIME EVENT WILL:

Assemble 7 am Start 8 am Disband 8 pm

DATE OF EVENT July 10, 2012

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

Billings Depot 100 yr celebration
30 minute train rides will be offered to the public every
45 minutes 11 times per day on July 10, 2012. To accommodate
the attendance and improve safety, we would like to close
the south lane of Montana Ave from 25th to the underpass.
This will allow drop-offs and provide a buffer from traffic.

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

Barricades and signage provided by BCS.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

Billings Depot Complex

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

We clean up

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.

DATE 3/27/09

APPLICATION APPROVED

DATE _____

APPLICATION DENIED

DATE _____

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

FOR CITY USE ONLY

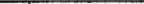
FEE: _____

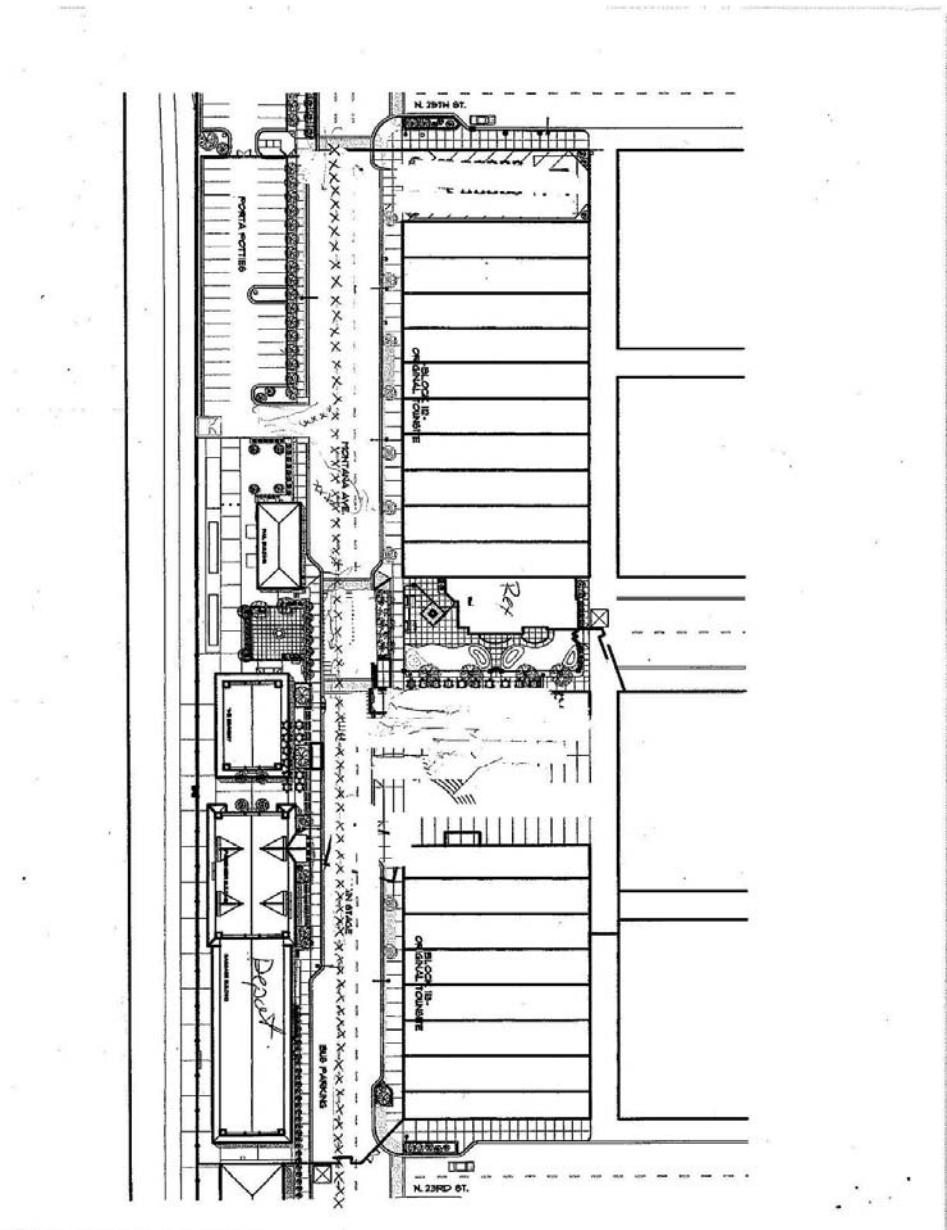
APPLICANT NOTIFIED BY _____

DATE: _____

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

ACORD™ CERTIFICATE OF LIABILITY INSURANCE				BILLDEPO			
PRODUCED BY Holness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638				DATE (MM/DD/YYYY) 05/22/2009			
INSURED Billings Depot, Inc. 2310 Montana Ave Billings, MT 59101-2420				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.			
INSURERS AFFORDING COVERAGE				NAIC #			
<small>INSURER A: Cincinnati Insurance Company</small> <small>INSURER B: Cincinnati Specialty Underwrite</small> <small>INSURER C:</small> <small>INSURER D:</small> <small>INSURER E:</small>							
COVERAGES							
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSURER ID#	LTR	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY			CAP5171696	07/03/08	07/03/09	EACH OCCURRENCE \$1,000,000
	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Per occurrence) \$500,000
<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$5,000	
						PERSONAL & ADV INJURY \$1,000,000	
						GENERAL AGGREGATE \$2,000,000	
						PRODUCTS - COMP/PROD AGG \$2,000,000	
GEN'L AGGREGATE LIMIT APPLIES PER:							
<input type="checkbox"/> POLICY <input type="checkbox"/> PER EXCESS <input type="checkbox"/> LOC							
AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Per accident) \$	
<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						BODY INJURY (Per person) \$	
						BODY INJURY (Per accident) \$	
						PROPERTY DAMAGE (Per accident) \$	
GARAGE LIABILITY						AUTO ONLY - EA ACCIDENT \$	
<input type="checkbox"/> ANY AUTO						OTHER THAN EA ACC \$	
						AUTO ONLY: AGG \$	
EXCESS/UMBRELLA LIABILITY						EACH OCCURRENCE \$	
<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE						AGGREGATE \$	
						\$	
<input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$ <small>If yes, describe under SPECIAL PROVISIONS below</small>						\$	
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUS/ TORY LIMITS \$	
ANY PROPRIETOR/PARTNER/EXECUTIVE OWNED BY THE INSURED EXCLUDED?						E.L. EACH ACCIDENT \$	
						E.L. DISEASE - EA EMPLOYEE \$	
						E.L. DISEASE - POLICY LIMIT \$	
B	OTHER General Liab			CSU0010769	04/10/09	10/12/09	\$1,000,000/Occurrence
							\$2,000,000/Aggregate
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS							
Thomas the Train Event July 10-12, 2009. The Certificate Holder is an Additional Insured as owner of land.							

CERTIFICATE HOLDER	CANCELLATION	10 Days for Non-Payment
City of Billings PO Box 1178 Billings, MT 59104	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, 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.</p> <p>AUTHORIZED REPRESENTATIVE:</p> 	





CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 2009

TITLE: Carpet One Fundraiser for Relay for Life Street Closure Request

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Carpet One requests the temporary closure of Canyon Drive on Saturday June 27th from 11:00 a.m. until 4:00 p.m. at 24th Street West going east just past the two businesses for participants to go back and forth safely.

Recommended conditions of approval include Carpet One:

1. Contacting all residences along Canyon Drive between 24th & 21st Streets West and along Winter Park Drive at least one week prior to the closure.
2. Submit a traffic control plan to City Engineer's Office for approval at least one week prior to the event.
3. Provide and install adequate traffic barricades closing the street that must be arranged so that they can be easily removed to allow for emergency vehicle access if necessary.
4. Providing certificate of insurance naming City of Billings as additional insured.
5. Clean area to be used after event.
6. No event activities shall extend into the sidewalk or roadway along 24th Street West.
7. Have no alcohol consumption in the Right of Way.

ALTERNATIVES ANALYZED:

1. Approve request to close the street for the event
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 Carpet One Relay for Life Fundraiser

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

ATTACHMENTS

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

06/08/2009 07:51 4066569496
06/05/2009 10:44 4062375291

CITY OF BILLINGS

PAGE 82/83
PAGE 82/87



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 Ron Scales / Randy Mostad
ORGANIZATION MAKING APPLICATION Carpet One - Connollys - Big West Awards
PHONE 656-9300 cell 860-4341
ADDRESS 505 So. 24th ST. WEST Blgs MT. 59102
EMAIL ADDRESS Ron@carpetone.bz

APPROXIMATE TIME EVENT WILL:
Assemble Sat. 6/27/09 Start 11:00 a.m. Disband 3 p.m.

DATE OF EVENT 6/27/09

* PURPOSE/DESCRIPTION OF EVENT: (Description and detail of the event.)
Fundraiser for Relay For Life. Businesses on both sides of Canyon
drive will host the event. We will have a barbecue, raffles and
events for kids - example, blow up trampolines - Blow up romper room,
Need the street closed so participants can go back and forth
safely. NO alcohol

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

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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

Retail outlets will clean up own lots

* there will be no booths, blow ups, etc in the street being
closed - only want it as a safety measure for people going
in and out.

06/08/2009 07:51 4866569496
06/05/2009 10:44 4862376291

CITY OF BILLINGS

PAGE 03/03

PAGE 03/07

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 in 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 BEVERAGE 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 Ron Scales DATE 6/8/09

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

06/08/2009 11:11 4866569496

From: Michelle Tipton - Payne Financial Group, Inc. To: Carpet One - Altr. Ron Page: 2/3 Date: 6/8/2009 11:05:32 AM

Client# 43015

CARPETON1

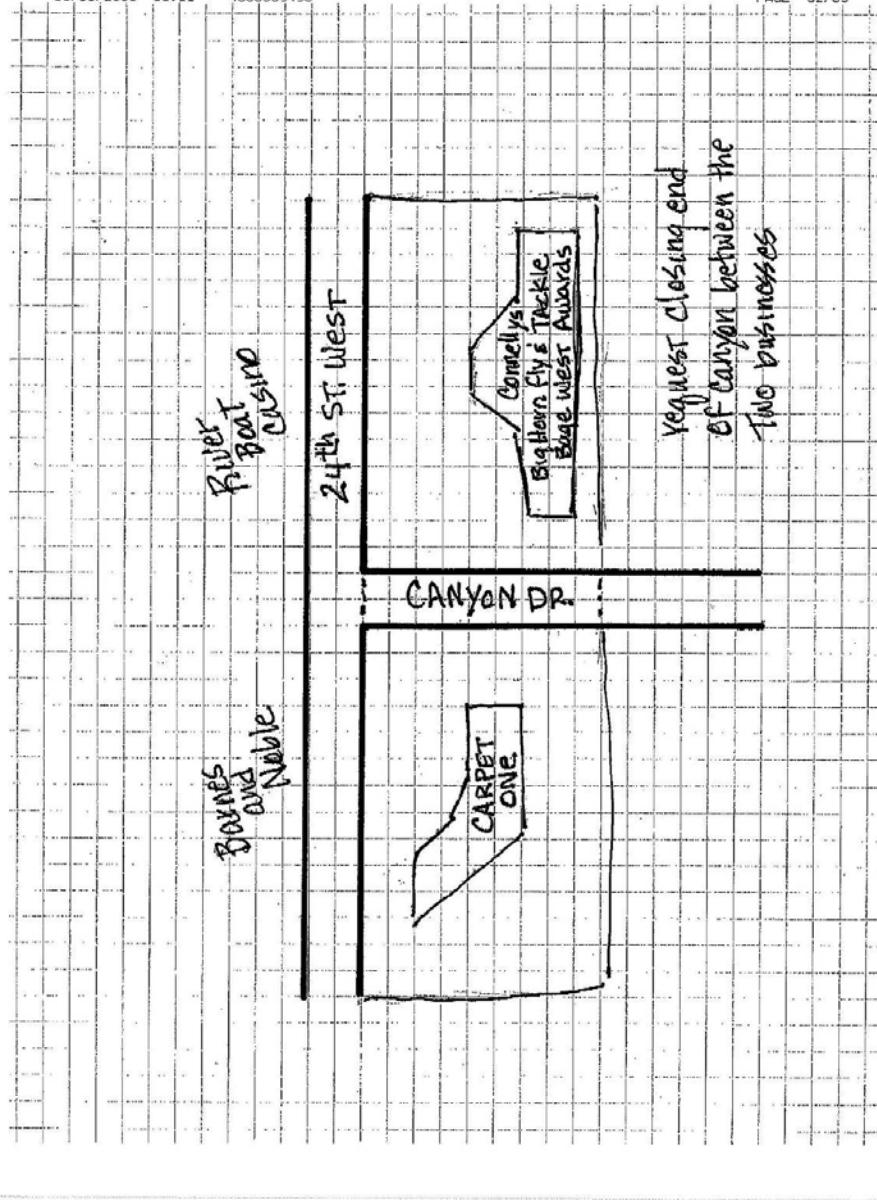
PAGE 03/03
DATE (MM/DD/YYYY)
6/08/2009

ACORD[®] CERTIFICATE OF LIABILITY INSURANCE			
PRODUCER Holness 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.	
INSURED Ergill, Inc. DBA Carpet One of Billings 505 South 24th Street West Billings, MT 59102		INSURERS AFFORING COVERAGE INSURER A: Phoenix Insurance Company INSURER B: The Travelers Indemnity Co. INSURER C: Travelers Property Casualty Co INSURER D: INSURER E:	
COVERAGES <small>THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</small>			
<small>INSUREE LINES INSURED</small>	<small>TYPE OF INSURANCE</small>	<small>POLICY NUMBER</small>	<small>POLICY EFFECTIVE DATE (MM/DD/YY)</small>
		<small>POLICY EXPIRATION DATE (MM/DD/YY)</small>	<small>LIMITS</small>
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	16804542W202PHX08	07/01/08
			07/01/09
			EACH OCCURRENCE \$1,000,000
			DAMAGE TO RENTED OR Hired EQUIPMENT \$300,000
			MED EXP (Any one person) \$5,000
			PERSONAL & ADV INJURY \$1,000,000
			GENERAL AGGREGATE \$2,000,000
			PRODUCTS - COMMERCIAL \$2,000,000
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> RENTED AUTOS <input checked="" type="checkbox"/> Hired AUTOS <input type="checkbox"/> NON-OWNED AUTOS	BA4542W29908SEL	07/01/08
			07/01/09
			COMBINED SINGLE LIMIT (Per accident) \$1,000,000
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			PROPERTY DAMAGE (Per accident) \$
			AUTO ONLY - BA ACCIDENT \$
			OTHER THAN BA ACC \$
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			EL EACH ACCIDENT \$
			EL DURABLE - EMPLOYEE \$
			EL DURABLE - POLICY LIMIT \$
<small>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS</small> <small>Certificate holder is an additional insured when required by written contract.</small> <small>RE: Fund Raiser for Relay For Life on 6/26/09.</small>			

CERTIFICATE HOLDER		CANCELLATION	
City of Billings 2224 Montana Avenue Billings, MT 59101		10 Days for Non-Payment <small>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.</small> <small>AUTHORIZED REPRESENTATIVE</small> <small><i>George P. Roper</i></small>	

ACORD 25 (2001/08) 1 of 2 #5389474/0389472

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: Acceptance and Recognition of \$1,000 Donation from Breakfast Exchange Club of Billings for Crime Prevention Center

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On May 21, 2009, the Police Department received a \$1,000 donation from the Breakfast Exchange Club of Billings designated for the Crime Prevention Center. City staff is requesting approval and acceptance of this \$1,000 donation.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: This donation has been deposited into our Fund 709 donation account designated for the Crime Prevention Center.

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this \$1,000 donation from the Breakfast Exchange Club of Billings.

Approved By: City Administrator City Attorney



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: 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 City Council held a public hearing on staff recommendations for the grant on June 8, 2009. The final draft of the ECBG application and the EECS is 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 approve the Energy Efficiency & Conservation Block Grant application and the Energy Efficiency & Conservation Strategy.

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

ATTACHMENTS

- A. City of Billings Energy Efficiency and Conservation Strategy

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 may 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 ECBG application and the EECS was held on June 8, 2009
- City Council will take action on the ECBG application and the EECS on June 22, 2009
- The ECBG 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 ECBG 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 ECBG 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.

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 final list forwarded to the City Council and subject to the public hearing on June 8, 2009, includes the following projects:

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) for an expected energy savings of 15% for new construction. 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 bicycle 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 \$496,749. 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 are 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. CITY 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.

Fifty-three thousand dollars 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 Parmly Billings Library 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 \$350,000. The funding request is for the entire amount.

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 approve the Energy Efficiency & Conservation Block Grant application and the Energy Efficiency & Conservation Strategy.

ATTACHMENTS

- A. City of Billings Energy Efficiency and Conservation Strategy

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 in the next 16 years. The EECBG project activities will support our energy efficiency strategies to achieve the following goals:

Goal 1: 15 by 15: *Establish baseline energy use information for all City facilities and participating private facilities, and reduce 2009 energy levels 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 benchmark energy use and identify projects that will result in energy savings.
- Utilize the energy audit to develop an energy management portfolio to monitor energy savings in public and private buildings 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 total fossil fuel consumption by adding 10 miles of multi-purpose pathways, bicycle lanes, and sidewalks, and increasing transit ridership 10% in 10 years.*

Objectives:

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

Strategies:

- Construct a one-mile, multi-purpose pathway to complete an important commuter route to downtown Billings
- Promote transit use and partner with major employers to incent workforce ridership
- Partner with public health organizations and agencies to develop public awareness campaign encouraging 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.
- Promote public awareness of clean-air benefits fuel efficient 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 EECBG projects proposed addresses one of the three goals.

1. **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.

EECBG Projects:

2009 INTERNATIONAL ENERGY CONSERVATION CODE PROGRAM DEVELOPMENT - a program to train and certify building safety officials, and educate the building community in the new Energy Code. This project is expected to preserve at least one internal position, and reduce energy consumption of new construction by 15% at a cost of \$100,000.

ENERGY PERFORMANCE CONTRACT FOR CITY-OWNED FACILITIES – hire an independent contractor to identify building improvements that will result in significant future energy savings through a Technical Audit at a cost of \$100,000. 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.

CITY ENERGY STAR CHALLENGE – \$53,000 will be used to establish baseline energy use levels in public and participating private buildings, and monitor the energy savings resulting from voluntary energy efficiency programs. The project includes a significant public awareness component, including a website with information on energy saving tips and available financial assistance, and a community marketing campaign about the Energy Star Challenge and the ways in which people can become involved.

2. **Goal 2: 10 in 10:** Reduce total fossil fuel consumption by adding 10 miles of multi-purpose pathways, bicycle lanes, and sidewalks, and increasing transit ridership 10% in 10 years.

EECBG Project:

SWORDS PARK TRAIL II – one mile of hard-surfaced multi-purpose trail connecting the existing Swords Park Trail to the bicycle path along Aronson Boulevard. This trail section will complete an important 4-mile bicycle commuting route from the Billings Heights neighborhood to downtown Billings. The City is requesting \$400,000 to supplement available funds to complete this project.

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

EECBG Project:

HYBRID BOOKMOBILE - replace the Parmly Billings Library 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 for \$350,000.

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 LEDs within the next three years. This project is aligned with the City of Billings' goal to reduce 2009 energy levels by 15% by 2015. Both the City and County's energy saving strategies will be monitored by the Mayor's Commission on Energy Conservation, a working group formed to promote energy conservation in the public and private arena. The Commission includes representatives from the local private utilities who provide additional information on energy saving products, rebates, and strategies.

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.

Montana's current energy policy, as provided in 90-4-1001, MCA, simply states that it is the policy of Montana "to promote energy efficiency, conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens." This year, an interim legislative committee will develop a revised in-depth proposal that promotes a secure and well-maintained energy infrastructure, includes technological developments in energy production and use, maximizes the use of in-state sources of power, and promotes energy efficiency and conservation. The Commission has invited participation from local governments to help formulate the new policy. The City of Billings will be closely involved to share the information on its policy implementation and ensure both the state and local policies are aligned.

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 strategies implemented as a result of this plan will have long lasting effects beyond this time period. This plan will be continually monitored and reevaluated as the results of the strategies become known. Using the Energy Star Portfolio Manager, the City will benchmark building energy performance, assess energy management goals over time, and identify strategic opportunities for savings. Energy efficiency improvements will be programmed in the City's Equipment Replacement Plan and Capital Improvement Program to ensure the timeframe of each goal is met. All affected City Departments will track the status of building performance, equipment retrofits, construction of non-motorized transportation facilities, and percentage of transit ridership. City staff will report to the public and the City Council the progress of meeting Strategy goals annually.

6. The President has made it clear that every taxpayer dollar spent on our economic recovery must be subject to unprecedented 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 unprecedented 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 or completed, and post all expenditures and revenues for public viewing. City Departments charged with planning and implementing energy efficiency and conservation strategies will report to the City Administrator's Office. This Office is responsible to ensure all expenditures are authorized and conform to accounting practices, contracts terms, and adopted plans.

Agenda Item: **L**



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

SUBJECT: Library Security Guard Service

DEPARTMENT: Parmly Billings Library

PRESENTED BY: Bill Cochran, Library Director

PROBLEM/ISSUE STATEMENT: The City Council approved a three-year agreement with Guardian Security for Library guard service on June 23, 2008. The agreement allows the City and Guardian to negotiate a new hourly rate for the service annually on the anniversary date of the agreement. For the second year of the agreement Guardian has proposed a new hourly rate of \$16.75, which is a \$.50 per hour increase over the current amount.

