

**NOTE: SUPPORTING DOCUMENTS FOLLOW AGENDA**

# **CITY OF BILLINGS**

## **CITY OF BILLINGS' VISION STATEMENT:**

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

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## **AGENDA**

**COUNCIL CHAMBERS**

**July 13, 2009**

**6:30 P.M.**

**CALL TO ORDER – Mayor Tussing**  
**PLEDGE OF ALLEGIANCE – Mayor Tussing**  
**INVOCATION – Councilmember McCall**  
**ROLL CALL**  
**MINUTES – June 22, 2009**  
**COURTESIES**  
**PROCLAMATIONS**  
**ADMINISTRATOR REPORTS – Tina Volek**

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

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

## **CONSENT AGENDA:**

1. A. **Bid Awards:**
  - (1) **Airport Ramp Sweeper.** (Opened 6/23/09) Recommend delay of award to July 27, 2009.
  - (2) **2009 Miscellaneous Improvements at Airport, West End Entrance Replacement.** (Opened 6/23/09) Recommend Knife River, \$205,084.60.
  - (3) **W.O. 04-26, Zone 4 Reservoir Phase 1, Composite Elevated Water Storage Tank.** (Opened 6/23/09) Recommend CB&I Constructors, \$2,468,000.

**(4) W.O. 09-17, 24<sup>th</sup> Street West Concrete Work.** (Opened 6/23/09)  
Recommend reject all bids.

**(5) SID 1386, East and West MacDonald Drive.** (Opened 6/23/09)  
Recommend delay of award until after bonds are sold on July 27, 2009.

**B. Approval of purchase** of fusible PVC pipe for water main replacement program from Underground Solutions, Inc. for \$100,000.

**C. Declaring Surplus Property** and authorizing the Police Department to release one Streethawk lightbar with control box and two red lenses to the Assemblies of God District Council Security.

**D. Professional Services Contract** for W.O. 09-12, Inner Belt Loop, Sanderson Stewart, not to exceed \$782,800.

**E. Professional Services Contract** for W.O. 09-13, Redundant Water Main to Staples Pump Station, Sanderson Stewart, not to exceed \$415,500.

**F. Agreement** with DataProse for comprehensive mailing services for water and sanitary sewer billing, \$42,350 per year.

**G. Modified Maintenance Agreement** between the City of Billings and the State of Montana adjusting the State's financial contribution to provide regular street maintenance of state-owned highway system within the city limits, and reducing the contract to a one-year term with an option to renew for a second year. Original two-year agreement approved May 11, 2009. Contract term is July 1, 2009, through June 30, 2010; modified revenue is \$392,278 in FY2010, including a contribution to the City's Equipment Replacement Plan.

**H. Agreement** with Billings Housing Authority to fund one Police Officer, July 1, 2009, through December 31, 2009.

**I. Memorandum of Understanding (MOU)** between the City of Billings and Billings Public Schools for two (2) middle school resource officers, July 1, 2009, to June 30, 2010; \$52,000 to the City.

**J. Memorandum of Understanding (MOU)** between the City of Billings and Billings Public Schools for three (3) high school resource officers, July 1, 2009, to June 30, 2010; \$62,400 to the City.

**K. Approval of grant application and acceptance** of the 2009 Justice Assistance Grant (JAG) for installation of LED lightbars on 13 police vehicles, and replacement of Simunitions training equipment; \$32,377.

**L. Street Closure:**

(1) **STAR Touring and Riding Parade**, brief intersection closures on July 23, 2009, 7:30 a.m. – 9:40 a.m.; parade begins at the Holiday Inn Grand Montana, proceeds to Laurel Road, to Montana Avenue heading east, north on Division Street, east to 4<sup>th</sup> Avenue North, to MetraPark Carnival Lot where parade disbands.

**M. Acceptance of Donation** from Phyllis Forshay Trust and **approval** of transfer of the donation to Yellowstone Valley Animal Shelter, \$94,051.76.

**N. Second/Final 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 54<sup>th</sup> Street West. Krutzfeldt Ranch, LLC, owner; William Krutzfeldt, agent

**O. Second/Final 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 1<sup>st</sup> Avenue North; Robert D. Schaak, applicant; Jay Shearer, agent.

**P. Resolution** creating the Council Ad-Hoc Committee on the Going-out-of-Business Sale Ordinance.

**Q. Preliminary plat** of Trails West Subdivision 1<sup>st</sup> Filing; 74 lots on approximately 67 acres of land, generally located on the south side of Grand Avenue, between 56<sup>th</sup> Street West and 60<sup>th</sup> Street West; conditional approval of the preliminary plat and adoption of the Findings of Fact; Dorn-Wilson Development, LLC, applicant, Sanderson Stewart, agent.