FINANCIAL IMPACT: The estimated annual cost for the second year of the three-year agreement is \$67,850. The Library has sufficient funds in the proposed FY10 budget to cover the cost of the services.

RECOMMENDATION

Staff recommends that Council approve the hourly rate of \$16.75 for the second year of the three-year agreement with Guardian Security.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A. Agreement – (3 pages)

AGREEMENT

This agreement entered into this 1st day of July, 2009, by and between Parmly Billings Library/City of Billings, hereinafter referred to as "Library", and Guardian Security, Inc., hereinafter referred to as "Contractor".

I. TERM

The term of this contract is July 1, 2009 with security services outlined in this Agreement starting that day and continuing through June 30, 2010.

II. SCOPE OF SERVICE

Contractor will provide one (1) security guard on the Library's property at 510 North Broadway according to the following schedule:

On days that the Library is open, the duty schedule shall be as follows,

Monday-Thursday	7:30 a.m. – 9:30 p.m.
Friday	7:30 a.m. – 6:30 p.m.
Saturday	7:30 a.m. – 5:30 p.m.
Sunday	12:30 p.m. – 5:30 p.m.

Contractor and Library may adjust this schedule by mutual written agreement.

The Library is closed on City legal holidays and on Sundays from Memorial Day through Labor Day. Security coverage will not be required on these days.

Security coverage will include, but not be limited to, patrol of the grounds and parking lots, the perimeter of the Library facility, and all publicly accessible interior areas of the facility while open, and other security duties as assigned by the Library Director.

Patrol duties will include, but not be limited to, observing, and intervening to address, criminal activities and violations of the Library's policies and guidelines for conduct; checking all doors and elevators for appropriate lock status; and other activities to enhance the safety and security of Library facility.

In addition, Contractor will make provisions for radio or cellular telephone contact with Library staff in a form approved by the Library. Security agents will be required to respond immediately upon contact by staff through this or other means.

Security agents will maintain regular communication with Library managers and/or designated staff, including submission of detailed daily reports in a form approved by the Library.

Although no regular comprehensive coverage of the facility is desired beyond the hours noted above, Contractor will provide random checks of the exterior and grounds of the facility from three (3) to six (6) times per evening, including days when the Library is closed, and will monthly provide to the Library written documentation of the checks.

COMPENSATION

The Library will be billed \$16.75 per hour per officer. Each month the Contractor shall present an invoice to the Library describing the work for which it seeks payment and documenting the hours worked by the security officer in the previous month. One officer will be assigned to the facility unless the parties mutually agree in writing to assignment of additional officers.

OTHER PROVISIONS

1. Contractor will observe and abide by all federal, state and local statutes, ordinances and regulations.
2. The Contractor shall indemnify, hold harmless, and defend the City of Billings and its Library, its agents and employees from and against any and all claims, lawsuits, liabilities, judgments, demands, or damages to property or injury to persons or other entities arising out of, or resulting from the Contractor's performance of this Agreement, provided such damage to property or injury to persons is due solely or partially to the negligent or intentional act, error, or omission of the Contractor or any of its employees or agents.
3. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the contractor, agents, employees, representatives, assigns, or subcontractors. The Contractor shall provide the following insurance:
 - A. Workers' compensation and employer's liability coverage as required by Montana law.

- B. Commercial general liability, including contractual and personal injury coverage of \$1,500,000 per occurrence and \$3,000,000 annual aggregate.
- C. Commercial automobile liability of \$1,500,000 per occurrence.

Each policy of insurance required above shall provide for no less than 45 days' advance notice to the Library prior to cancellation, shall endorse the City as a primary non-contributory insured, and shall also contain a waiver of subrogation against the City on all policies except the Worker's Compensation policy.

4. It is mutually agreed that the Contractor is an independent contractor and is responsible for all expenses related to such status.

5. The Contractor shall not sell, subcontract, or otherwise assign this Agreement or any of the services to be rendered without first securing the written consent of the Mayor and City Council.

6. The Contractor shall provide, at its expense, uniforms approved by the Library, for all Library security officers.

7. All persons with responsibilities in the performance of the terms of this Agreement on behalf of the Contractor shall not discriminate against any person(s) on the basis of race, religious creed, color, sex, national origin, age, political affiliation or beliefs, marital status, mental or physical handicaps, or ancestry, in any activities performed pursuant to the Agreement.

8. The Library agrees to notify Contractor as soon as possible of any changes in procedures that might affect the Library's security or the security officer's performance in their duties.

9. Either party has the right to cancel and terminate this agreement forthwith upon giving thirty (30) days written notice.

10. Complete Agreement: This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written contract shall be valid or binding and this contract may not be enlarged, modified, or amended, except in writing signed by the parties.

Dated this ____ day of _____, 2009.

Ron Tussing, Mayor
City of Billings

Date

Guardian Security Co.

Date

Agenda Item: **M**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 22, 2009

SUBJECT: Resolution to Close Special Improvement/Sidewalk Bond Debt Funds to the SID Revolving Fund

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: State law requires closing SID/Sidewalk debt service funds once the debt has been satisfied. Any excess/deficit cash balances upon completion of the bond obligations are transferred to the SID Revolving Fund. Funds 890 and 891 will be closed and project number 621322 will be closed in fund 820.

FINANCIAL IMPACT: The revolving fund will receive cash of \$10,200 for a Special Improvement District in Fund 820 with positive cash. Cash was loaned from the SID Revolving Fund to Special Improvement Districts in funds 890 and 891 to pay bond principal and interest. The loans in the amount of \$65,071 are a result of district delinquencies and are uncollectible. The loans will be written off in the SID revolving fund. The cash balance in the SID Revolving Fund is about \$4,600,000. The properties will show delinquent assessments at the County. The City may recover some of these delinquencies if a property changes ownership or is sold at tax sale.

RECOMMENDATION

Staff Recommends Council Approve the Resolution closing Special Improvement/Sidewalk Bond Debt Funds to SID Revolving Fund.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

- A- Resolution to Close the Special Improvement District Debt Funds & Sidewalk Special Assessment Debt Funds to the Special Improvement District Revolving Fund
- B- Location of SIDs & Sidewalks
- C- Detailed Amounts Closed to the Revolving Fund

ATTACHMENT A

RESOLUTION _____

A RESOLUTION TO CLOSE THE SPECIAL IMPROVEMENT DISTRICT DEBT FUNDS AND SIDEWALK SPECIAL ASSESSMENT DEBT FUNDS TO THE SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND PURSUANT TO M.C.A. 7-12-4222.

WHEREAS, the Special Improvement District Bond Debt Obligation and the Sidewalk Special Assessment Debt Obligation has been paid in full and excess/deficit balances remain, and

WHEREAS, state law requires that Special Improvement/Sidewalk Debt Funds be closed to the SID Revolving Fund and the City Council has the authority to close these funds after all debt has been satisfied.

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

That the Special Improvement/Sidewalk Funds be closed per Attachment C to the SID Revolving Fund effective June 22, 2009:

PASSED AND APPROVED by the City Council, this 22nd day of June 2009

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

ATTACHMENT B

SID 820 - Non-Pooled Series

SID 1322 Monad Rd Between 19th Street west and 20th Street West

SID 890 - 1993 A Pooled Sidewalk Series

SID 9404 Misc curb, gutter & sidewalk program-various locations throughout the city
SID 9405 Misc curb, gutter & sidewalk program-various locations throughout the city
SID 9495 Misc curb, gutter & sidewalk program-various locations throughout the city
SID 9496 Misc curb, gutter & sidewalk program-various locations throughout the city
SID 9602 Misc curb, gutter & sidewalk program-various locations throughout the city

SID 891 - 1993 B Pooled Sidewalk Series

SID 9402 Misc curb, gutter & sidewalk program-various locations throughout the city
SID 9498 Misc curb, gutter & sidewalk program-various locations throughout the city
SID 9603 Misc curb, gutter & sidewalk program-various locations throughout the city

ATTACHMENT C

SID 820

PROJECT	ISSUE	ISSUE	ACCRUED		ACCTS	FUND
NUMBER	DATE	AMOUNT	CASH	INTEREST	REC	BALANCE
621322		_____ -	<u>10,173.62</u>	<u>25.66</u>	_____ -	<u>10,199.28</u>
TOTALS		-	10,173.62	25.66	-	10,199.28

SID 890 1993 Pooled Sidewalk Series

PROJECT	ISSUE	ISSUE	ACCRUED		ACCTS	FUND
NUMBER	DATE	AMOUNT	CASH	INTEREST	REC	BALANCE
931	1993	-	-	(4.99)	-	(4.99)
9404	1993	219,577.00	(11,195.12)	13.18	-	(11,181.94)
9405	1993	150,965.00	(35,720.29)	(2.17)	-	(35,722.46)
9495	1993	2,417.00	(167.96)	2.06	-	(165.90)
9496	1993	15,701.00	(1,507.46)	0.01	-	(1,507.45)
9602	1993	<u>62,340.00</u>	<u>(7,171.33)</u>	<u>(12.75)</u>	_____ -	<u>(7,184.08)</u>
TOTALS		451,000.00	(55,762.16)	(4.66)	-	(55,766.82)

SID 891 1993 B Pooled Sidewalk Series

PROJECT	ISSUE	ISSUE	ACCRUED		ACCTS	FUND
NUMBER	DATE	AMOUNT	CASH	INTEREST	REC	BALANCE
932	1993	-	45.14	85.04	-	130.18
9402	1993	112,971.00	(3,584.84)	(22.68)	-	(3,607.52)
9498	1993	5,990.00	(203.57)	(3.44)	-	(207.01)
9603	1993	<u>46,039.00</u>	<u>(5,520.83)</u>	<u>(80.16)</u>	_____ -	<u>(5,600.99)</u>
TOTALS		165,000.00	(9,264.10)	(21.24)	-	(9,285.34)



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: Rescind Tax Incentive for RSP Holding, LLC

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: In November, 2008 the Billings City Council approved a five (5) year tax abatement/incentive for RSP Holdings, LLC for property that it owns at 1737 King Avenue West. RSP Holdings is the property owner but the retail furniture store that operates in the building conducts business as Carrie's Quilts and Iron. Council granted the tax incentive based on information supplied by the company which included employment assurances. The retail business has announced its closing and therefore will not produce or retain the jobs that it stated in the application. The City Council may rescind tax incentives if the applicant does not meet the conditions of approval.

FINANCIAL IMPACT: The estimated annual incentive is no more than \$15,735. This action will rescind that incentive, so taxes would theoretically increase and be paid to the two principal taxing entities that are affected by the incentive; the City of Billings and School District 2. Since the business is closing and commercial real property value and taxes are based in part on business income, the amount of taxes that the property owner will pay will probably decline despite the incentive being rescinded. The property owner paid nearly \$50,000 in real property taxes, fees and assessments in tax year 2008.

RECOMMENDATION

Staff recommends that Council rescind the previously approved tax incentive for RSP Holdings, LLC for property located at 1737 King Avenue West.

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

ATTACHMENTS

A: Resolution rescinding tax incentive

B: Resolution No. 08-18770 approving RSP Holdings LLC tax incentive

ATTACHMENT A

Resolution No. 09-

Whereas, the City of Billings operates tax incentive programs to encourage investment and reinvestment in commercial and industrial properties and thereby increase property values, property appearances and increase employment; and

Whereas, RSP Holdings, LLC applied for a tax abatement or incentive on property it owns at 1737 King Avenue West and promised to make property investments and increase employment; and

Whereas, the Billings City Council approved Resolution No 08-18770 on November 24, 2008 that granted a tax incentive for RSP Holdings, LLC under guidelines contained in Resolution No. 05-18377 and Montana Code Annotated Section 15-24-1501; and

Whereas, the retail furniture store that occupies the subject property has announced that it is permanently closing its operations in the building and therefore will not create or retain new jobs that were contained in RSP Holding's application.

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

That the tax incentive approved by the Billings City Council on November 24, 2008 for RSP Holdings, LLC for property that it owns located at 1737 King Avenue East is hereby rescinded and Resolution No. 08-18770 is repealed due to the property tenant ceasing operations and not retaining the jobs that were promised in the RSP Holdings LLC application. The property is further described as Tax Code #D01349, Tract 1B, Certificate of Survey No. 1551.

Passed and Approved by the Billings City Council on this 22nd day of June, 2009.

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

ATTACHMENT B

RESOLUTION NO. 08-18770

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS,
MONTANA, APPROVING TAX BENEFITS FOR RSP HOLDINGS, LLC, DBA
CARRIE'S QUILTS AND IRON

WHEREAS, Resolution 05-18377 provides for granting tax incentives for remodeling, reconstructing or expanding existing buildings in the city, pursuant to Section 15-24-1501, M.C.A. and establishes a procedure for applying for said tax incentives; and

WHEREAS, RSP Holdings, LLC, DBA Carrie's Quilts and Iron, has applied for said tax incentives for the property described herein; and

WHEREAS, The City Council of the City of Billings, Montana held a public hearing and duly considered the application of RSP Holdings, LLC and has determined that said application meets all qualifications for the tax incentive and should be approved

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

That the application for tax benefits made by RSP Holdings, LLC, DBA Carrie's Quilts and Iron, dated May, 2007 is APPROVED. The tax benefits approved are those provided in Resolution 05-18377. The property receiving the tax benefits is described as follows:

Tax Code #D01349, Tract 1B, Certificate of Survey 1551

PASSED AND APPROVED by the City Council this 24th day of November, 2008.



CITY OF BILLINGS

By: 
Ron Tussing, Mayor

ATTEST:

By: Cari Martin
Cari Martin, City Clerk

AGENDA ITEM:

O



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 22, 2009

TITLE: Amended Plat of Dedicated Park, Block 2, Twin Oaks Subdivision

DEPARTMENT: Public Works Department – Engineering Division

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Amended Plat of Dedicated Park, Block 2, Twin Oaks Subdivision dedicates right of way connecting Sioux Lane from Whitetail Subdivision to Twin Oaks Drive. The final plat of Whitetail Subdivision was approved at the June 8, 2009, City Council Meeting. Whitetail Subdivision dedicated Sioux Lane from Lake Elmo Drive to Twin Oaks Subdivision. To get Sioux Lane connected to Twin Oaks Drive, it becomes necessary to dedicate the Sioux Lane right of way through the parkland in Twin Oaks Subdivision. The approximate area of parkland to be dedicated as Sioux Lane right of way is 1,326 square feet. Parks, Recreation and Public Lands (PRPL) recognizes the need to sell the parkland to connect the two streets for improved traffic circulation in the area and for emergency vehicle access requirements. PRPL is in favor of the sale.

ALTERNATIVES ANALYZED:

1. Approve Amended Plat of Dedicated Park, Block 2, Twin Oaks Subdivision.
2. Do not approve Amended Plat of Dedicated Park, Block 2, Twin Oaks Subdivision.

FINANCIAL IMPACT: The developer of Whitetail Subdivision received a comparative market analysis from Rod Wilson, a local realtor. The comparative market analysis valued the parkland at \$1.55 per square foot. The total purchase price would be \$2,055 for the 1,326 square feet of parkland needed to be right of way.

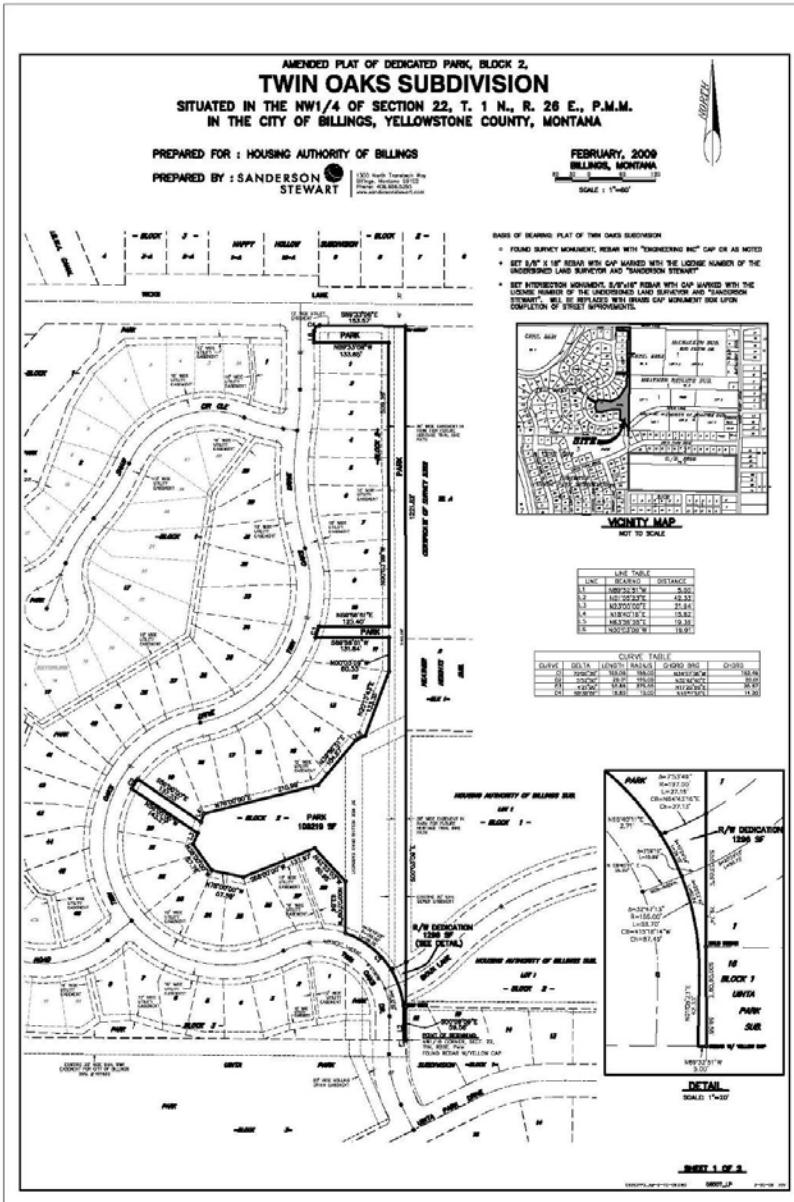
RECOMMENDATION

Staff recommends that the City Council approve Amended Plat of Dedicated Park, Block 2, Twin Oaks Subdivision.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

- A. Copy of Subdivision Plat
- B. Comparative Market Analysis



LETTER OF APPRAISAL

COMPARATIVE MARKET VALUE BASIS

June 1,2009

For: Housing Authority of Billings

Regarding: 1,326 SF of the Amended Plat of dedicated city park, Block 2, Twin Oaks Subdivision

Tax ID'S: No Tax ID, Portion of existing park in Twin Oaks Subdivision

Legal's: Proposed 1,326 SF R.O.W dedication for the future Sioux Lane Street to access Twin Oaks Drive. Twin Oaks Drive is in Twin Oaks Subdivision. Sioux Lane Street is the center street of the proposed Whitetail Square Subdivision.

Definition Market Value: Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been defined and refined. A current economic definition agreed upon by agencies that regulate federal financial institutions in the United States of America is:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure to the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

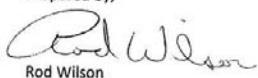
COMPARATIVE MARKET VALUE—

Proposed 1,326 SF R.O.W dedication for the future Sioux Lane Street to access Twin Oaks Drive. Twin Oaks Drive is in Twin Oaks Subdivision. Sioux Lane Street is the center street of the proposed Whitetail Square Subdivision.

The proposed R.O.W dedication is existing City parkland. The attached detail of the irregular piece of parkland requires several assumptions to define value. The property has value as it enables an access to the proposed subdivision. Street modifications and building the proposed new intersection will be costly but very beneficial to the proposed subdivision. The small R.O.W is not big enough on its own to be a residential building lot.

There were 7 comparable residential lot tracts without infrastructure in place in front to use as comparables (4 active & 3 closed) were used in this analysis. The properties met the definition for the market value basis. Data concerning the comparables was derived from the Billings Association of Realtors Multiple Listing Service. By interpolating the data and converting to a per SF value it was ascertained that the range of value for the subject property is \$1.28 to \$1.79 per square foot. The value for market purposes after taking in the external variables is \$1.55 per square foot. The R.O.W. property consists of 1,326 SF and the value is \$2,055.

Prepared by,

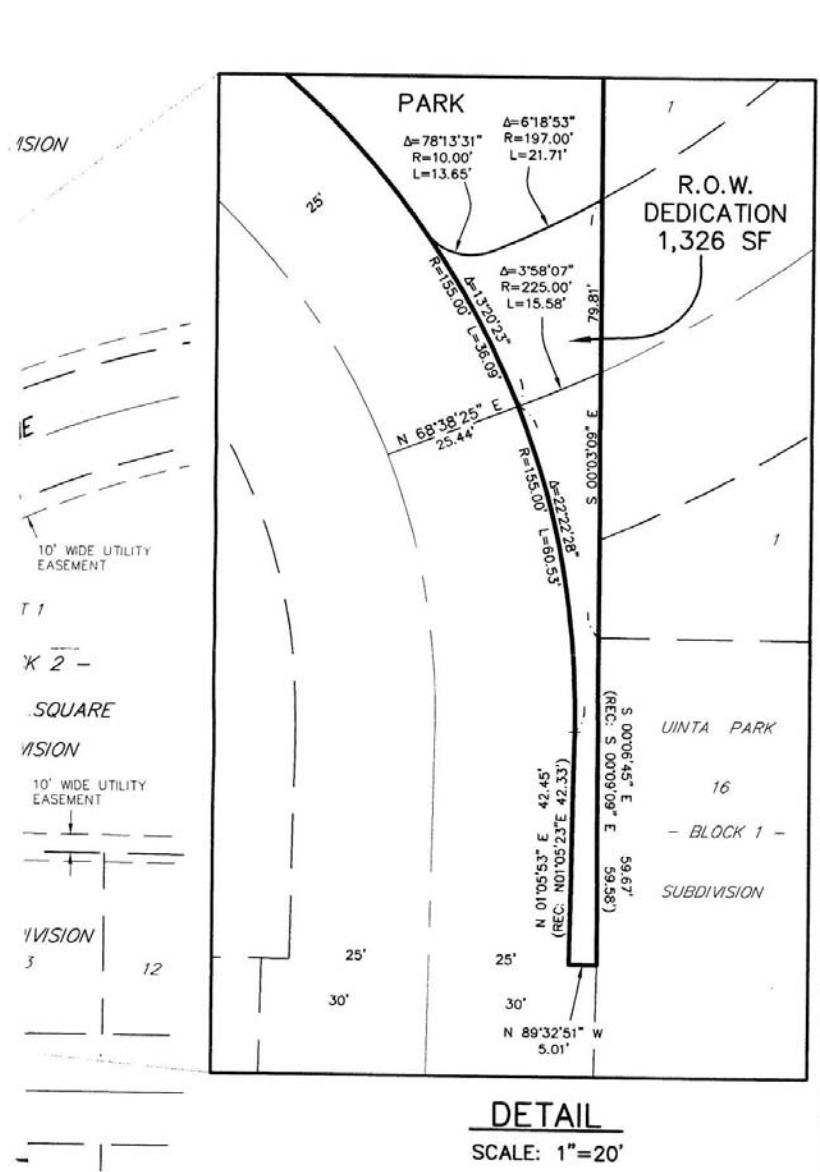


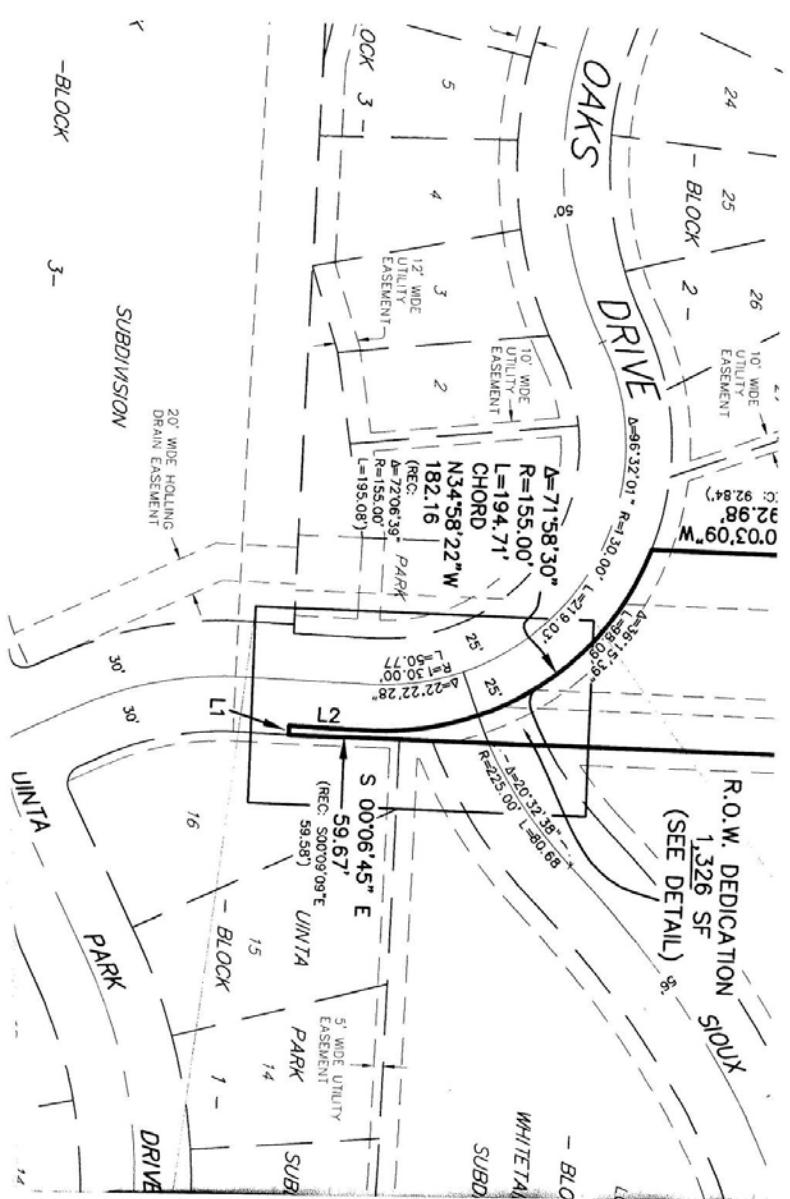
Rod Wilson

Broker / Owner Wilson and Wilson "The Real Estate Firm" Billings, Montana

Rod Wilson is a Montana Licensed Real Estate Broker. Rod Wilson is not a Licensed Real Estate Appraiser. This analysis is an opinion of value using the Comparative Market Value basis. Photos of the subject property and detail drawing are attached.

This written report contains only summary discussions of the data, reasoning, and analysis that were used in the comparative market value process to develop the opinion of value. Supporting documentation concerning the data, reasoning, and analysis is retained in the preparer's file.







CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 2009

TITLE: Preliminary Plat of Mont Vista Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On October 1, 2008, the subdivider, Krutzfeldt Ranch, LLC, applied for preliminary major plat approval for Mont Vista Subdivision. Since that time, the proposal had been delayed for several months to work out various zoning issues. A revised proposal was submitted on April 1, 2009. This current proposal contains 122 lots on approximately 63.88 acres of land. The subject property is located on the southeast corner of the intersection of Rimrock Road and 54th Street West. There is a concurrent zone change in process for the majority of this property to rezone from Residential 9,600 (R-96) to Planned Development with underlying R-96, Residential 7000 Restricted (R-70R), Residential 7000 (R-70), Residential 6000 (R-60), Residential Multi-Family Restricted (RMF-R), Residential Multi-Family (RMF), and Public (P) zones. The Yellowstone County Board of Planning reviewed the plat and conducted a public hearing on May 27, 2009. The City Council will review the preliminary plat and approve, conditionally approve, or deny the proposed subdivision at the June 22, 2009, meeting. The representing agent is C & H Engineering, and Land Design, Inc.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated.

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

RECOMMENDATION

The Planning Board on a 10-0 vote recommends conditional approval of the preliminary plat of Mont Vista Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

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

INTRODUCTION

On October 1, 2008, the subdivider, Krutzfeldt Ranch, LLC, applied for preliminary major plat approval for Mont Vista Subdivision. Since that time, the proposal has been delayed for several months to work out various zoning issues. A revised proposal was submitted on April 1, 2009. This current proposal contains 122 lots on approximately 63.88 acres of land. The subject property is located on the southeast corner of the intersection of Rimrock Road and 54th Street West.

PROCEDURAL HISTORY

- The subject property was annexed on October 5, 2006.
- In March, 2008, a preliminary plat for Mont Vista Subdivision was submitted for preliminary plat review and a Planned Development zone change was submitted. Both applications were withdrawn in order to further develop the proposals.
- In October, 2008, the preliminary major plat and zone change applications were resubmitted to the Planning Division.
- In November, 2008, after receiving an unfavorable recommendation from the City Zoning Commission regarding the proposed zone changes, the applicant withdrew both the zoning and subdivision applications from consideration.
- On April 1, 2009, a new revised preliminary plat for Mont Vista Subdivision was submitted for preliminary plat review, along with an updated Planned Development zone change application.
- On April 16, 2009, a department review meeting was held to review the updated preliminary plat submittal.
- On April 27, 2009, Planning Division and Parks Department staff met with the developer and agents to further discuss the parkland proposal for subdivision plat.
- On April 28, 2009, a preliminary public review meeting was held to review the proposed Planned Development zone change. Final draft documents for the Planned Development Agreement are due on May 8, 2009.
- On May 5, 2009, Planning Division, Engineering, and Parks Department staff met with the developer and agents to discuss stormwater management and the disposition of Cynthia Park.
- On May 12, 2009, Planning Board reviewed the plat.
- On May 26, 2009, Planning Division, Parks and Legal staff met with the developer and agents to discuss the Cynthia Park land swap.
- On May 27, 2009, Planning Board held a public hearing and made a recommendation to the governing body on the plat proposal.
- On June 2, 2009, the City Zoning Commission held a public hearing and made a recommendation to the governing body regarding the proposed Planned Development zone change.
- On June 22, 2009, the City Council will review and take action on both the subdivision and the zone change applications.

BACKGROUND

On April 1, 2009, the subdivider, Krutzfeldt Ranch, LLC, resubmitted application for a preliminary major plat approval for Mont Vista Subdivision. This current proposal contains 122 lots on approximately 63.88 acres of land. The subject property is located on the southeast corner of the intersection of Rimrock Road and 54th Street West. The subject property is bordered on all sides by residential and agricultural properties.

General location:	On the south side of Rimrock Road, south of the Cove Ditch, between 50 th St. West and 54 th St. West
Legal Description:	Tracts 1 & 2, Certificate of Survey 2054
Subdivider/Owner:	Krutzfeldt Ranch, LLC
Engineer and Surveyor:	C&H Engineering and Surveying, Inc.; Land Design, Inc. (design and landscape architectural services
Existing Zoning:	Residential 9600 (zone change pending)
Existing land use:	Vacant Land
Proposed land use:	Single-Family and Multi-Family Residential
Gross area:	63.88 acres
Net area:	40.37 acres
Proposed number of lots:	122
Lot size:	Max: 2.11 acres Min.: 0.16 acres
Parkland requirements:	4.44 acres of parkland required

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be shown on the final plat. *(Recommended by Engineering Division)*
2. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate mail carrier vehicles. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
3. To bring the subdivision into compliance with state and local laws, the Tracts and Certificate of Survey number shall be included with the legal description on the plat. *(Recommended by Planning Division)*
4. To minimize effects on local services, calculations supporting the percentage contributions at the intersections of 54th & Grand and 54th & Rimrock shall be submitted to and approved by the City Traffic Engineer prior to final plat approval. The approved percentages shall be used in calculating the cash-in-lieu amounts and shall be noted in the final SIA. *(Recommended by Engineering Division)*
5. To minimize effects on local services, the following amendments to the Subdivision Improvements Agreement (SIA) shall be made to the final document *(Recommended by Engineering and Planning Division):*
 - a. Section II.A.3. – 50th Street West: Delete the second sentence “50th Street West is to be constructed...” and replace with “Subdivider will be responsible for construction of a minimum of 20 feet of asphalt, curb, gutter and sidewalk for a portion of 50th Street West adjacent to the eastern frontage of Mont Vista Subdivision. Depending on the status of development on the east side of 50th Street West, the City reserves the right to be able to offset the street in the right-of-way to provide room for two-way traffic.”
 - b. Section II.D. –Traffic Control Devices: update section to state contribution amounts as approved by City Engineering for each Phase.
 - c. Section IV. – Parks/Open Space: update section to reflect parkland dedications being accepted by the City.
6. To minimize effects on local services, a preliminary storm drain report is required prior to final plat approval and shall provide an analysis on the capacity of the storm water ponds to ensure adequate space is available on the lots to provide storage. Furthermore, a mechanism for maintenance of the storm water facilities shall be established prior to final plat approval. *(Recommended by Engineering Division)*

7. To minimize effects on local services, the one-foot no-access strip along the Yerger Drive frontage of Lot 6, Block 2 shall be reduced to a length of 75 feet on the final plat. *(Recommended by Engineering Division)*
8. To minimize effects on local services, street names for the internal streets shall be reviewed and approved by City Fire Department and county GIS Department prior to final plat approval. *(Recommended by City Fire Department)*
9. To minimize effects on public health and safety, the fire hydrant spacing for the subdivision shall be reviewed and approved by the Fire Department prior to final plat approval. *(Recommended by City Fire Department)*
10. To minimize effects on local services, the land swap between the City of Billings and Krutzfeldt Ranch for Cynthia Park be completed no later than the release of Phase 2. If it is not completed prior to final plat approval, Cynthia Park cannot be a part of this plat, unless the City gives its consent to the plat. *(Recommended by City Planning, Legal and Parks Departments)*
11. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
12. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

None.

STAKEHOLDERS

At its May 27, 2009 meeting, the Planning Board held a public hearing to gather public input on the proposal. Certified letters were sent to adjacent property owners regarding the hearing and a legal notice also advertised the public hearing. Aside from the applicant and his agents testifying in favor of the application and answering questions, there was no other public testimony in favor or against the proposal.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2008 Growth Policy, applicable area plans, the Transportation Plan and the Heritage Trail Plan is discussed within the Findings of Fact.

RECOMMENDATION

The Planning Board on a 10-0 vote recommends conditional approval of the preliminary plat of Mont Vista Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

ATTACHMENT A

Preliminary Plat of Mont Vista Subdivision



ATTACHMENT B

Site Photographs



From corner of
Rimrock Road and
54th St. West looking
south east across
subject property.



From corner of
Rimrock Road and
54th St. West looking
east toward Cove
Ditch corridor along
subject property's
northern boundary.

ATTACHMENT C

Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for the preliminary plat of Mont Vista Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations.

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

1. Effect on agriculture and agricultural water user facilities

The subject property is currently vacant pasture land historically utilized for agricultural purposes. The Cove Ditch is located on the northern border of the subject property and is maintained within a 66-foot wide ditch easement. The only alteration of the ditch will be to install a culvert for Yerger Drive to cross into the subdivision, which will be constructed in Phase II of the development. As specified within the SIA, there are 64 shares of Cove Ditch water rights assigned to the subject property. These rights will not be transferred to subsequent owners.

There is a lateral ditch that crosses the property in a north-south direction east of proposed Yerger Drive that provides water from the Cove Ditch to a down stream user south of the subdivision. The lateral will be maintained within a 25-foot wide irrigation easement within an open space/parkland corridor.

2. Effect on local services

- a. **Utilities** – Water and sewer to the subject property will be through extended lines within the internal subdivision streets from the main lines within Rimrock Road and 54th Street West. Private electric and gas utilities will be served by NorthWestern Energy and MDU. The subdivider shall work with these companies and the City of Billings Public Works Department to ensure necessary utility easements are shown on the final plat (**Condition #1**).
- b. **Stormwater** – Stormwater management for the proposed subdivision will be provided by directing water through a network of curb and gutters, inlets and piping to retention ponds in the southeast and southwest corners of the subdivision. These retention facilities are located where connections to the future storm sewer trunk main, as specified within the West End Stormwater Master Plan, can easily be accomplished. The ponds will be located on lots that will be dedicated to the City of Billings Public Works Department with a reversibility clause that in the event that future storm sewer line connections can be made, ownership would then revert back to Krutzfeldt Ranch. Landscaping of these ponds will be the responsibility of the developer, as approved by City Engineering. Maintenance of the ponds will be accomplished through the creation of a stormwater maintenance district. A preliminary storm drain report is required prior to final plat approval and shall provide an analysis on the capacity of the storm water ponds to ensure adequate space is available on the lots to provide storage. Furthermore,

a stormwater maintenance district shall be established prior to final plat approval (**Condition #6**). All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

- c. **Solid waste** – The City will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed subdivision will be via internal streets from Rimrock Road, 54th Street West, and 50th Street West. Street improvements will be done in phases, as outline in the SIA. The **internal subdivision streets** will be constructed to 34-feet back to back pavement widths within 56-foot wide rights-of-way, with the exception of the northern portion of Mont Vista Drive and the western portion of Trail Creek Drive located adjacent to Block 1. In the future, Block 1 may be proposed for commercial uses, so the developer is choosing to plat 70-foot rights-of-way adjacent to it to accommodate the potential need for wider commercial streets. Proposed street names for the internal streets will need to be approved by the City Fire Department and the County GIS Department prior to final plat approval (**Condition #8**). These entities identified some issues with the preliminary street name proposals and have requested some changes to avoid name duplication and to follow the current street naming conventions.

To prevent additional accesses from 54th Street West and Rimrock Road, 1-foot no-access easements have been shown on the northern and western boundaries of the subdivision. The Engineering Division has reviewed the submitted no access easements and finds that they are sufficient as drawn with one exception. The one-foot no-access strip along the Yerger Drive frontage of Lot 6, Block 2 shall be reduced to a length of 75 feet on the final plat (**Condition #7**).

Yerger Drive with access from Rimrock Road will be constructed to a County paved road standard outside of the subdivision. It will be a 24-foot wide paved width with 2-foot wide shoulders on each side. Additionally, as specified in the SIA, a properly sized culvert will be installed by the subdivider to cross the Cove Ditch on Yerger Drive. These improvements would be installed with Phase 2 development.

Rimrock Road located to the north of the subject property is identified as a principal arterial. The subdivider will make a cash-in-lieu contribution for the construction of Rimrock Road directly adjacent to the subdivision based on one-half the difference in cost between constructing a 64-foot wide arterial roadway, including sub-base, base course, asphalt paving, and standard curb & gutter, and the existing-24 foot wide roadway. The cash-in-lieu contribution will also include estimated engineering design and construction administration costs.

In addition to the cash contribution, the developer will construct 5-foot wide boulevard sidewalks along their Rimrock Road frontage and a westbound left turn-lane serving both 54th Street West and Mont Vista Drive. This turn lane shall meet applicable

AASHTO and City standards for width, tapers, deceleration, and storage length, and shall also include the necessary widening west of 54th Street West to transition through traffic from a 3-lane section back to the existing roadway width. The turn lane and associated improvements on Mont Vista Drive shall be constructed to preclude left turns out of Mont Vista Drive onto Rimrock Road. Any raised median or diverter islands shall be illuminated to applicable design standards by the installation of street lights. The sidewalk improvements will be required with Phase 5 development, while the turn-lane improvements will be required with Phase 3 or Phase 5 development, whichever comes first.

Along the western border of the subject property, **54th Street West** is classified as a minor arterial. As specified within the SIA, 54th Street West is required to be constructed with a 44-foot width from back to back of curb. The portion of the street bordering the subject property has been partially constructed with 24-feet of asphalt. The subdivider will provide a cash-in-lieu contribution for the construction of the eastern 10-feet of asphalt and curb, gutters, and sidewalks. These contributions will be made in phases.

50th Street West fronts the eastern boundary of the subject property. It is a local street that is currently in substandard condition and ends just beyond the Cove Ditch. The subdivider will be required to construct the portion of 50th St. West that fronts the property, with street surface no less than 20 feet wide, and curb, gutter and sidewalk (**Condition #5**).

In addition, the Subdivider will be required to make cash-in-lieu contributions toward the design and installation of **future intersection traffic controls** at the intersections of Rimrock Road and 54th Street West and at Grand Avenue and 54th Street West. These contributions are based on the estimated volume of subdivision traffic using these intersections and an estimated cost of \$250,000 per intersection for the design and construction of a traffic signal at the intersection. Installation of a traffic signal is assumed for calculation of the cash-in-lieu contribution only. Other forms of intersection control, such as a roundabout, may ultimately be installed at one or both of these intersections. The calculations shall be submitted to and approved by the City Traffic Engineer prior to final plat approval. The approved percentages shall be used in calculating the cash-in-lieu amounts for the SIA (**Condition #4**).

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 54th Street West and Grand Avenue (Station #7). The Fire Department finds the proposed layout will provide adequate emergency access. The fire hydrant spacing for the subdivision shall be reviewed and approved by the Fire Department prior to final plat approval (**Condition #9**).
- f. **Schools** – The subdivision is located within School District #2. The school assignments for the subdivision were received from the School District during the previous review of

the subdivision. Assuming these assignments haven't changed, students from the proposed subdivision will attend Burlington Elementary School, Lewis and Clark Middle School, and Senior High School.

g. **Parks and Recreation** – In accordance with State and City laws, the subdivider is required to provide a minimum of 4.44 acres of parkland. Additionally, the subdivider is proposing to swap additional parkland for the existing Cynthia Park land (0.8069 acres) in order to maximize the size and usability of the park. This would bring the total required parkland dedication to 5.2485 acres. The subdivider has proposed to meet this requirement by dedicating a 4.35-acre parcel in the north-central region of the subdivision, and a 3.28 acre park strip along the southern boundary of the subdivision. These two larger pieces are connected by a 25-foot wide open space corridor that doubles as a ditch lateral easement for a small ditch that runs from the Cove Ditch, south to the adjacent property off-site.

With the preliminary plat the subdivider has also proposed additional parkland dedication along the northern portion of the property, which is encumbered by the Cove Ditch and ditch easement, as well as a platted alley easement.

The City Parks and Recreation Department has reviewed the various portions of this proposal and have determined that the larger 4.35 acre parcel is acceptable, as well as the southern 3.28-acre piece, as long as it does not become primarily a stormwater detention facility.

The City, as a practice, does not accept ditch easements or alleys as parkland dedication, as the easement has an intended use of maintenance for the ditch and the alley is for access to properties north of the subject property. Therefore, Parks Department staff does not recommend accepting the ditch corridor as parkland. The subdivider will retain ownership of this land.

Condition #10 requires that the land swap for Cynthia Park be completed no later than the release of Phase 2, and if it is not completed prior to final plat approval, Cynthia Park cannot be a part of this plat, unless the City gives consent to the plat.

h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access (**Condition #2**). This location shall be reviewed and approved by the post office prior to final plat approval.

3. Effect on the natural environment

A geotechnical report was submitted with this application. As specified by the Building Official's review of the submitted geotechnical report, a final design geotechnical investigation will be required when final building designs are available.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. However, adjacent neighbors to the north have documented numerous species of birds and small mammals in the wooded area along the Cove Ditch and within the proposed park area. The subdivider has made an attempt to preserve some of this habitat by dedicating a 4-acre park parcel in the wooded areas, and by preserving a natural greenway along the ditch corridor. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner.

5. Effect on the public health, safety and welfare

If the recommended conditions of approval are met, any effects on public health, safety and welfare should be mitigated.

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

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2008 Growth Policy, the 2001 West Billings Plan, the Northwest Shiloh Area Plan, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2008 Growth Policy

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

- **Goal: More housing and business choices within each neighborhood. (Land Use Element, pg. 6)**
- **Goal: Contiguous development focused in and around existing population centers separated by open space. (Land Use Element, pg. 6)**
- **Goal: New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element, pg. 6)**
- **Goal: Protection of groundwater, surface water, riparian areas, air quality, and productive agricultural land. (Natural Resources Element, pg. 9)**
- **Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness. (Open Space & Recreation Element, pg. 10)**

2. 2001 West Billings Plan

The proposed subdivision satisfies the following policy of the West Billings Plan:

- Development in the West End planning area shall provide for a variety of residential types and densities.
- Conditional approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.
- Medium and high-density residential development should be located nearby and within walking distance to commercial centers, medical facilities, and parks.

3. Northwest Shiloh Area Plan

The proposed subdivision complies with the following goals of the Northwest Shiloh Area Plan:

- **Provide more housing and business choices within each neighborhood.**
- **Plan for the cost-efficient extension and delivery of public services.**
- **Plan for orderly and efficient urbanization of agricultural lands.**

4. Urban Area 2005 Transportation Plan Update

Rimrock Road is identified as principal arterial. The subdivider has provided the necessary right-of-way dedications for this street, and will contribute to its improvements as noted above in the streets section. 54th Street West is classified as a minor arterial. The subdivider has also provided the necessary right-of-way dedications for this street, and will contribute to its improvements as noted above in the streets section. 50th Street West is classified as a local street, and improvements will be made to it as noted above. All other internal streets will be constructed in phases to City specifications.

5. Heritage Trail Plan

The Heritage Trail Plan identifies an arterial bikeway along Rimrock Road to the north of the subdivision and a new multi-use path has been completed on the north side. Although no trail corridors are identified specifically within this subdivision, the developer has indicated plans to construct a soft-surfaced trail system along the Cove Ditch, the ditch lateral and along the southern parkland strip. These voluntary trail improvements will enhance connectivity of this neighborhood to the surrounding neighborhoods, Cottonwood Park and the Cottonwood school site.

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

The subdivision conforms to state and local subdivision regulations, with the exception of the title on the plat, which does not identify the legal description for the property. **Condition #3** requires the legal description to be included on the plat.

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

The subdivision will utilize city water, sanitary sewer, and solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

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

The a portion of subject property is currently in the process of a zone change from R-96 to PUD with underlying R-96, R-70R, R-70, R-60, RMF-R, RMF, and P zoning. Development on the property shall conform to the zoning requirements for these districts.

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

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. **Condition #1** requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

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

Legal and physical access to the proposed subdivision will be via internal subdivision streets from Rimrock Road, 54th Street West, and 50th Street West.

CONCLUSIONS OF FINDING OF FACT

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

Approved by the Billings City Council, June 22, 2009.

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

June 23, 2009

Krutzfeldt Ranch, LLC
P.O. Box 1265
Miles City, MT 59301

Dear Applicant:

On June 22, 2009, the Billings City Council conditionally approved the preliminary plat of Mont Vista Subdivision. The conditions of approval are as follows:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be shown on the final plat.
2. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate mail carrier vehicles. The location of the boxes shall be reviewed and approved by the post office.
3. To bring the subdivision into compliance with state and local laws, the Tracts and Certificate of Survey number shall be included with the legal description on the plat.
4. To minimize effects on local services, calculations supporting the percentage contributions at the intersections of 54th & Grand and 54th & Rimrock shall be submitted to and approved by the City Traffic Engineer prior to final plat approval. The approved percentages shall be used in calculating the cash-in-lieu amounts and shall be noted in the final SIA.
5. To minimize effects on local services, the following amendments to the Subdivision Improvements Agreement (SIA) shall be made to the final document:
 - a. Section II.A.3. – 50th Street West: Delete the second sentence “50th Street West is to be constructed...” and replace with “Subdivider will be responsible for construction of a minimum of 20 feet of asphalt, curb, gutter and sidewalk for a portion of 50th Street West adjacent to the eastern frontage of Mont Vista Subdivision. Depending on the status of development on the east side of 50th Street West, the City reserves the right to be able to offset the street in the right-of-way to provide room for two-way traffic.”
 - b. Section II.D. – Traffic Control Devices: update section to state contribution amounts as approved by City Engineering for each Phase.
 - c. Section IV. – Parks/Open Space: update section to reflect parkland dedications being accepted by the City.

6. To minimize effects on local services, a preliminary storm drain report is required prior to final plat approval and shall provide an analysis on the capacity of the storm water ponds to ensure adequate space is available on the lots to provide storage. Furthermore, a mechanism for maintenance of the storm water facilities shall be established prior to final plat approval.
7. To minimize effects on local services, the one-foot no-access strip along the Yerger Drive frontage of Lot 6, Block 2 shall be reduced to a length of 75 feet on the final plat.
8. To minimize effects on local services, street names for the internal streets shall be reviewed and approved by City Fire Department and county GIS Department prior to final plat approval.
9. To minimize effects on public health and safety, the fire hydrant spacing for the subdivision shall be reviewed and approved by the Fire Department prior to final plat approval.
10. To minimize effects on local services, the land swap between the City of Billings and Krutzfeldt Ranch for Cynthia Park be completed no later than the release of Phase 2. If it is not completed prior to final plat approval, Cynthia Park cannot be a part of this plat, unless the City gives its consent to the plat.
11. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
12. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding with the Planning Division at 247-8684 or by email at spaldingj@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

Pc: Matt Cotterman, PE, C&H Engineering & Surveying, Inc.
Patrick Parker, ASLA, Land Design, Inc.

Q



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JUNE 22, 2009

SUBJECT: Cancellation of Checks and Warrants
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Finance has done a review of the outstanding warrants and checks. Under state law 7-6-4303, City Council has the authority to cancel municipal warrants and checks that have remained outstanding or unpaid for a period of one year or longer.

Also, bad debts were reviewed for the Parking, Building, Parks and Recreation, and Solid Waste departments. The following bad debts have not been paid and are deemed to be uncollectible:

Parking	\$ 1,247.50	- Reserved parking charges uncollected in parking garages and surface lots.
Building	\$ 340.00	- Residential and commercial building permits uncollected.
Parks/Rec	\$ 125.00	- Tree removal charges which were not collected.
Solid Waste	\$ 8,163.50	- Bad debts from landfill usage, residential pickup and dumpster lease.

FINANCIAL IMPACT: The \$38,798.40 of cancelled warrants and checks will be reverted back to affected funds. Employees were notified and given the opportunity to pay the stop payment fee and have the check reissued. Employees are still responding so checks that are re-issued will not be cancelled.

The \$9,876 of charges has been turned over to the collection agency of CBB Collections. If CBB Collections is unsuccessful in collecting, the bad debts will be eliminated.

RECOMMENDATION

Staff recommends that Council authorize the cancellation of said warrants and checks and receivable balances.

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 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 \$1,402,500.61 audited and are presented for your approval for payment. A complete listing of the claims dated May 22, 2009 in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

AGENDA ITEM: **R2**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 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 \$1,818,279.79 audited and are presented for your approval for payment. A complete listing of the claims dated May 29, 2009, in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 2009

TITLE: SILMD 307 – Amended Resolution of Intent to Create a Special Improvement Lighting Maintenance District for Shiloh Road from Rimrock Road to Pierce Parkway

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: At the June 8, 2009, City Council meeting, the Resolution of Intent to Create SILMD 307 (Resolution No. 09-18821) was passed, and a public hearing for creation of the district was set for July 13, 2009. Included in the Resolution of Intent were dates when notification that the resolution had passed would be published in *The Billings Times* and mailed to all property owners being assessed under the District. The dates listed within Resolution No. 09-18821 were incorrect, and a revised resolution must be passed by council reflecting the correct dates. As June has a fifth Monday, staff was able to correct the notification dates and still meet the required 15-day protest period without changing the public hearing and SILMD creation date of July 13, 2009. If an amended resolution is not passed, the previous resolution will need to be repealed, and the public hearing date set for July 13, 2009, will need to be canceled and set for a later date.

ALTERNATIVES ANALYZED:

1. Pass the amended resolution reflecting the proper notification dates.
2. Do not pass the amended resolution.

FINANCIAL IMPACT: There is no financial impact associated with this amended resolution.

RECOMMENDATION

Staff recommends that Council pass the amended Resolution of Intent to Create SILMD 307 reflecting the proper notification dates.

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

ATTACHMENT

- A. Amended Resolution of Intent to Create SILMD 307

RESOLUTION NO. _____

A RESOLUTION AMENDING RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 307 #09-18821 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 previous Resolution of Intention to Create SILMD 307, Resolution No. 09-18821, provided incorrect advertisement dates notifying the general public that the resolution has been passed by City Council; and

WHEREAS the correct publications dates are as revised in Section 9; and

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. Due to an error in this section of Resolution No. 09-18821, said notices shall be published in the June 25, 2009 and July 2, 2009 issues of "The Billings Times" rather than advertisements within the June 11, 2009 and June 18, 2009 issues of "The Billings Times", and notices shall be mailed to all affected property owners on June 25, 2009 and not on June 11, 2009.

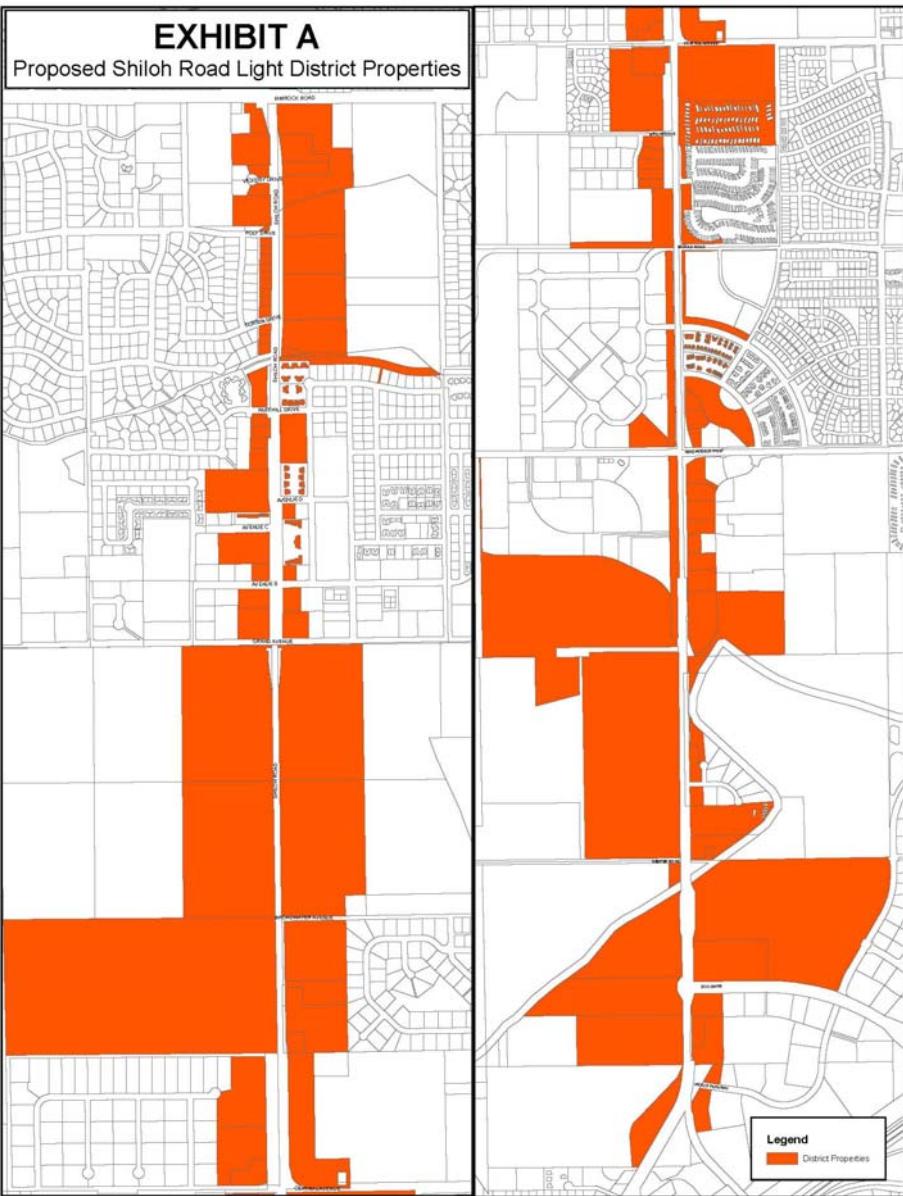
PASSED by the City Council and APPROVED this 22nd day of June 2009.

CITY OF BILLINGS

By _____
Ron Tussing, Mayor

ATTEST:

By _____
Cari Martin City Clerk



SILMD 307- Exhibit B

TaxID	OwnerName	PhysicalAddress	Frontage	Estimated SILMD Assessment Based on Frontage
A26424	SOCCO DEVELOPMENT &	GRAND AVE	252.75 \$	326.60
A26424B	MONTANA DEVELOPMENT CO	1511 SHILOH RD	234.63 \$	303.18
A26473	POTTERER, JIMMIKE 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, KEN	SHILOH RD	147.95 \$	191.20
A26484	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	CONNELL, BILIE 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	KILAM, 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	626 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, EDHALA	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, ERVIND D & 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	UPPERT, 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	JOH, MARGARET RAE & KENNETH M	625 S 38TH ST W 24	4.32 \$	5.59
A28013	ECHEVERRI, NORIA 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

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TaxID	OwnerName	PhysicalAddress	Frontage	Estimated SILMD Assessment Based on Frontage
A28023	BOYER PROPERTIES LLC	626 5 38TH ST W 35	4.32 \$	5.39
A28024	RALPH, WILLIAM M	626 5 38TH ST W 36	4.32 \$	5.39
A28025	YELVINGTON, TAMARIA	626 5 38TH ST W 37	4.32 \$	5.39
A28026	LARSON, CARL L	626 5 38TH ST W 38	4.32 \$	5.39
A28027	HAMMEL, MARILYN K	625 5 38TH ST W 39	4.32 \$	5.39
A28028	PAIGE, PATRICK K	625 5 38TH ST W 40	4.32 \$	5.39
A28029	BOWLES, PATRICK D & BARBARA	626 5 38TH ST W 41	4.32 \$	5.39
A28030	BRUHAUG, EDWARD O &	625 5 38TH ST W 42	4.32 \$	5.39
A28031	BOEHS BARBARA	626 5 38TH ST W 43	4.32 \$	5.39
A28032	HEMMER, DOROTHY M	625 5 38TH ST W 44	4.32 \$	5.39
A28033	CHARRETTE, FRED A	625 5 38TH ST W 45	4.32 \$	5.39
A28034	HICKEL ROSALIE A	625 5 38TH ST W 46	4.32 \$	5.39
A28035	RHEA, ERIC M	625 5 38TH ST W 47	4.32 \$	5.39
A28036	CUCCIARDI, MICHAEL I. & CHERYL	625 5 38TH ST W 48	4.32 \$	5.39
A28037	BLUM, BLANCHE E	625 5 38TH ST W 49	4.32 \$	5.39
A28038	WORTHINGTON, BETTY L	625 5 38TH ST W 50	4.32 \$	5.39
A28039	UCH, VAI	625 5 38TH ST W 52	4.32 \$	5.39
A28040	LOOS, DONNA &	625 5 38TH ST W 54	4.32 \$	5.39
A28041	SMILEY, CHERYL K	625 5 38TH ST W 56	4.32 \$	5.39
A28042	KLUSMANN, DULCIE O	625 5 38TH ST W 3920	4.32 \$	5.39
A28043	TAYLOR, WANELTA	625 5 38TH ST W 3922	4.32 \$	5.39
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	EIKANGER, 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	FRANZ, CYNTHIA	2016 SWANSON LN	19.03 \$	24.59
A28799E	DUNCAN, DAVID F & TIFFANY A	2018 SWANSON LN	19.03 \$	24.59
A28799F	BARTHOL, LAWRENCE J & RITA J	2020 SWANSON LN	19.03 \$	24.59
A28799G	HOTCHISS, 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	BEETH, DONALD D	2028 SWANSON LN	19.03 \$	24.59
A28799K	WOLFF, DENNIS D	2030 SWANSON LN	19.03 \$	24.59
A28799L	DAHLSLISDE, BLAINE D	2032 SWANSON LN	19.03 \$	24.59
A28817	CITY OF BILLINGS		36.23 \$	46.80
A28826	DENOUGH, AGNES E	3955 OLYMPIC BLVD UNIT 1	5.96 \$	7.70
A28827	XHODSEN, 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	WYST, 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 KERI	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	CHILDESS 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

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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	LAU, 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	HICOS, 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	KNUSOEN, RHONDA & MILES	3955 OLYMPIC BLVD 38	5.96 \$	7.70
A28868	MILLER, KENNETH H & 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	DONOHUE, 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	KELLISSON, BONNIE K &	2076 SWANSON LN	21.9 \$	28.30
A29197	OBERAUER, MICHAEL E & BARBARA L	2078 SWANSON LN	21.9 \$	28.30
A29198	FRANK, JANIS J	2080 SWANSON LN	21.9 \$	28.30
A29199	ERWIN V & COLLEEN M SMITH REV TRUST	2082 SWANSON LN	21.9 \$	28.30
A29200	POUSH, DONALD X & NANCY G	2084 SWANSON LN	21.9 \$	28.30
A29201	SCHANCK, NOIMA 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
A30967	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 \$	69.88
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 \$	244.32
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 \$	226.93
A34027A	SHILOH CROSSING, LLC	856 SHILOH CROSSING BLVD	248.61 \$	321.25
A34027B	SHILOH CROSSING, LLC	940 SHILOH CROSSING BLVD	218.9 \$	282.86
A34027C	FIRST INTERSTATE BANK	830 SHILOH CROSSING BLVD	405.29 \$	523.71
C017540	CITY OF BILLINGS	SHILOH RD	302.53 \$	390.92
C01755	KINGAID LAND LLC	2724 SHILOH RD	205.98 \$	282.46
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	KINGAID LAND LLC	2512 SHILOH RD	295.00 \$	381.19
C02218	STRUICHHAM, TRAVIS B & 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	FRANIS CARL	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	2206 SHILOH RD	95.7 \$	123.66
C02236	REDFIELD, RONALD L & PEARL R SCOTT	2122 SHILOH RD	116.53 \$	150.58
C02236A	LEHFELD, CHRIS A & HOLLY A	2114 SHILOH RD	90 \$	116.30
C02236B	PAPPAS, GEORGE J SR & KAREN V	2106 SHILOH RD	80 \$	103.37
C02239	RK DEVELOPMENT LLC	4003 PARKHILL DR	395.85 \$	511.51
C02240A	R K 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

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TaxID	OwnerName	PhysicalAddress	Frontage	Estimated SILMD Assessment	
				Based on Frontage	
C08659	EGGEBRECHT FAMILY LIMITED PTNRSHP		717.38 \$	926.98	
C09661C	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	247.85 \$	320.27	
C10239	SHILOH GLEN LLC	3900 OLYMPIC BLVD	101.47 \$	131.12	
C10240	CITY OF BILLINGS (PARIS)		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 & USA	225 S 41ST ST W	116.84 \$	150.98	
C13912	JUSSON, AL & DIANNA	235 S 41ST ST W	116.84 \$	150.98	
C13913	FRANC MEILLE 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 \$	165.83	
C13938	SHILOH 47 LLP	3954 ZOO DR	309.82 \$	400.34	
C13939	SHILOH 47 LLP	2049 SHILOH RD	364.32 \$	470.77	
C13940	SHILOH 47 LLP	2085 SHILOH RD	252.81 \$	326.68	
C13944	SHILOH 47 LLP	3979 PIERCE PKWY	262.7 \$	339.46	
C13950A	SHILOH 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 \$	1,640.50	
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 AXA	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	
D00698	INDUSTRIAL PLANNING ASSOCIATES LP	HESPER RD	291.3 \$	376.41	
D00699C	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	ZELLAH FARM LLC	1122 SHILOH RD	1316.39 \$	1,701.01	
D11403	ZELLAH FARM LLC	SHILOH RD	1295.95 \$	1,674.60	
D11775	INTERNAL CHURCH OF THE FOURSQUARE	517 SHILOH RD	59.98 \$	77.50	
D13776	INT'L CHURCH OF THE FOURSQUARE	321 SHILOH RD	435.94 \$	563.31	
D13872	YEGEN GRAND AVE FARMS INC		1245.95 \$	1,609.99	
D13873	YEGEN GRAND AVE FARMS INC		1264.88 \$	1,634.45	
D13891	WELLS, LELAND J & LORRAINE W	16 SHILOH RD	220.66 \$	286.76	
D13892	IWATA, AMY TRUSTEE	CENTRAL AVE	283.3 \$	346.07	
D12486	REGER, JAMES R & DEBORAH C	ZOO DR	500.53 \$	646.77	
1.00000	Shallow Drain Right-of-Way		2376.91 \$	3,073.98	
A31922	Arv Ross Park		2209.79 \$	2,960.11	
D12710	REGER, JAMES R & DEBORAH C (2/3) &	ZOO DR	780.86 \$	1,009.01	
			46,794.37 \$	60,466.85	
	Total of City's Contribution			7,912.74	
	Total City Percentage			13%	

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 ½ of the SE ¼ 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.

AGENDA ITEM: **2**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 22, 2009

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

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

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

General Fund (010)-Parks, Recreations and Public Lands (51)- This request is to increase the budget for internal special assessment fees by \$25,811 and trash for trees by \$3,000 received from donations.

Property/Insurance Fund (630)- This request is to increase the budget for liability insurance premiums, D'Alton lawsuit settlement and self insurance claims by \$80,000, \$125,000, and \$95,000, respectively. Reserves will be used for these amendments.

Police Programs Fund (718)-Drug Fines & Forfeitures for State and Local-The Police Department is requesting that money collected from drug fines and forfeitures be spent for the purchase of a body wire in the amount of \$6,495 for the Drug Unit.

Police Programs Fund (717)-Drug Fines & Forfeitures for Federal-The Police Department received more forfeiture revenue than expected. For this reason, additional budget authority is being requested for both forfeiture revenue (\$35,000) and expenditures (\$13,000) to reimburse other agencies for their share of the forfeiture money received.

Park Maintenance District Fund – PMD - (872) The PMD budget will need additional budget authority in water services of \$40,000. Due to increasing cost in ground maintenance, additional budget authority is needed in the amount of \$23,000. Also, the parks charge for services budget for other city departments needs additional budget authority of \$66,000. Lastly, the Special Assessments line needs additional budget of \$4,600. Additional assessments to the property owners in the PMD's will pay for these amendments.

SID Revolving Fund - (231) Sidewalk and curb debt service that was issued in 1993 was delinquent in collections in the amount of \$65,053. No more tax collections will be received by these sidewalk districts and thus monies will need to be transferred out of the SID revolving fund. The SID revolving fund will need budget authority to transfer out \$65,053 into the Sidewalk and Curb District Fund for the deficit.

Special Improvement Districts Fund - (820) Special Improvement District Debt Service that was issued in 1993 has excess cash in the amount of \$10,200. No more tax collections or payments will be made by this SID district and thus the monies will be transferred out of the Special Improvement District fund. The Special Improvement District Fund will need budget authority to transfer \$10,200 into the SID Revolving Fund for the excess.

Airport Fund – (405) Budget amendments are requested to establish budget authority in the Airport fund for two capital projects. \$207,000 is needed for the additional perimeter wildlife security fencing and \$150,000 is needed for hangar ramps located in the Airport's executive hangar area.

Street and Traffic Fund – (211) Wage and overtime budget authority is requested in the Street & Traffic fund for all the storms this past winter. \$50,000 is needed in the wages line and \$24,000 is needed in the overtime line.

RECOMMENDATION

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

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

ATTACHMENT

A-Resolution to Make Fiscal Year 2008/2009 Adjustment Appropriations (with Exhibit A)

Attachment A

RESOLUTION 09-

A RESOLUTION TO MAKE **FISCAL YEAR 2009** ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT AND CAPITAL OUTLAY.

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

WHEREAS, based upon a **Quarterly Budget Review (FY 2008/2009)**, it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT A)

PASSED AND APPROVED by the City Council, this 22nd day of June, 2009.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

EXHIBIT A

Revenue **Expenditure**

010- General Fund - PRPL

The Parks department is requesting an increase in the budget for special assessments by \$25,811. These are internal assessments that include fire hydrant, storm sewer, arterial, and street maintenance fees. Also the trash for trees expenditure budget needs to be increased by \$3,000.

010-5112-452	5410	25,811
010-5112-452	7249	3,000

630- Internal Service-Property/Liability

The property insurance fund has experienced increases in expenditures due to a lawsuit settlement for \$125,000, insurance premiums for \$80,000, and self insurance claims for \$95,000. These amounts will be funded by reserves.

	<u>Revenue</u>	<u>Expenditure</u>
630-1753-485	7310	220,000
630-1753-485	5130	80,000

718- Special Revenue-Police Programs, Drug Fines & Forfeitures for State and Local

The Police Department is requesting that money collected from drug fines and forfeitures be spent for the purchase of a body wire for the Drug Unit.

	<u>Revenue</u>	<u>Expenditure</u>
718-2160-421	9490	6,495

717 Special Revenue-Police Programs, Drug Fines & Forfeitures for Federal

The Police Department received more forfeiture revenue than expected. For this reason, additional budget authority is being requested for both forfeiture revenue and expenditures to reimburse other agencies for their share of the forfeiture money received.

	<u>Revenue</u>	<u>Expenditure</u>
717-2166-351	5060	35,000
717-2166-421	7865	13,000

872 Special Revenue Fund - Park Maintenance Districts

The Park Maintenance Districts need budget authority in water services, ground maintenance, Parks charges for service and Special Assessments.

	<u>Revenue</u>	<u>Expenditure</u>
872-5198-452	3410	40,000
872-5198-452	3650	23,000
872-5198-452	3968	66,000
872-5198-452	5410	4,600

231 - Debt Service Fund-Special Improvement Districts

Sidewalk and curb debt service is delinquent in the amount of \$65,053. These delinquencies will be transferred out of the SID revolving Fund. Additional budget authority is being requested for this transfer in the SID Revolving Fund.

	<u>Revenue</u>	<u>Expenditure</u>
890-1571-383	5060	55,767
891-1571-383	5060	9,286
231-1583-415	8225	65,053

820 - Debt Service Fund-Special Improvement Districts

SIDs have excess cash in the Special Improvement Districts Fund in the amount of \$10,200. This excess will be transferred out of the SID Fund and into the SID Revolving Fund. Additional budget authority is being requested for this transfer.

	<u>Revenue</u>	<u>Expenditure</u>
231-1583-383	7536	10,200
820-1572-479	8225	10,200

405 Enterprise Fund-Airport

The airport desires to establish budget authority to rehabilitate the 20 plus year old pavement for the City-owned hangar ramps located in the Airport's Executive Hangar area. This work was bid along with the adjoining taxi-way re-paving work in anticipation that the Airport would receive favorable pricing for this work. Bids were subsequently \$51,878 less than the engineer's estimate. This work will be eligible for federal reimbursement at 95% in a future Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant. The Airport has sufficient funds in its capital fund for this project.

	<u>Revenue</u>	<u>Expenditure</u>
405-7125-711	9692	150,000

211 Special Revenue Fund - Street & Traffic Fund

The Street & Traffic fund needs additional budget authority in wages and overtime due to the extra workload from the storms this past winter. The Street & Traffic fund has sufficient cash for this additional labor cost.

	<u>Revenue</u>	<u>Expenditure</u>
211-3132-433	1240	16,000
211-3133-433	1240	4,000
211-3134-433	1240	4,000
211-3132-433	1140	10,000
211-3134-433	1140	40,000

AGENDA ITEM: **3**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 2009

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

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: On May 26th, the City Council adopted a Resolution of Intent to expand the downtown Business Improvement District No. 0001 and set a public hearing for June 22. The resolution of intent was in response to MET Transit's petition to expand the district by adding the new transfer center, located at 2nd Avenue North and N. 25th Street. The Council will conduct a public hearing and consider whether to grant the petition and expand the district.

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

FINANCIAL IMPACT: MET's estimated assessment is \$2,645/year. The City does not charge for its oversight or for assessing the BID properties. It receives the assessments from the County Treasurer and passes them to the BID in full.

RECOMMENDATION

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

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

ATTACHMENTS

- A: Resolution Expanding BID
- B: MET petition

ATTACHMENT A

RESOLUTION _____

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

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

WHEREAS, on May 4, 2009 the City received a petition from MET Transit to expand the boundaries of the BID to include its property at the intersection of 2nd Avenue North and N. 25th Street; and

WHEREAS, the City Council adopted a resolution of intent to expand the district on May 26, 2009, advertised its intent to expand the district and conducted a public hearing on June 22, 2009 regarding the proposed expansion; therefore

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

Section 1. Expansion of Business Improvement District (B.I.D.) No. 0001: In accordance with the Resolution of Intent No. 09-_____, the City Council hereby expands the Downtown Business Improvement District (B.I.D.) No. 0001. The expanded boundaries are as displayed on Exhibit A attached hereto. The expansion property is described as;

Lots 1-12, Block 60, Billings Original Townsite, in the City of Billings, Yellowstone County, Montana according to the official plat thereof on file and of record in the office of Clerk and Recorder of said county, under Document No. 016312.

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

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

APPROVED by the City Council of the City of Billings, Montana this 22nd day of June, 2009.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

EXHIBIT A



ATTACHMENT B

PETITION TO AMEND THE BOUNDARIES OF BUSINESS IMPROVEMENT
DISTRICT 001 IN DOWNTOWN BILLINGS

In accordance with Title 7, Chapter 12, Part 11. *Business Improvement Districts*, of the Montana Code Annotated 2003, the undersigned hereby petition the *Governing Body* of the City of Billings for approval of Resolution of Intent to expand the boundaries of Business Improvement District 001. When no protests have been delivered to the governing body within 15 days after the date of the first publication of the notice of the passing of the resolution of intention, when a protest shall have been found by the governing body to be insufficient or has been overruled, or when a protest against the extent of the proposed district or proposed expansion of a district has been heard and denied, the governing body has jurisdiction to order the creation or expansion of the district and shall pass a resolution creating or expanding the district in accordance with the resolution of intention.

Signature of Property Owner	PRINTED NAME	Address of Property or Properties	Date Signed	Tax ID Code
<i>WB</i>	MET TRANSFER CENTER	2512 3 rd Avenue 2513 2 nd Avenue		A00388, A00383
			</td	



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 2009

TITLE: Public Hearing for Site Development Ordinance Variance # CC-09-02

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: John Gonitzke, owner of Mark Rite Lines Holding Company, L.L. C. (MRL), addressed as 5379 Southgate Drive has requested a variance from Section 1208 (h) (5) of the site development ordinance pertaining to the number of curb cuts allowed by regulations. MRL is located approximately 400 feet east of Parkway Lane and is south of King Avenue East. MRL recently purchased a portion of Lot 15-A, Block 2 of Southgate Subdivision, 1st Filing from the City of Billings Park Department. The property was replated as Lot 1-A-1, Block 2, of Southgate Subdivision, 1st Filing, situated in the Northeast 1/4 and Northwest 1/4 of Section 17 T. 1 S., Range 26 East, P. M. M., (see Attachment B) Billings, Montana. Presently, only two curb cuts are allowed by code across the frontage of Lot 1-A-1, Block 2, of Southgate Subdivision, 1st Filing with access onto Southgate Drive. The owner is asking for approval of one additional curb cut onto Southgate Drive from the newly acquired portion of the property (see Attachment C).

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 option is to meet the requirements of the Site Development Ordinances. MRL will be required to limit the number of curb cuts allowable by City Code to two.

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. Application for Variance from MRL requesting Additional Approach
- B. Subdivision Plat showing new lot
- C. Proposed Site Plan Layout of Curb Cuts

INTRODUCTION

John Gonitzke, owner of Mark Rite Lines Holding Company, L.L. C. (MRL), addressed as 5379 Southgate Drive has requested a variance from Section 1208 (h) (5) of the site development ordinance pertaining to the number of curb cuts allowed by regulations. MRL is located approximately 400 feet east of Parkway Lane and is south of King Avenue East. MRL recently purchased a portion of Lot 15-A, Block 2 of Southgate Subdivision, 1st Filing from the City of Billings Park Department. The property was replated as Lot 1-A-1, Block 2, of Southgate Subdivision, 1st Filing, situated in the Northeast ¼ and Northwest ¼ of Section 17 T. 1 S., Range 26 East, P. M. M., (see Attachment B) Billings, Montana. Presently, only two curb cuts are allowed by code across the frontage of Lot 1-A-1, Block 2, of Southgate Subdivision, 1st Filing with access onto Southgate Drive. The owner is asking for approval of one additional curb cut onto Southgate Drive from the newly acquired portion of the property (see Attachment C).

BACKGROUND

John Gonitzke has provided a Proposed Final Site Plan Layout (Attachment C) for the variance showing the placement of the additional proposed curb cut.

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.

MRL recently purchased a portion of what was Lot 15-A, Block 2 of Southgate Subdivision, 1st Filing from the City of Billings Park Department. The newly acquired portion was replated into the adjacent lot owned by MRL thus forming Lot 1-A-1, Block 2, of Southgate Subdivision, 1st Filing, situated in the Northeast ¼ and Northwest ¼ of Section 17 T. 1 S., Range 26 East, P. M. M., (see Attachment B) Billings, Montana. However, even with additional property frontage MRL does not have enough property frontage along Southgate Drive for additional curb cuts.

The frontage of Lot 1-A-1 along Southgate Drive is approximately 528.29 feet. In accordance with the Section 6-1208 Curb Cut Regulation, MRL currently would be allowed 2 curb cuts for the first 600 feet.

MRL has provided a Variance Application (Attachment A) requesting a variance of City Codes Section 1208 (h) (5) for an increase in the number of allowable curb cuts (Attachment C).

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.
3. Do not approve the variance. If this variance is denied, the owner's option is to meet the requirements of the Site Development Ordinances. MRL will be required to limit the number of curb cuts allowable by City Code to two.

SUMMARY

Property owner John Gonitzke, of Mark Rite Lines Holding Company, L.L. C. (MRL) is requesting a variance for an increase in the number of allowable curb cuts to three.

RECOMMENDATION

Staff recommends that Council approve the variance allowing the additional curb cut.

ATTACHMENTS

- A. Application for Variance from MRL requesting Additional Approach
- B. Subdivision Plat showing new lot
- C. Proposed Site Plan Layout of Curb Cuts

Attachment "A"

Mark Rite Lines

Variance # CC-09-02

Application #

APPLICATION FOR VARIANCE

1. Legal description of property: LOT 1-A OF BLOCK 2
OF SOUTHGATE SUBDIVISION N¹2 N¹2 OF SECTION 17 T. 18, R. 26E
2. Address (if unknown, contact the City Engineer's office) or general location: 5379 SOUTHGATE DRIVE
3. Owner(s): Mark Rite Lines Holding Co. LLC
(Recorded Owner)
5379 Southgate Drive
(Address)
Billings, MT 59107
(Phone Number)
4. Agent(s):
(Name)
(Address)
(Phone Number)
5. Section of the Site Development Ordinance that this request for variance applies to:
6. Reason for request: TO REALIGN AND INCREASE LENGTH OF EXISTING DRIVE APPROACH TO ACCOMMODATE SEMI-TRUCK ACCESS.

7. Covenants for deed restrictions on the property: Yes No

I understand that the filing fee accompanying this application is not refundable, and that the fee does not constitute a payment for variance requested. Also, that all the information presented is true and correct.

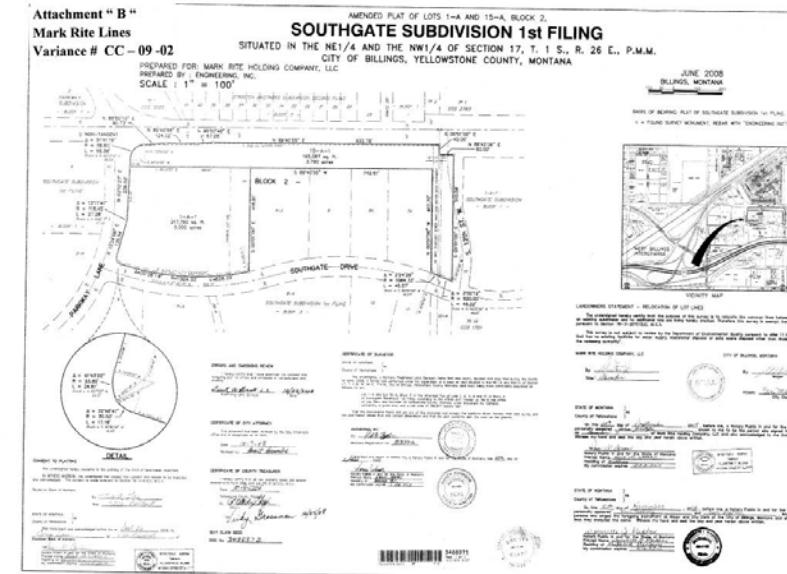
Signature: John Gonitz
(Recorded Owner)

Date: 5-26-09

Fee: \$60

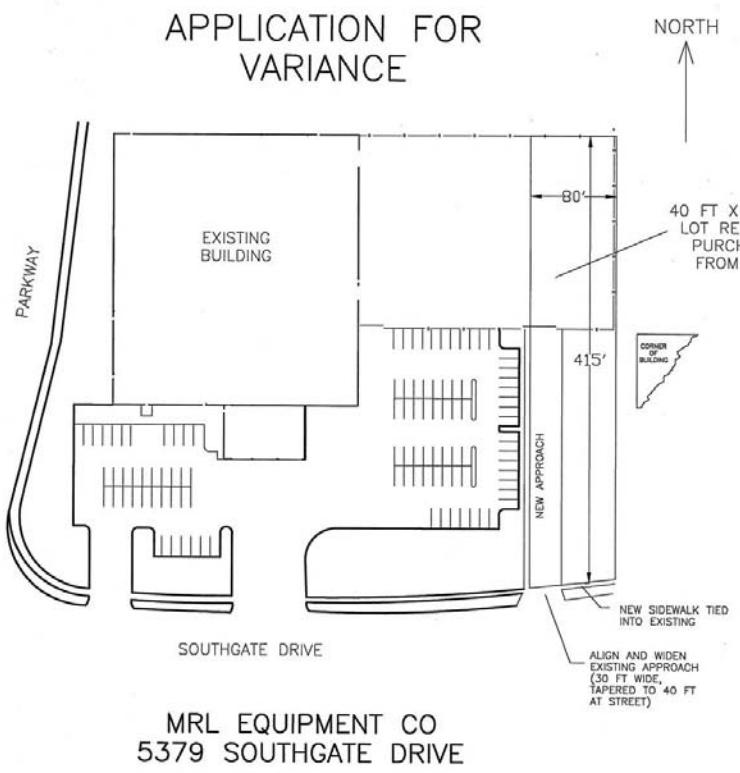
Receipt #: 344198

Hearing Date: _____



**Attachment "C"
Mark Rite Lines
Variance # CC - 09 -02**

**APPLICATION FOR
VARIANCE**



J. MEICK
5/26/09

AGENDA ITEM: **5**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 2009

TITLE: Public Hearing and 1st Reading of Ordinance, Zone Change #851,
Proposed Mont Vista Subdivision

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: This is a zone change request from Residential 9,600 (R-96) and Public (P) to Planned Development with underlying zoning districts of Residential 9,600 (R-96), Residential 7,000 (R-70), Residential 7,000-Restricted (R-70-R), Residential 6,000 (R-60), Residential Multi-Family-Restricted (RMF-R), Residential Multi-Family (RMF) & Public (P). The property is located on the south east corner of the intersection of Rimrock Road and 54th Street West and is a 60.4 acre parcel of land described as Tracts 1 and 2 of Certificate of Survey 2054 with the exception of the 4.29 acres in the northwest corner or Tract 1. This 4.29 acre area will be known as Block 1, Mont Vista Subdivision and will remain zoned R-96. The proposed zone change also includes Yerger Heights Park (aka Cynthia Park) on the southern end of 50th Street West. The property is owned by the Krutzfeldt Ranch, LLC and William Krutzfeldt is the agent. A pre-application neighborhood meeting was held at The Yellowstone Country Club on March 28, 2009. The Zoning Commission conducted a public hearing on June 2, 2009, and is forwarding a recommendation of approval on a 5-0 vote.

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

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change, if approved, could increase the City's tax base when the property is developed. Denial of the proposed zone change should have no effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #851 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

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

ATTACHMENTS:

- A: Surrounding Zoning
- B: Proposed Mont Vista Planned Development Zoning Master Plan
- C: Photographs of site and surrounding property
- D: Ordinance

INTRODUCTION

This is a zone change request from R-96 to Planned Development with seven underlying zoning districts: R-96, R-70, R-70-R, R-60, RMF, RMF-R and Public. The property was annexed by the City on September 25, 2006, and was placed in the “default” zoning district of R-96. The property is two tracts in a certificate of survey and Yerger Heights Park totaling about 65 acres of land. The 4.29 acres at the intersection of 54th St West and Rimrock Road is not included in this request and will remain in the R-96 zoning district.

PROCEDURAL HISTORY

- The subject property was annexed on October 5, 2006.
- On June 3, 2008, a zone change (ZC #837) from R-96 to Planned Development (PD) with several underlying zoning districts was granted withdrawal by the Zoning Commission. It was determined the proposed application did not meet the intent of the PD zoning regulations.
- On October 6, 2008, a zone change (ZC #851) from Residential R-96 to CC, RMF, RMF-R, R-60, R-70, R-70R, and Public was submitted for the subject property. In addition, a special review to permit multi-family residential uses on the portion of the subject property proposed for R-60 zoning was submitted.
- On November 5, 2008, the Zoning Commission conducted a public hearing on the proposed zone change and special review for the subject property. The zoning commission voted to recommend approval of the zone change with exclusions recommended by staff on a 3-0 vote. The special review was recommended for denial on a 2-1 vote.
- On November 24, 2008, the City Council conducted a public hearing and allowed the applicant to withdraw the zone change and special review requests.
- On March 28, 2009, the applicant conducted a pre-application neighborhood meeting at Yellowstone Club Estates.
- On April 4, 2009, the applicant re-submitted the zone change application to allow a Planned Development.
- On April 28, 2009, the Planning Staff conducted a Preliminary Review meeting as required by the Planned Development zone change regulations.
- On May 8, 2009, the applicant submitted final Planned Development zone change documents.
- On June 2, 2009, the Zoning Commission conducted a public hearing and is forwarding a recommendation of approval on a 5-0 vote.
- The City Council will conduct a public hearing and first reading of the ordinance on June 22, 2009. If approved on first reading, the second reading of the ordinance is scheduled for July 13, 2009.

BACKGROUND

The applicant conducted a pre-application neighborhood meeting on March 28th, 2009 at the Yellowstone Country Club. Twenty-six people attended the meeting and the new subdivision plan and draft Planned Development zoning document were presented and discussed. Significant changes from the original zone change submitted in March 2008 were reviewed, including increases in the planned open space and parkland, placing the higher density residential area away from the existing low density residential areas and

reducing the number of streets and cul-de-sacs to accommodate a curvilinear street design. Concerns expressed at the pre-application meeting included proposed building heights of 40 feet, neighbor inclusion in the development of the covenants for the subdivision and traffic control. Traffic speed on Rimrock Road was a primary concern.

The Planning Division staff conducted a Preliminary Review meeting on April 28th, 2009. The meeting included the owner, his agent, the surrounding property owners and other city staff. Twelve people attended this meeting, including six surrounding property owners. City staff expressed concern with zero lot line provisions and accessory dwelling units and how that might affect building code and site development compliance. City staff also expressed concern that some terms used in the draft Planned Development were not defined and may not be enforceable. The surrounding owners expressed concern with some proposed building heights, the calculation of density and the proposed lot coverage of 70%. The applicant received the comments and concerns and submitted a revised Planned Development document on May 8, 2009.

The applicant has made significant changes in the proposed development since the original submittal in March 2008. These changes have been made in direct response to city staff concerns and surrounding property owner concerns. The 4.29 acres at the intersection of 54th Street West and Rimrock Road was proposed for Community Commercial zoning in 2008. The owner has not reached a consensus on the proposed zoning for this parcel and therefore has not included this land in the proposed zone change. Buildings throughout the development are proposed to be limited to 36 feet maximum height or two-stories, lot coverage is proposed to be 65% to accommodate more ground floor living area and terms used in the document are specifically defined. Accessory dwelling units are not allowed throughout the development and the proposed zero lot line provisions have been eliminated. Traffic concerns will be addressed through the subdivision approval including contributions to a traffic signal at 54th St West and Rimrock Road as well as construction of the dedicated left turn lane into the development from Rimrock Road.

Planned Development zoning regulations state the primary purpose of allowing a flexible zoning such as Mont Vista is to, *“encourage unique development or re-development through a flexible, timely and efficient process. Developments which utilize innovative, progressive planning and site design techniques and methods to allow a mixture of land uses, densities, setbacks and building heights will be encouraged. In addition, this zone is intended to encourage the preservation and enhancement of the physical characteristics of the site.”* The Planned Development regulation also requires the City to consider each request to vary from a standard zoning district to be weighed against the additional benefits the development would provide. As an example, a PD zone that allows 120/dwelling units per acre should be weighed against some additional amenity not otherwise required in a high density residential subdivision. The regulations specifically state this guideline: *“For example, permitting greater density in a PD could be approved, in exchange for a greater amount of open space than a similar project, not located in a planned development zone, would be required to provide.”* The proposal for Mont Vista does propose more open space and parkland than would otherwise be required. In a residential subdivision, 11% of the net land area or equivalent cash in lieu of parkland is required. Mont Vista is proposed to have

20.5% of the net land area dedicated as common open space – almost twice as much open space than what is required by subdivision regulations.

The Northwest Shiloh Area Plan proposes higher density residential uses along 54th Street West between major intersections. The West Billings Neighborhood Plan also has a goal for minimum residential density of 4 dwelling units per acre to achieve efficiency for provision of city services and to conserve limited land resources. The proposed Mont Vista PD does achieve these goals listed in the Northwest Shiloh Area Plan and West Billings Neighborhood Plan. The average density across the entire development is 5.43 dwelling units per gross acre for a total of 328 dwelling units. The highest density is in proposed Area #6 with an underlying zoning of RMF. The maximum number of dwelling units is 79 for this 7.77 acre area or about 10 dwelling units per acre. The Planned Development zone has been modified to be sensitive to the adjacent land uses and zoning. In Area #5 along 54th Street West, the proposed density is about 5 dwelling units per acre. The maximum building height is similar to surrounding zoning districts of 34 feet.

The Planning Division reviewed the proposed zone change and recommended approval based on the attached twelve (12) criteria for zone changes and Section 27-1303 Planned Development Guidelines. The applicant has prepared a zoning plan that provides compatibility with surrounding property, meets the goals of the Growth Policy and does not concentrate population in a small area. Reductions in maximum building height and allowable residential densities since the first proposal in March 2008 have made the development more compatible with surrounding land uses. The applicant has provided 20.5% of the net area as open space and parkland and will be developing those areas for use by the future residents of the subdivision and the immediate neighborhood. Current city service capacity is adequate at this time to serve this proposed development.

The Zoning Commission has reviewed the proposed zone change and is recommending approval on a 5-0 vote. The recommendation is based on the attached twelve (12) criteria for zone changes and Section 27-1303 Planned Development Guidelines. The remaining zoning districts proposed comply with both the West Billings Plan and the Northwest Shiloh Area Plan for land uses.

ALTERNATIVES ANALYSIS

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

1. *Is the new zoning designed in accordance with the Growth Policy?*
The Growth Policy, the West Billings Neighborhood Plan and the Northwest Shiloh Area Plan support higher density residential uses along arterial streets between intersections. The proposed zoning master plan is compatible or complementary to the surrounding land uses.
2. *Is the new zoning designed to lessen congestion in the streets?*

The new zoning is not designed to lessen congestion in the streets but does locate zoning districts that generate the highest number of vehicle trips on arterial streets that are designed to handle the increase in traffic. Traffic impacts have been identified and are to be mitigated through the subdivision approval that will be concurrently reviewed by the City Council. Improvements to the intersection of 54th St West and Rimrock Road will require a contribution from the developer and a left turn lane on Rimrock Road will be installed as well.

3. *Will the new zoning secure safety from fire, panic and other dangers?*
The property has public street frontage on 54th Street West, Rimrock Road and 50th Street West. The zoning master plan shows a proposed road layout that provides physical access to all the proposed lots. Building heights are proposed to be limited to 36 feet throughout the development. The proposed zoning will protect from fire, panic and other dangers.
4. *Will the new zoning promote health and general welfare?*
The new zoning contains restrictions on uses allowed. In general this list of allowed uses is restricted to residential purposes. There are proposed higher density residential zones adjacent in the southeast corner and lower density areas adjacent to existing lower density neighborhoods. This will promote the health and general welfare.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning, as do all districts, has limits on the maximum percentage of lot that can be covered with structures. The proposed lot coverage of 65% is much greater than existing zoning for single and two family districts of 30%. However, given the required building setbacks, the maximum building height and lot configurations, maximum lot coverage of 65% will not be reached by the majority of lots within the development. This will prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*
The Residential zones allow single family and multi-family dwellings. The PD limits to total number of dwelling units allowed in each proposed development area. The conventional RMF zone allows up to 28 dwelling units per acre. The Mont Vista PD area limitations would allow only 10 dwelling units per acre in the underlying RMF zone. The proposed PD zone avoids undue concentration of population.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

<i>Transportation:</i>	The new zoning will have an effect on the adjacent streets and traffic patterns. A traffic study has been completed as part of the subdivision review and improvements or contributions to street improvements is required to mitigate the effects of this development.
<i>Water and Sewerage:</i>	The City will provide water and sewer service to the property and has adequate facilities to serve this property.
<i>Schools and Parks:</i>	There will be an effect on parks and schools from this rezoning. Cottonwood Park is west across 54 th Street West. The proposed parks, primarily walking trails and connections between open space areas will be developed at the time of the subdivision. No comment was received from SD #2 regarding the zoning proposal; however any new students will attend Burlington Elementary School, Lewis and Clark Middle School, and Senior High School. The school district will be conducting a long term facilities plan in the near future.
<i>Fire and Police:</i>	The property is within the Billings Urban Fire Service Area. It is currently active agriculture land. Fire Station #7 is approximately 1 mile south of the development and can provide adequate service to the subdivision.

9. *Does the new zoning give reasonable consideration to the character of the district?*
The primary zoning in this area is R-96 to the east, north and west. The areas north and west have been developed with lower density single family residences in the County. The R-96 to the east is a new city subdivision, River Rock Estates, and has received preliminary plat approval for single family homes. South of the subject property is land zoned A-1 in the County and has active agricultural uses. The proposed density and mixed residential uses are compatible with the existing and planned land uses to the east, north, west and south.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*
The subject property may be suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*
The new zoning may alter the value of buildings in the area. The area proposed for the higher residential densities is located away from existing low density areas so land and building values should remain stable or increase from the proposed development.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
The new zoning will encourage the most appropriate use of this land in the area based on the existing land uses and zoning.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy and area plans is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on June 2, 2009, and is forwarding a recommendation of approval on a 5-0 vote. The applicant and agent attended the hearing and provided testimony. Two surrounding property owners attended the hearing and provided testimony in favor of the application and asked questions to clarify the application.

Stacy Robinson of Land Design, a consultant for the applicant, presented the revised zoning and design plan to the Zoning Commission. Mr. Robinson described the process to arrive at the new design. Mr. Krutzfeldt stated he was there for questions and quoted from a recent Billings Gazette opinion article that supported the design of this new subdivision that has trails and walkable streets that will connect to existing neighborhoods and the future Cottonwood Park and future elementary school.

Dan Mazel of 2811 Helen Lane testified in favor of the application. He stated that last November he and many of the neighbors were opposed to the application because it did not fit with the area. He stated the applicant, his agents, as well as city staff have worked very hard with the surrounding owners to resolve those issues and they are very happy with the new project. His property is located just north of Cove Ditch and he is helping Mr.

Krutzfeldt prepare the area proposed for the new park by creating a wildlife inventory and cleaning up the property. inventoried and cleaned up.

Comment [F1]: Is a word missing here?

Karen Michaud of 3036 Lloyd Mangrum testified on the application. She did not have any objection to the proposed plan however she wanted to know whether the corner property not included in the application would be developed for single family homes or left undeveloped with the possibility of another zone change application in the future. Chairman
Dailey stated the property was not included in the zone change and the applicant had
explained that no plans for developing the 4.29 acres currently exist.

Comment [F2]: Did no one answer this question?

Chairman Leonard Dailey closed the public hearing and Member Ed Workman moved the commission forward a recommendation of approval, seconded by Member Larson. Member Larson stated he was pleased with the actions of the applicant to work with the neighborhood to redesign the proposed development. He stated that this is the preferred method for working through issues rather than at public hearings. Chairman Dailey stated he agreed this was a favorable design for the property. Member Barbara Hawkins stated she thought the redesign was a great plan for the property and agreed the work with the neighborhood resulted in a much better design. The Zoning Commission voted 5-0 in favor of the motion to recommend approval.

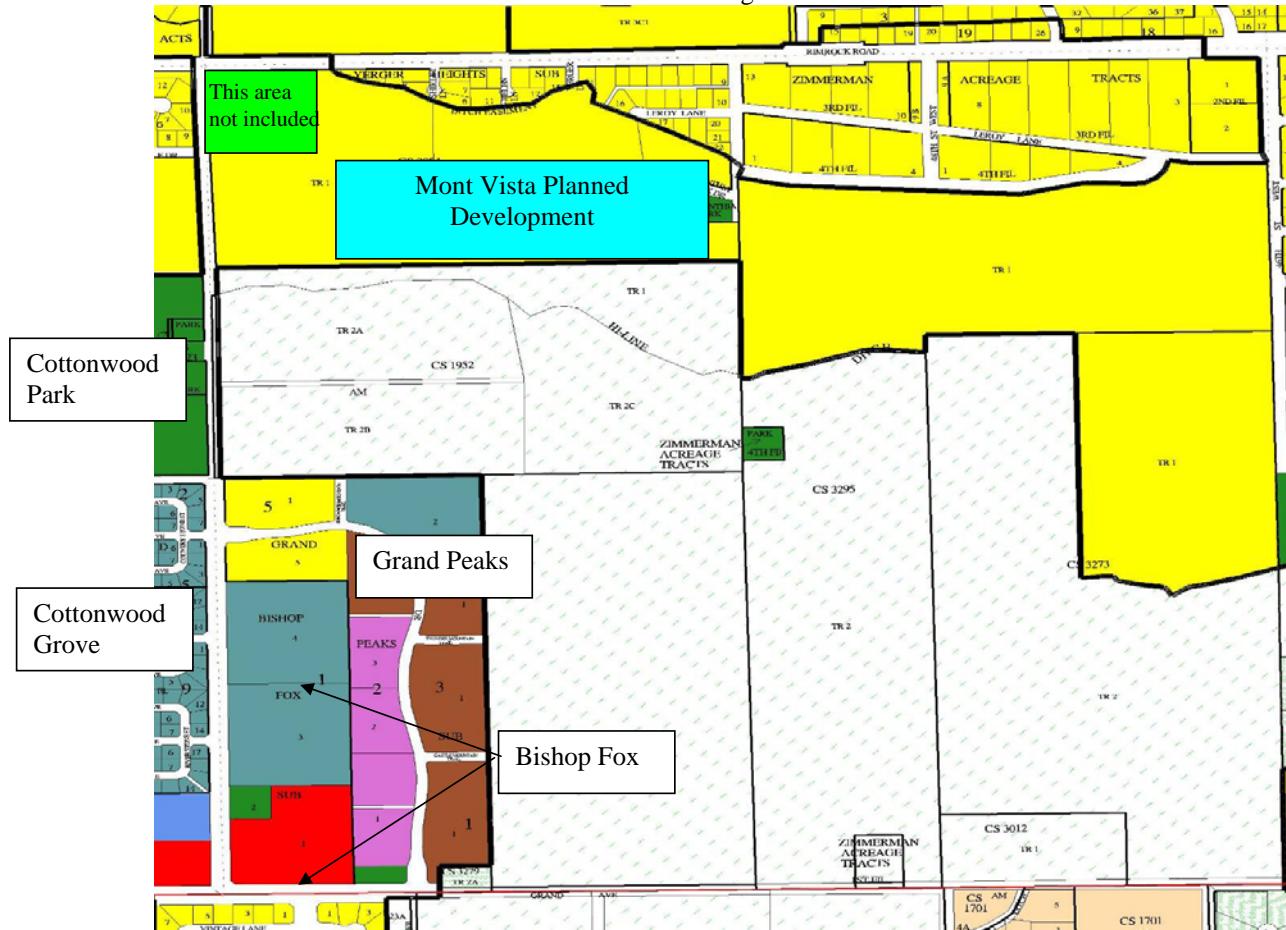
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #851 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

ATTACHMENTS

- A: Surrounding Zoning
- B: Proposed Mont Vista Planned Development Zoning Master Plan
- C: Photographs of site and surrounding property
- D: Ordinance

Attachment A
Zone Change #851

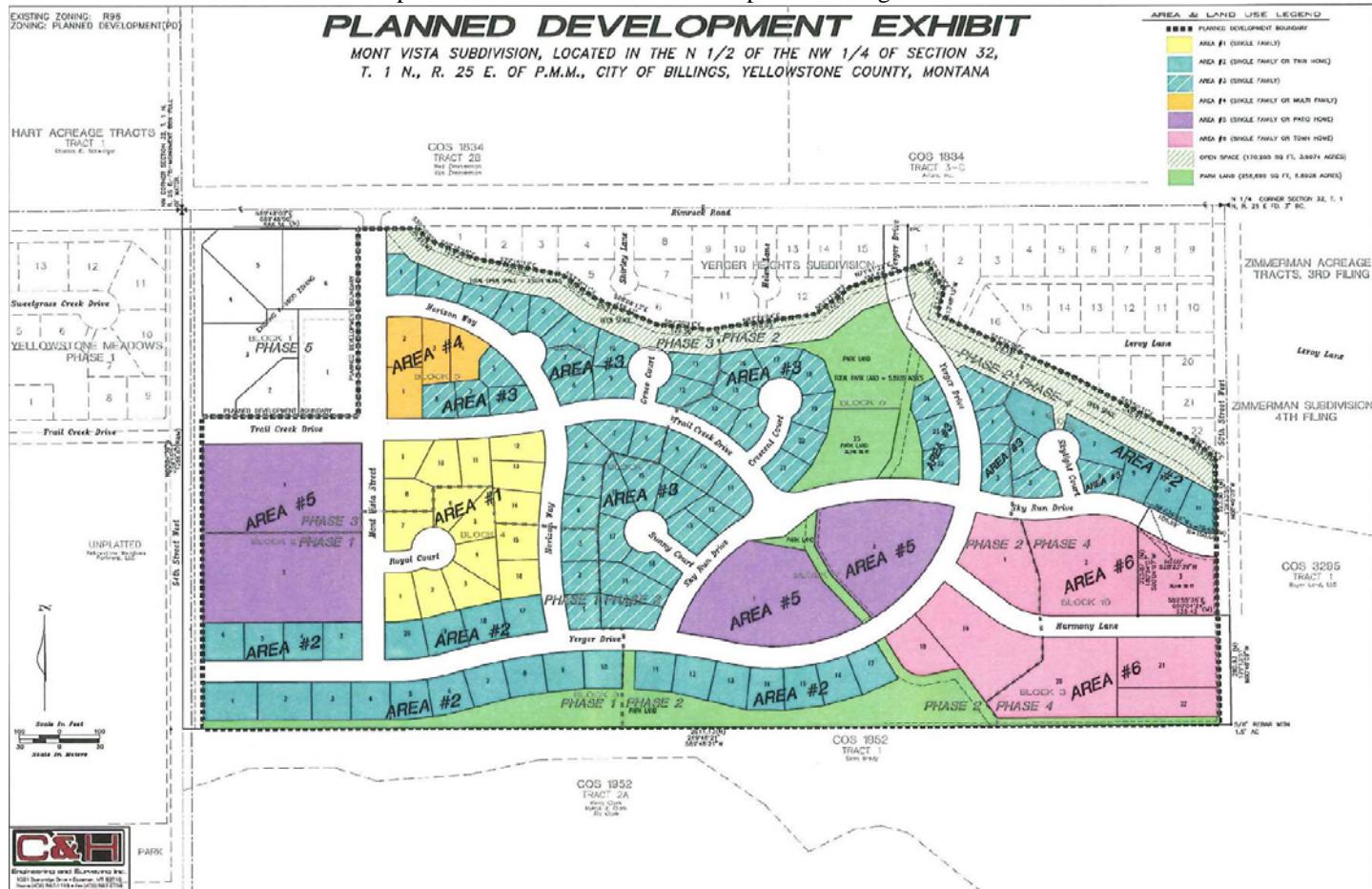


Attachment B

Proposed Mont Vista Planned Development Zoning Master Plan

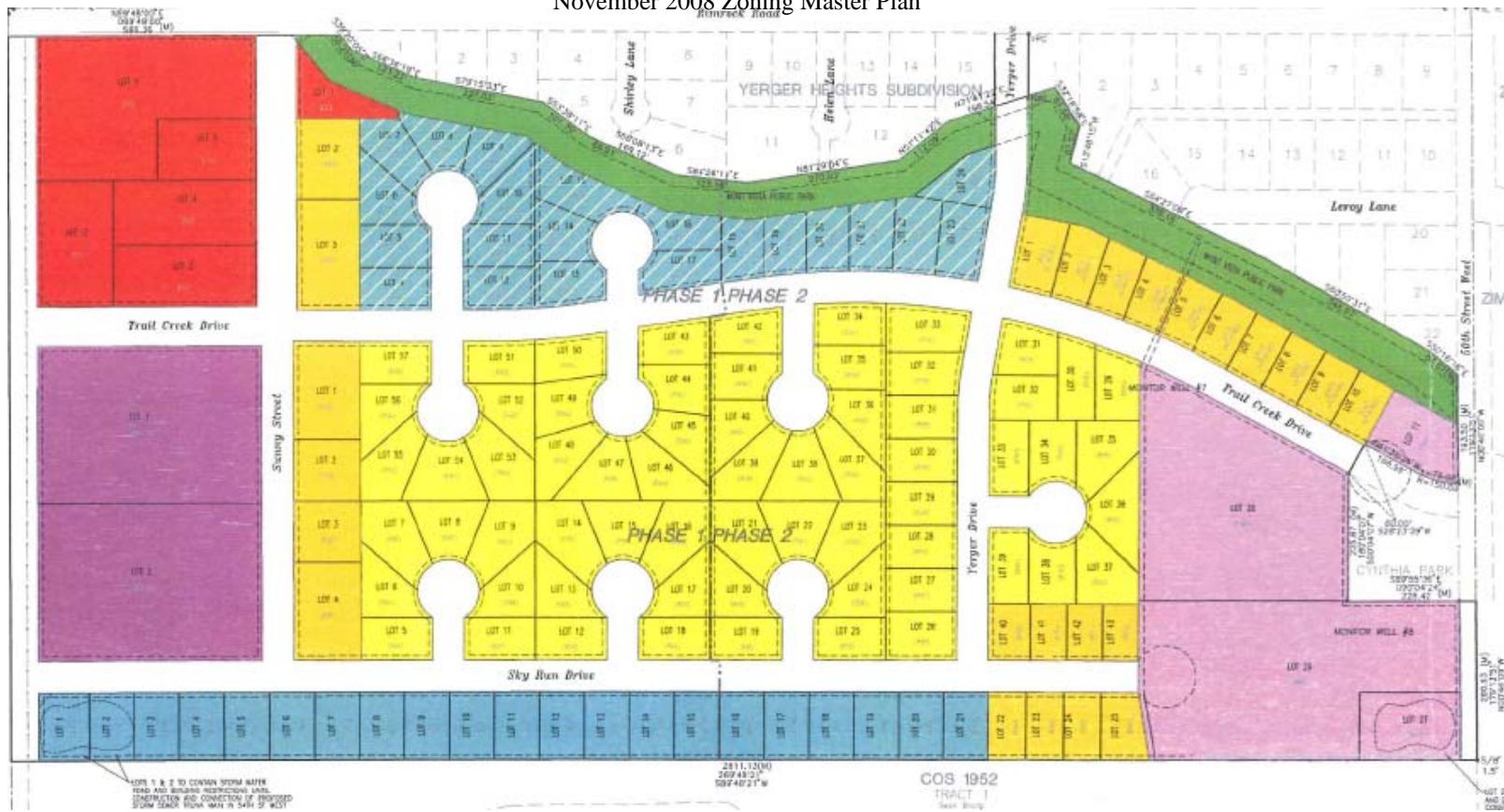
PLANNED DEVELOPMENT EXHIBIT

MONT VISTA SUBDIVISION, LOCATED IN THE N 1/2 OF THE NW 1/4 OF SECTION 32,
T. 1 N., R. 25 E. OF P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA



Attachment B, continued

November 2008 Zoning Master Plan



Attachment C
Site Photographs



View north and east across subject parcel from 54th Street West



View south and east from 54th Street West

Attachment D

Zone Change #851

ORDINANCE NO. 09-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
Certificate of Survey 2054 Tract 1 with the exception of the
north west 4.29 acres, Certificate of Survey 2054 Tract 2
and Yerger Heights Park (aka Cynthia Park) containing
approximately 60.4 acres

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

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. DESCRIPTION. A tract of land known as Certificate of Survey 2054 Tract 1 with the exception of the north west 4.29 acres, Certificate of Survey 2054 Tract 2 and Yerger Heights Park (aka Cynthia Park) containing approximately 60.4 acres and is presently zoned Residential 9600 and Public and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9600 and Public to Planned Development as described in Exhibit A attached here to** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Planned Development** as set out in the Billings, Montana City Code.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading June 22, 2009.

PASSED, ADOPTED AND APPROVED on second reading July 13, 2009.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
City Clerk

ZC #851 – Mont Vista Planned Development

Exhibit A

FINAL DRAFT DATED MAY 8, 2009

Return to: Krutzfeldt Ranch, LLC
Attn: William Krutzfeldt
P.O. Box 1265
Miles City, MT 59301

PLANNED DEVELOPMENT AGREEMENT

FOR

MONT VISTA

By and Between:

Krutzfeldt Ranch, LLC
P.O. Box 1265, Miles City, Montana 59301

And

The City of Billings, Montana

**PLANNED DEVELOPMENT AGREEMENT
FOR MONT VISTA SUBDIVISION**

This PLANNED DEVELOPMENT AGREEMENT is made this _____ day of _____, 2009, by Krutzfeldt Ranch, LLC, a Montana Limited Liability Company, ("Developer") of P.O. Box 1265, Miles City, MT. 59301 and the City of Billings, a Montana municipality, ("City") of 210 North 27th Street, Billings, MT. 59101.

RECITALS

WHEREAS, KRUTZFELDT RANCH, LLC is the owner of all of the following described property situated in the N1/2NW1/4 of Section 32, Township 1 North, Range 25 East, P.M.M., Yellowstone County, Montana:

Certificate of Survey No. 2054 as shown on the plat and survey thereof on file and of record in the office of the Clerk and Recorder, Yellowstone County, Montana.

WHEREAS, a portion of the above described property is referred to herein as "Mont Vista Planned Development"; and

WHEREAS, the Mont Vista Planned Development may consist of a mixture of residential housing and Krutzfeldt Ranch, LLC desires to place certain Planned Development zoning and land use restrictions on the property; and

WHEREAS, Krutzfeldt Ranch, LLC enters into this Agreement with the City of Billings to ensure that the Mont Vista Planned Development will be developed and maintained consistent with the standards described in this Agreement.

NOW, THEREFORE, the undersigned hereby establish and declare the following development plan shall apply to all of the real estate described hereinabove, shall bind the present and future property owners to such real property and shall run with the land.

AGREEMENT

ARTICLE I - PURPOSES

Section 1. Greater or Lesser Standards. Many of the requirements described in this Agreement are the same, similar to, or stricter than requirements in the Unified Zoning Regulations. However, to the extent that this Agreement creates greater or lesser standards for density, use, height, lot coverage, parking, signage, traffic circulation, landscaping or other land use conditions, the City has determined in accordance with Section 27-1303 of the Unified Zoning Regulations, these unique standards are appropriately balanced by the inclusion of mitigating features or special amenities not otherwise provide by law or regulation. Some of these amenities that shall be incorporated into the Mont Vista Planned Development include:

- A. Open Space and Park Land above the statutory minimum of eleven percent (11%).

- B. The Development will provide access to a natural bird habitat to be dedicated as Park Land. This Park Land bird habitat area will emphasize a natural park concept.
- C. Construction and landscaping of a functional and attractive pedestrian and bicycle path in the Park Land along the south edge of the Development that will promote the safe and convenient transportation of children and adults while interfacing with the Cottonwood Park located off the southwest corner of the Mont Vista Planned Development.
- D. Construction of a functional and attractive pedestrian path interconnecting Park Land to facilitate pedestrian walking in a natural and linear Park Land concept.

Section 2. Natural Environment. A natural and healthy environment will be emphasized with ample Park Land. Sidewalks, bicycle and walking trails will interconnect with Park Land to encourage physical activity.

Section 3. Mixed Residential Use Purpose. The Mont Vista Planned Development will effectively define a variety of residential uses allowing for a planned mix of housing types creating a diverse and aesthetically pleasing community.

Section 4. Flexibility for Future Development. The Mont Vista Planned Development shall permit maximum flexibility of design and materials to meet residential demands as they change over time. The planned development zoning described in this Agreement is intended to provide an opportunity for future development that will create an attractive and functional neighborhood with a variety of living opportunities.

ARTICLE II – DEFINITIONS

Section 1. Unified Zoning Regulation Definitions. All terms used herein shall have the same definition and meaning as specified in the City of Billings Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein. If a definition is not provided, the term shall be deemed to have a common and ordinary meaning.

Section 2. Mont Vista Planned Development. “Mont Vista Planned Development” or “Planned Development” or “development” consists of a portion of the land situated in the N1/2NW1/4 of Section 32, Township 1 North, Range 25 East, P.M.M., Yellowstone County, Montana described in Certificate of Survey No. 2054 as shown on the plat and survey thereof on file and of record in the office of the Clerk and Recorder, Yellowstone County, Montana. Certificate of Survey No. 2054 land is planned to be in the Mont Vista Subdivision plat that will have Blocks 2, 3, 4, 5, 6, 7, 8, 9, 10, streets, Open Space and Park Land that is in the Mont Vista Planned Development. Block 1 of the Mont Vista Subdivision is not included in the Planned Development.

Attached hereto and by reference incorporated herein is the **Planned Development Exhibit** illustrating the land and streets included in the Planned Development. The development will feature mixed residential uses.

Section 3. Mont Vista Homeowners Association. The term “Association” or “Mont Vista Homeowners Association” shall mean the association of owners of property within the Mont Vista Planned Development that may be organized by Krutzfeldt Ranch, LLC.

Section 4. Design Review Committee. “Design Review Committee” means the person, entity or committee appointed by Krutzfeldt Ranch, LLC to exercise the rights, duties and responsibilities assigned to it by Krutzfeldt Ranch, LLC under this Planned Development Agreement or under any Declaration of Covenants and Restrictions recorded by Krutzfeldt Ranch, LLC.

Section 5. Developer. “Developer” means Krutzfeldt Ranch, LLC or any person or entity to whom Krutzfeldt Ranch, LLC transfers or assigns its development rights hereunder.

Section 6. Dwelling Unit. “Dwelling Unit” means one (1) or more rooms designed for or occupied by one (1) family for living or sleeping purposes and may contain kitchen and/or bathroom facilities for use solely by one (1) family. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit. A residence building may contain one (1) or more dwelling units.

Section 7. Grade. “Grade” is the lowest point of elevation of the finished surface of the ground, or the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and the property line, if it is less than five (5) feet distance from the wall. In cases where walls are parallel to and within five (5) feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley, or public way.

Section 8. Height. “Height” or “Building Height” means the vertical distance from the highest point of a structure to the “grade”.

Section 9. Lot. “Lot” or “lot” means a portion of the Mont Vista Planned Development depicted as a separately identified parcel on a recorded subdivision plat that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Park Land and Open Space or property dedicated to the public.

Section 10. “Multi-Family” or “Multi-Family residential” means a building constructed and designed for occupancy by three (3) or more families living independently of each other, and containing three (3) or more dwelling units, where the dwelling units share a common separation such as a ceiling, wall, etc. (including, without limitation, the wall of an attached garage or porch) and where access cannot be gained between the units through an internal doorway, excluding common hallways.

Section 11. Park Land and Open Space. “Park Land and “Open Space” means any property or facility that Krutzfeldt Ranch, LLC has identified on the Mont Vista Subdivision plat as Open Space and/or Park Land. In addition, Park Land may include but are not limited to park areas, open spaces, common areas, water amenities, bike trails, sidewalks, walking paths, exercise or play areas, sitting areas, picnic areas, landscaped entryways, community sign areas.

Section 12. Owner. “Owner” or “owner” shall mean any person or entity owning a fee simple interest in a lot or a purchaser by a contract, whether one or more persons or entities, owning or purchasing a lot, but excluding Developer and/or those having a mortgage or an interest merely as security for the performance of an obligation.

Section 13. Patio Home. A single-family dwelling unit with common ownership of land, which may include an attached patio.

Section 14. Single Family. “Single Family” or “single family residential” means a building constructed and designed for occupancy by one (1) family and containing one (1) dwelling unit.

Section 15. Story. "Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six (6) feet above grade as defined herein for more than fifty percent (50%) of the total perimeter or is more than twelve (12) feet above grade as defined herein at any point, such basement, cellar or underused under-floor space shall be considered a story.

Section 16. Town Home. "Town Home" or "town home residential" or "townhouse" means a building or structure that has two (2) or more one (1) family dwelling units erected as a single building, each being separated from the adjoining unit or units by an approved fire wall or walls and providing for fee simple ownership of land and dwelling unit. In contrast to a "condominium" a town home includes deeded ownership of the land underneath the dwelling unit in the town home, whereas a condominium may not.

Section 17. Twin Home. Twin Home" or "twin home" or "twin home residential" means a building constructed and designed for occupancy by two (2) families living independently of each other, and containing two (2) dwelling units, where the dwelling units share a common separation such as a hallway, covered lane, ceiling, wall, including without limitation, the wall of an attached garage or porch, however access can be gained between the units through an internal doorway and/or common hallways and/or covered lane.

Section 18. Unit Ownership Act. Unit Ownership Act means the Unit Ownership Act of the State of Montana, Section 70-23-101, et seq., Montana Code Annotated. At the discretion of Developer(s), the Unit Ownership Act may be used to develop Patio Homes, Town Homes, Multi-Family and Twin Homes in the Areas identified herein for such use. However, the terms and limitations in this Planned Development Agreement shall remain applicable.

ARTICLE III – PERSONS BOUND BY THIS AGREEMENT

Section 1. Persons and Entities Bound. The City of Billings and all individuals, corporations or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within the Mont Vista Planned Development shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement, the terms of which shall run with the land.

ARTICLE IV – LAND USES

Section 1. Underlying Land Use Classifications. Lots and underlying land use classifications are illustrated on the attached **Planned Development Exhibit**. The lots are divided into the following Areas with described underlying land use classification.

Underlying Land Use Classification(s)

AREA NO. 1 R-96 Residential 9,600

Block 4 -Lots 1 through 16

AREA NO. 2 R-70 Residential 7,000

Block 2- Lots 3 through 6

Block 3- Lots 1 through 17

Block 4- Lots 17 through 20

Block 9- Lots 6, 7, 9, 10, and 11

AREA NO. 3 R-70R Residential 7,000 Restricted

Block 5- Lots 5 through 8

Block 6- Lots 1 through 24

Block 7- Lots 1 through 20

Block 9- Lots 1 through 5, 8

AREA NO. 4 R-60 Residential 6,000

Block 5- Lots 1 through 4

AREA NO. 5 RMF-R Residential Multi-Family-Restricted

Block 2- Lots 1, 2

Block 8- Lots 1, 2

AREA NO. 6 RMF Residential Multi-Family

Block 3- Lots 18 through 22

Block 10- Lots 1, 2, and 3

Section 2. Permitted Area Uses.

Area No. 1 lots may be used for single-family residential purposes.

Area No. 2 lots may be used for single family and/or twin home residential purposes.

Area No. 3 lots may be used for single-family residential purposes.

Area No. 4 lots may be used for single family and/or multi-family residential purposes.

Area No. 5 lots may be used for single family and/or patio home residential purposes.

Area No. 6 lots may be used for single family and/or town home residential purposes.

Land not described in lots is to be used for Open Space, Park Land, streets, boulevards, trails, sidewalks, drainage ponds, Cove Ditch, irrigation ditches and structures, ingress and egress and utility easements and such other uses as may be reserved or required by Developer. Developer, at its discretion, may transfer Open Space land to a Mont Vista Homeowners Association company.

Section 3. Special Review Uses. Special Review Procedures for the underlying land use classifications set forth in Article IV hereinabove are allowed and shall comply with the Unified Zoning Regulations as established by the City of Billings.

Section 4. Special Review Criteria to be Considered. In considering a special review request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:

- A. Krutzfeldt Ranch, LLC must have given its written consent to the special review request.
- B. The proposed use meets architectural guidelines as may be established by Krutzfeldt Ranch, LLC.
- C. In no case shall a variance be granted for a use prohibited by this agreement.

Section 5. Commercial Uses Prohibited. All lots within the Mont Vista Planned Development shall only be used for residential purposes. No lot may be used at any time for any business, trade, manufacture or other commercial purpose; however, dwelling units may be rented and in home business using telephone, internet and other telecommunications is allowed but such in home business shall be regulated as may be required by City zoning regulations or municipal code.

Section 6. Accessory Dwelling Units. Garages detached from a dwelling unit and/or apartments above a garage are not allowed.

Section 7. Overhead Lines. Overhead utility lines including electrical, telephone, cable lines are prohibited.

Section 8. Lot Size. The lot sizes are varied and will be set forth in the final plat of the Mont Vista Subdivision. No lot area per dwelling unit, however see Maximum Density as shown below.

Section 9. Minimum Setbacks.

Minimum Setback Requirements for lots in all Areas is as follows:

Front-----	20 feet
Side -----	5 feet
Side adjacent to Street-----	10 feet
Rear of Lot abutting Cove Ditch 66 feet easement-----	5 feet
Rear of Lot not abutting Cove Ditch 66 feet easement-----	10 feet

Building across lot lines in all Areas is allowed.

Section 10. Lot Coverage. With setback and height limitations, lot coverage maximums allow larger building footprints. Maximum lot coverage is 65%.

Section 11. Maximum Height. Maximum Height for all buildings is 36 feet with a limit of two stories in addition to basements.

Section 12. Permitted Projections. With Design Review Committee approval, the following projections shall be permitted:

- A. Front porches, steps, balconies, stoops, open porches, and covered walkways may encroach 5 feet into a 20 feet front yard setback; however, an encroaching porch must have a length equal to or greater than one-half the length of the building facade or 12 feet, whichever is greater and a minimum depth of 6 feet.
- B. Fireplaces and bay windows not to exceed two (2) feet;
- C. Roof overhangs, eaves, gutters, cornices or other architectural features not to exceed three (3) feet.

Section 13. **Maximum Density.** The City calculates density by determining total dwelling units divided by total gross acres. The City recommends a minimum density of 4 units per acre. Maximum average dwelling unit density for 328 dwelling units divided by 60.398 gross acres (64.6880 COS No. 2054 minus 4.29 acres in Block 1) is an average density of 5.43. The dwelling units are located in Areas shown on the attached **Planned Development Exhibit** as follows:

Area No. 1- 16 Single family dwelling units
Area No. 2- 56 Twin home dwelling units.
Area No. 3- 54 Single family dwelling units
Area No. 4- 26 Multi-family two story dwelling units
Area No. 5- 97 Patio home dwelling units
Area No. 6- 79 Town home dwelling units
Total 328 dwelling units

Nothing herein shall require Developer(s) to actually build the maximum 328 dwelling units.

ARTICLE V – BUILDINGS, SIGNS, FENCES DESIGN STANDARDS

Section 1. **General Building Design Standards.** Unless expressly designated herein, the building design standards of the City of Billings Zoning Regulations, the Site Development Ordinance and the Building Code shall be followed for properties in this Planned Development.

Section 2. **Design Considerations.** Design Considerations shall include five (5) of the following considerations in any application to the Design Review Committee and to the City:

- A. Relationships to open space, pedestrian circulation, landscape features on and adjacent to the site;
- B. Views of the architecture from pedestrian and vehicular perspectives;
- C. Satisfaction of physical, psychological, social and functional needs of users;
- D. Orientation of buildings in relation to streets;
- E. Vehicular versus pedestrian flows.
- F. Character of surrounding developments;
- G. Solar orientation, climate and solar reflection
- H. Potential environmental hazards;
- I. Enhancement of the overall landscape;
- J. Scale of adjacent facilities and open space;
- K. Mountain views.

Section 3. **Design Features.** Design features shall include three (3) of the following as features of the finished construction:

- A. Landscaped entrance drives;
- B. Decorative walkways;
- C. Dynamic building and roof forms;
- D. Window patterns;
- E. Light and shadow patterns;
- F. Color accent.

Section 4. New Construction Required. Any building or residence erected upon lots in any of the Areas shall be of new construction with concrete basements or concrete footings and foundation walls or other appropriately designed permanent foundation system.

Section 5. Construction Equipment Time Limit. No construction equipment or materials of any nature shall be moved on to a lot more than sixty (60) days prior to the start of construction to be initiated thereon.

Section 6. Additional and Supplemental Design Guidelines. In addition to the design rules set forth herein, Krutzfeldt Ranch, LLC may record a Declaration of Covenants and Restrictions that provides additions, amendments and supplemental design and restriction guidelines.

Section 7. Signs Comply with Zoning Regulations. All signs shall comply with the City of Billings Zoning Regulations unless limited herein or as provided in any restrictive covenants recorded by Krutzfeldt Ranch, LLC. No neon, fluorescent, or lighted signs are allowed.

Section 8. Fences Comply with Zoning Regulations. Fences, walls, berms, hedges and other improvements shall comply with the clear vision standards of the City of Billings Zoning Regulation. Rear and side yard fences, walls, berms or hedges on a lot and not on a street or Open Space or Parkland shall not exceed eight (8) feet. An earth berm or hill on Open Space or Parkland may exceed eight (8) feet.

VI – LANDSCAPING

Section 1. Parkland Landscaping. Developer, at its expense, shall landscape Park Land in four (4) phases. This landscaping obligation occurs after fifty percent (50%) of the lots in a phase have been sold. The phases are as shown on the attached **Planned Development Exhibit**. The Open Space within the Cove Ditch easement may remain natural and “as is” and need not be landscaped. Emphasis will be given to creating natural and linear park areas, preserving trees, using drought tolerant plant species, and rocks. Park Land dedicated to the City will be landscaped as approved by City and Developer. Natural parkland is not required to be irrigated but may be irrigated as is necessary to maintain plants and grasses.

VII – PARK LAND

Section 1. Park Land. The statutory park dedication requirement shall be satisfied by Krutzfeldt Ranch, LLC either dedicating to the City of Billings, those acres identified on the Attached **Planned Development Exhibit** as Park Land or by the City of Billings waiving the park dedication requirement if the land set aside for Park Land meets the requirements of state statute.

Section 2. Park Land Maintenance. The maintenance of Park Land will be by a Park Maintenance District for Park Land dedicated to the public with maintenance fees obtained from lot owners in the Mont Vista Subdivision used to maintain, repair and improve the dedicated land.

Section 3. Cynthia Park Land Exchange. Yellowstone County represents Cynthia Park as shown on the Yerger Heights Subdivision plat is owned by the City and that County will provide transferring documents to the City. The City represents Cynthia Park is annexed into the City of Billings. Krutzfeldt Ranch, LLC and the City agree that Cynthia Park shall be exchanged for an equal acreage of land now owned by Krutzfeldt Ranch, LLC. The existing Cynthia Park land shall be transferred to Krutzfeldt Ranch, LLC and a lot to be identified as Lot 25 of Block 6 of

the Mont Vista Subdivision shall be transferred to the City with good clear, insurable, and merchantable title. The Lot 25 to be acquired by the City shall be dedicated as Public Park Land. The land acquired by Krutzfeldt Ranch, LLC which is presently Cynthia Park shall be identified as Lot 3 of Block 10 of the Mont Vista Subdivision and this Lot 3 shall cease to be Public Park and shall be PD zoned and available for development under the Mont Vista Planned Development. The land exchange procedure shall comply with Montana state statutes.

VIII – BICYCLE AND PEDESTRIAN FACILITIES

Section 1. Bicycle and Pedestrian Paths. The development shall provide for pedestrian access along or through lots, and Park Land to create a system of bicycle, pedestrian sidewalks and paths. Prior to turnover to the Park Maintenance District created for the dedicated Park Land, Developer, at its expense, shall provide bicycle and pedestrian trails and sidewalks in four (4) phases. This obligation occurs after fifty percent (50%) of the lots in a phase have been sold. The phases are as shown on the attached **Planned Development Exhibit**.

Trails as distinct from sidewalks will interconnect some streets, Cove Ditch easement land, and an existing Park Land tree area. Sidewalks in Park Land will interconnect with the trails along the south side of the Planned Development. Sidewalks shall be a minimum of five feet (5') wide and constructed of concrete or asphalt. Paths may be less than five feet (5') wide and may be natural dirt or covered with rubberized chips, or gravel. Location of sidewalks and paths shall be as determined by Developer.

IX – SITE DEVELOPMENT STANDARDS

Section 1. Street Types and Standards. In the absence of a contrary agreement, all streets shall be developed to the City of Billings standards for width, curb, gutter, sidewalk, cross-section, and surface treatment.

Section 2. Zone Boundaries. The transitional areas between different residential use classifications should be designed to complement the adjacent land uses. Use of buffering landscaping is encouraged to achieve a harmonious change between properties and promote the sense of a single, unified neighborhood.

Section 3. Vehicular Access. Vehicular access into the Planned Development will be provided by Yerger Drive, Mont Vista Street, Trail Creek Drive, and Sky Run Drive as shown on the **Attached Planned Development Exhibit** of the Mont Vista Subdivision. Vehicular access to the lots in this subdivision will also be provided from interior local streets or by private access easements.

Section 4. Outside Storage. No storage area shall be permitted in the front portion of any lot. Storage areas, if any, shall be screened from the ground-level view of adjacent properties and streets. Screening elements shall be of landscape materials or materials similar to those used to construct the primary structure. Storage areas shall comply with applicable building setbacks and must be approved by the Design Review Committee.

Section 5. Parking Area Development Standards. All parking, access drives and loading areas shall be paved and properly graded to ensure adequate drainage. Minimum parking requirements

shall meet the City of Billings standards and parking structures must be approved by the Design Review Committee.

Section 6. Loading and Unloading Areas. Owners may load and unload on their Lot(s) for purposes of their residential use.

X – INSTALLATION OF IMPROVEMENTS

Section 1. Site Lighting Standards.

- A. All outdoor pole lighting on lots shall be at the Lot Owner cost and fully shielded (no light emitted by a fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than eighteen (18) feet above grade.
- B. All outdoor lighting, except streetlights, shall be located and aimed or shielded to minimize stray light going across property boundaries.

XI – OTHER REQUIRED DOCUMENTS

Section 1. Other Documents.

- A. Special Improvements Agreement. The City and Developer shall enter into a Special Improvements Agreement that includes provisions for creation of a Mont Vista Park Maintenance District for land dedicated to the City for Park Land, provisions for exchange of Cynthia Park land to Developer and provisions for Special Improvement Districts.
- B. Covenants and Restrictions. Developer may, but is not required to do so, record a declaration of covenants and restrictions that shall supplement this Planned Development Agreement.
- C. Other Documents. Any other documents as may be necessary to implement this agreement shall be executed by the parties hereto.

XII – OTHER REGULATIONS

Section 1. Maintenance. Maintenance by lot Owners between lot lines and the street shall include removal and replacement of dead and dying trees, grass and shrubs, removal of trash and weeds, repair and maintenance of drains, mail boxes whether on or off the Owner's lot, and repair of light standards, fences, walls, surfacing materials and in general maintain a neat and tidy appearance both on the lot and between the lot and the street.

Section 2. Nuisances Prohibited. No noxious or offensive activity shall be carried on, nor shall anything be done in any of the Areas, Open Space or Park Land that may become an annoyance or nuisance to the neighborhood. Offensive activity may include but is not limited to noise from radios, horns, whistles, bells or other sound devices, obstructions of walkways and streets, careless disposition of litter, cigarettes, gum and candy, animal excrement, animal behavior. The Design Review Committee, in its sole discretion, may determine whether an activity is an annoyance or nuisance and upon Committee request the activity or nuisance shall immediately cease. Failure of the person causing the activity to cease the activity or nuisance may be

remedied by the Committee obtaining a court injunction together with damages, attorney fees and costs.

XIII – ENFORCEMENT

Section 1. Right to Enforce by City. The terms of this Agreement may be enforced by the City as provided in the Unified Zoning Regulations.

Section 2. Right to Enforce by Owners. The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within the Mont Vista Planned Development and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto, the Design Review Committee, as well as future property Owners. The parties agree the Design Review Committee shall have standing to enforce this Agreement relative to the City or any property owner regardless of whether the Design Review Committee owns a Lot. In addition to all rights under this Agreement, the parties enforcing this Agreement reserve all rights and remedies available at law or in equity, by statute or otherwise including the right to recover damages, reasonable attorney fees and costs. All such rights and remedies shall be cumulative.

Section 3. Right of Abatement and Suit. If Developer, the Design Review Committee or the City of Billings objects (“the objecting party”) to any Owner’s or other party’s breach of this Agreement (“the defaulting party”), the objecting party shall have, in addition to any other rights and remedies arising at law or in equity, the right to abate the effects of the defaulting party’s breach. To exercise the right of abatement the objecting party shall provide the defaulting party with written notice of its objection, specifying the particulars of the objection. If within thirty (30) days of receipt of such notice, the defaulting party fails or refuses to commence to remedy its breach under this Agreement, or if after commencing action the defaulting party fails to cure its default within a sixty (60) day period, the objecting party may perform whatever reasonable maintenance, repair, operation or other curative action as needed to remedy the default. The defaulting party shall pay upon demand to the objecting party the costs of such maintenance, repair, operation or other curative action, together with interest allowed by law from the date of disbursement of such costs until paid in full. The objecting party shall not be responsible for the continued maintenance or repair of any structure or Lot or the performance of the defaulting party’s obligation under this Agreement. The objecting party may also prosecute a proceeding at law or in equity to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied or to recover damages for said violation.

Section 4. Limitation on Enforcement. This Agreement is for the benefit of Developer, City, Owners and the Design Review Committee appointed by Developer and their heirs, devisees, assigns, trustees and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce the restrictions contained herein, judicially or otherwise.

XIV – AMENDMENTS AND VARIANCES

Section 1. Amendments or Changes. This Agreement may not be amended, modified or terminated in whole or in part, except with the written consent of Developer and the City. The consent of Owners who purchase Lots shall not be required to amend, modify, or terminate this

Agreement. Any modifications requested by Developer shall be processed using the same procedures as for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

- A. Change the overall character of the development;
- B. Change additional allowed uses;
- C. Change the approved minimum setbacks, maximum lots coverage or maximum allowed structure height.

Section 2. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations. In no case shall a variance be granted for a use not consistent with those listed within this Agreement or for uses prohibited within the Unified Zoning Regulations.

Section 3. Zone Change Procedures. Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

XV– GENERAL PROVISIONS

Section 1. Assignment of Agent. Developer may, in its sole discretion appoint an individual or entity to act as its agent to fulfill the duties and obligations of Developer hereunder. Although not required to be effective, notice of such appointment may be made in writing containing a legal description of the Mont Vista Planned Development land, recorded with the real estate records of Yellowstone County, Montana and mailed to the City at the address specified herein for notices.

Section 2. Assignment by Developer. Developer may, in its sole discretion, assign its rights and delegate its duties under this Agreement in whole or in part to any other person or entity. Notice of such assignment shall be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for the Mont Vista Planned Development, or any portion thereof, affected by the assignment. Notice of assignment and delegation shall also be provided to the City at the address specified herein. Once any notice of delegation has been recorded in the real estate records of Yellowstone County, Montana, Developer shall have no further responsibility or liability for the future performance or non-performance of this Agreement, and the City and all property Owners shall look exclusively to the appointed person or entity.

Section 3. Coordination with Other Regulations. The City Planned Development (PD) Zoning Regulations are considered to be part of this Agreement and by reference are incorporated herein.

If this Agreement or Covenants do not prescribe rules for a particular aspect of the development or use, either by express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations or ordinances applicable to the property are subsequently amended, the amended regulations or ordinances shall likewise continue to be applicable to the property to the extent that they are not inconsistent with this Agreement or Covenants. If there is any conflict between this Agreement or Covenants recorded by Developer and Planned Development Zonings Regulations, Unified Zoning Regulations, Subdivision Regulations, or other zoning regulations or ordinances, the terms and conditions of Covenants shall govern.

Section 4. **Notices.** All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereon in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipts therefor. All notices or demands to Developer or the City shall be given at the following addresses or such other addresses as Developer or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Developer: Krutzfeldt Ranch, LLC With copies to: Janette Jones, Attorney-at-Law
Attn: William Krutzfeldt 1200 Pleasant Street
P.O. Box 1265 Miles City, MT 59301
Miles City, MT 59301

And copies to: City Attorney's Office
P.O. Box 1178
Billings, MT 59108-1178

Section 5. Waiver. Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

Section 6. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, terrorist acts, governmental regulations and controls, enemy or hostile governmental action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

Section 7. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and

the remaining provisions shall remain in force and be binding upon the parties hereto.

Section 8. No Partnership. This Agreement is not intended to create, nor shall it in any way be interpreted to create a joint venture, partnership, or any other similar relationship between the

Section 9. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof.

and supercedes all prior agreements, oral or written, with respect to the subject matter hereof.

The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

Section 10. Recordation. This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of Yellowstone County, Montana.

NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY OF THE MONT VISTA PLANNED DEVELOPMENT LOCATED IN THE MONT VISTA SUBDIVISION OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY AND SHALL FUTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.

Section 11. Duties Run with the Land. The duties created by this Agreement shall run with the land and shall be binding upon Krutzfeldt Ranch, LLC, the City of Billings, property Owners, and their heirs, successors and assigns.

Section 12. Contact Person. Developer hereby designates a contact person who may be contacted concerning any questions, comments, or concerns. Initially, at the time of recording, the contact person is William Krutzfeldt, P.O. Box 1265, Miles City, MT 59301 (Telephone (406) 234-2222). Upon designation of the Design Review Committee, a member of the committee or an entity appointed by Developer shall be the contact person or entity to replace William Krutzfeldt.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year indicated by the notarial certifications indicated below.

KRUTZFELDT RANCH, LLC

By: _____

William Krutzfeldt, Member Agent

STATE OF MONTANA)

:ss

County of _____)

This instrument was executed and acknowledged before me on the _____ day of _____, 2009, by William Krutzfeldt, known to me to be the member agent of Krutzfeldt Ranch, LLC.

(Notary Seal)

Notary Signature _____
Printed name _____
Notary Public for the State of Montana
Residing at _____, Montana
My commission expires: _____

CITY OF BILLINGS:

(City Seal)

BY: _____

ATTEST:

BY: _____
City Clerk

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this _____ day of _____, 2009, before me, a Notary Public for the State of Montana, personally appeared Ron Tussing and _____, known to me to be the Mayor and City Clerk respectively of the City of Billings, and whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

(Notary Seal)

Notary Signature
Printed Name
Notary Public for the State of Montana.
Residing at Billings, Montana.
My Commission expires:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 22, 2009

TITLE: Zone Change #855 Public Hearing and 1st Reading of Ordinance –
2123 1st Avenue North

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Controlled Industrial (CI) to Central Business District (CBD) on Lots 18 – 24, Billings Original Town located at 2123 1st Avenue North. This is the current location of Yellowstone Valley Brewing and Enterprise Rent-A-Car. The applicant is Robert D. Schaak (Riverside Farms, Inc) and the agent is Jay Shearer. A pre-application neighborhood meeting was held at Yellowstone Valley Brewing on April 26, 2009. The Zoning Commission conducted a public hearing on June 2, 2009, and is forwarding a recommendation of approval on a 5-0 vote.

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

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change should have little effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #855 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

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

ATTACHMENTS:

- A: Surrounding Zoning
- B: Site photographs
- C: Ordinance

INTRODUCTION

The applicant is requesting to rezone a 24,500 parcel just east of the existing CBD zoning from CI to CBD. The land includes the Enterprise Rent-A-Car and Yellowstone Valley Brewing. The address of the property is 2123 1st Avenue North. In 1996, the micro-brewer located in the north 4,800 square feet of the existing 10,688 square foot building.

Yellowstone Valley Brewing has a tap room and outdoor seating area that is open daily for tasting from 4 pm to 8 pm. State law allows micro-breweries to have tap rooms open from 10 am to 8 pm daily. Micro-breweries up to certain generating capacities are allowed in the CI and CBD zones without special review approval. A micro-brewery generating up to 5,000, 31-gallon barrels per year is an allowed use in the CI zone. A micro-brewery generating up to 1,500, 31-gallon barrels per year is an allowed use in the CBD zone. Yellowstone Valley Brewing has the capacity to generate between 1,000 and 5,000, 31-gallon barrels per year.

PROCEDURAL HISTORY

- On April 26, 2009, the pre-application neighborhood meeting for the proposed zoning application was conducted at Yellowstone Valley Brewing at 2123 1st Avenue North.
- On May 4, 2009, a zone change application was submitted to the Planning Division.
- On June 2, 2009, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On June 22, 2009, the City Council will conduct the public hearing for the zone change.
- On July 13, 2009, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

1st Avenue North is an arterial street that handles 13,000 vehicle trips per day. At this location, 1st Avenue North is one-way westbound with three travel lanes and on-street parking on both sides of the street. The on-street parking on 1st Avenue North from N 14th Street west to N 24th Street is not metered parking. This location is within the East Billings Urban Renewal and Tax Increment Finance District and is part of the master plan that is being developed for City Council consideration in July 2009. This proposal to re-zone the property from CI to CBD is not contrary to the draft master plan as presented to date. The proposed master plan contemplates a combination of off-street, on-street and structured parking options, assuming new zoning and site development standards are adopted to align with the master plan. The primary motivation for the request is to relieve the owner from imposition of off-street parking standards when remodeling the building to accommodate new or better equipment. The City approved an original remodeling building permit in 1996 to allow the installation of the microbrewery but did not impose or require any additional off-street parking at that time. A recent request to operate a domestic distillery triggered a building code and site development review. Several changes in the building code will require remodeling to improve public health and safety and will also trigger a review of the required off-street parking. Enterprise Rent-A-Car uses most of the existing parking spaces on the parcel.

In 1981, the City Council initiated a major expansion of the CBD zone from the original 20 city blocks to include an additional 56 city blocks. In addition, the City Council also approved changes to the code that eliminated lot area, building height, lot coverage and off-street parking requirements for any development within the CBD zone. The City Council acknowledged by making this change that metered on-street parking would need to be provided, and the construction of several parking garages would be needed to meet the downtown parking needs. Since 1982, the city has constructed four parking garages and established metered parking as well as unmetered parking inside and outside the CBD zone. The Parking Division is currently conducted a Parking Survey to identify existing and future parking needs downtown.

The lots to the north, east and south are zoned CI and have been fully developed for commercial or residential uses. Most lots that have frontage on 1st Avenue North have been developed for commercial or retail uses whereas the lots from mid-block north of 1st Avenue have been developed for residential purposes. West across N 22nd Street is the current boundary of the CBD zone.

The Growth Policy supports predictable land uses in existing neighborhoods and encourages compact commercial development where arterial streets exist to handle traffic. The Central Business District classification is intended to primarily accommodate stores, hotels, governmental and cultural centers and service establishments at the central focal point of the city's arterial and transportation system, where the district can conveniently serve the population of the entire urban area with a varied and specialized selection of goods and services. The existing Enterprise Rent-A-Car and Yellowstone Valley Brewing have existed at this location and are compatible uses with the CBD zone. The city has not received complaints regarding on or off-street parking at this location although it is directly adjacent to an older residential neighborhood. Changing the zoning from CI to CBD will not have a significant impact on the surrounding property nor will it result in a development that is detrimental to the purposes of the CBD area or the East Billings Urban Renewal and Tax Increment Finance District. The proposed CBD zoning district for these lots adjacent to developed commercial property on a principal arterial street meets these policy goals. The applicant conducted a pre-application neighborhood meeting to discuss the zone change. None of the surrounding property owners attended the meeting. The Planning Division has not received any comments or concerns from the surrounding property owners.

The Planning Division reviewed this application and recommended approval to the Zoning Commission based on the attached twelve (12) criteria for zone changes. The subject property is adjacent to an arterial street and the property is appropriate for CBD uses and development. The zone change will not alter the character of the East Billings Urban Renewal and Tax Increment Finance District since the lots have already been developed. Improvements on the property will add tax increment to the district. The proposed zoning is compatible with the surrounding zoning and neighborhood character. The Zoning Commission concurred with this recommendation.

ALTERNATIVES ANALYSIS

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

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

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

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would allow continued improvements on an arterial street that is consistent with all surrounding land uses and zoning. The Central Business District classification is intended to primarily accommodate stores, hotels, governmental and cultural centers and service establishments at the central focal point of the city's arterial and transportation system, where the district can conveniently serve the population of the entire urban area with a varied and specialized selection of goods and services.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The proposed zoning is consistent with the surrounding character of the neighborhood.

Comment [F3]: This must be a typo. Do you mean 1st Avenue North?

Comment [F4]: Not if it is in the CBD. Maybe this is an artifact from another memo.

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

1st Avenue North is a principal arterial that carries approximately 13,000 vehicle trips per day. North 22nd Street is a local access street that serves the adjacent businesses and residences. No significant increase in traffic load is anticipated from this zone change since the lots are fully developed.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

The subject property is currently serviced by City Fire and Police. The proposed zoning will not affect the ability to these services.

4. *Will the new zoning promote health and general welfare?*

The current CI zoning allows some manufacturing uses that may be incompatible with the existing residential area to the north. The proposed zoning of CBD does not allow most manufacturing uses and should be more compatible with the existing neighborhood.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning does not require building setbacks or limit building height. Building and fire codes should provide assurance of adequate light and air for the property and surrounding neighborhood.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning does not limit maximum lot coverage. The existing zoning of CI allows up to 75% lot coverage. Lot coverage only includes the area of the lot covered

by structures and does not include pavement. The proposed increase in lot coverage should not overcrowd the property.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning does not require any minimum lot area if it were used for residential purposes. The existing zoning of CI does not allow any residential uses except by special review approval. The proposed zoning would not unduly concentrate population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation:	The proposed zoning should have no impact on the arterial street.
Water and Sewer:	The City provides water and sewer to the property through existing lines on the applicant's property.
Schools and Parks:	There should be no impact on schools or parks from this rezoning.
Fire and Police:	The subject property is currently served by the City of Billings Fire Department and Police Department.

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

The proposed zoning will permit fewer manufacturing uses than the current CI zoning. This will be more compatible with the surrounding uses that include residential homes, auto services and specialized retail services. The new zoning gives reasonable consideration to the existing character of the district.

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

The subject property is suitable for the requested zoning district. Properties directly west of the subject property are zoned CBD and expansion of the CBD zone is suitable for this location.

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

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. As re-development continues in the CBD and the East Billings Urban Renewal and Tax Increment Finance District building values should increase as surrounding properties are improved.

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

The proposed zoning will encourage the most appropriate use of this land on a principal arterial street in the downtown area of Billings.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy Plan and discussed within the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on June 2, 2009, and forwarded a recommendation of approval to the City Council on a 5-0 vote. The agent, Jay Shearer, provided testimony on the application. In addition, Lee Stadtmiller, a member of the Building Committee for Yellowstone Valley Brewing and George Moncure, part owner of Yellowstone Valley Brewing were present at the Zoning Commission meeting and explained the application. Gordon Tryan, Chairman of the Billings Industrial Revitalization District (B.I.R.D.), presented testimony in favor of the application. There was no further public comment at the meeting and no discussion by the Zoning Commission.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #855 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

ATTACHMENTS:

- A: Surrounding Zoning
- B: Site Photographs
- C: Ordinance

Attachment A

Zone Change #855 – 2123 1st Avenue North



Attachment B

Site Photographs - Zone Change #855 – 2123 1st Avenue North



Subject Property with existing parking area



View east along 1st Avenue North

Attachment C

Zone Change #855

ORDINANCE NO. 09-

AN ORDINANCE AMENDING THE ZONE
CLASSIFICATION FOR Lots 18 - 24 of
Block 86, Billings Original Town containing
24,500 square feet

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

1. **RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC*, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. **DESCRIPTION.** A tract of land known as Lots 18-24 of Block 86, Billings Original Town containing 24,500 square feet and is presently zoned **Controlled Industrial (CI)** and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Controlled Industrial (CI)** to **Central Business District (CBD)** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Central Business District (CBD)** as set out in the Billings, Montana City Code.

4. **REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. **EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading June 22, 2009.

PASSED, ADOPTED AND APPROVED on second reading July 13, 2009.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: Cari Martin, City Clerk

Zone Change #855- 2123 1st Avenue North