**R. Final Plat**

- (1) Bergquist Subdivision, Amended Lots 2 & 3, Block 1
- (2) Central West Subdivision
- (3) Lake Hills Subdivision, 31<sup>st</sup> Filing

**S. Bills and Payroll**

- (1) June 12, 2009
- (2) June 19, 2009

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

**REGULAR AGENDA:**

2. **RESOLUTION RELATING TO \$509,000 POOLED SPECIAL IMPROVEMENT DISTRICTS BONDS, AUTHORIZING THE ISSUANCE AND CALLING FOR THE NEGOTIATED SALE.** A resolution authorizing the sale of up to \$509,000 in pooled bonds to finance SID 1372 and SID 1386. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
3. **PUBLIC HEARING AND RESOLUTION AUTHORIZING FILING OF THE ANNUAL FEDERAL TRANSIT ADMINISTRATION SECTION 5307 GRANT.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
4. **PUBLIC HEARING AND RESOLUTION TO CREATE SILMD 307,** Shiloh Road from Rimrock Road to Pierce Parkway. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
5. **PUBLIC HEARING AND RESOLUTION VACATING A PORTION OF CLARK AVENUE WITHIN THE 2300 BLOCK.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
6. **PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE #OP-09-02:** A variance from Section 6-1203(a) and Section 6-1203(j) allowing a reduced number of off-street parking spaces for a new office building proposed at 123 South 27<sup>th</sup> Street, on Lots 1-24, Block 141, Billings Original Town. Yellowstone Health Partnership, owner, CTA Architects Engineers, agent. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
7. **STIPULATION TO A 2009-2011 CONTRACT WITH MPEA/BILLINGS POLICE UNION.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
8. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

## **Council Initiatives**

## **ADJOURN**

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



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

AGENDA ITEM:



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

**TITLE:** Postponement of Award of Ramp Sweeper for Billings Logan International Airport

**DEPARTMENT:** Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** This project is for the purchase of a new Airport Ramp Sweeper that is used primarily to clear the commercial aircraft parking ramp, taxiways, taxi lanes, and Terminal streets of construction debris, foreign object debris (FOD), and sand that is used for traction during periods of ice and snow. It is important to clean these areas because serious aircraft damage or engine failure may occur if these materials should be ingested into a jet engine or aircraft propeller. The new unit will replace a 25-year-old sweeper that is no longer able to clean these areas effectively and was identified for replacement through the City's Equipment Replacement Program.

This project was advertised in the *Billings Times* for two weeks, and was posted on the City's Web Site. On June 23, 2009, the following bids for this piece of equipment were received:

<u>COMPANY</u>	<u>PRICE</u>
Titan Machinery	\$173,642.62
Intermountain Sweeper	\$187,329.00
<b>ESTIMATE</b>	<b>\$200,000.00</b>

**RECOMMENDATION**

Staff recommends that City Council postpone the award of the Airport Ramp Sweeper until the July 27, 2009, City Council meeting to allow staff time to compare the bid packet specifications to the equipment that was bid.

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




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

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**TITLE:** Award of the Airport's West End Entrance Replacement Project

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** The Airport's west end highway entrance has not been improved in over 20 years, and is not designed to accommodate the current large truck and tandem trailer combinations used for mail and freight deliveries to and from the Airport. This replacement project will construct a new highway access approximately 500 feet to the west of the existing access. The new access is designed with a flatter approach and a 160-foot wide entrance that will provide an adequate turning radius for the truck and trailer units without interfering with traffic in adjacent vehicle lanes, thereby enhancing the safety of the entrance.

This project was approved in the FY 2009 CIP and budget. The project was designed and set to be advertised in May, bid on June 9, with approval on June 22. However, a mishap in conveying the advertising materials to the City Clerk occurred, which delayed the bid award. While funding is available for this project and adequate budget authority exists in the FY 2010 Airport budget, a first quarter budget amendment will be necessary to correct the use of this additional budget in this Fiscal Year. This project was advertised in the *Billings Times* for two weeks, and was posted on the City's Web Site. On June 23, 2009, the following bids were received:

<b><u>CONTRACTOR</u></b>	<b><u>BID</u></b>
Knife River-Billings	\$205,084.60
Ostermiller Construction	\$227,802.50
CMG	\$239,839.00
Asphalt Plus	\$299,683.50
Riverside Sand and Gravel	Incomplete
<b>ESTIMATE</b>	<b>\$300,000.00</b>

**FINANCIAL IMPACT:** The total cost of this project is \$205,084.60. The funding for this project is available in the Airport's Capital Fund.

**RECOMMENDATION**

Staff recommends that Council award the Airport's West End Entrance Replacement Project to the low bidder, Knife River-Billings, for the amount of \$205,084.60.

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



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

**TITLE:** W.O. 04-26—Zone 4 Reservoir, Phase 1, Construction Contract Award  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** The Public Works Water Utility proposes to construct a pumping facility and water storage tank in Northwest Billings (near Ironwood Subdivision) to provide service to water distribution pressure Zones 4 and 5 West. The new pump station, associated site piping, and Zone 4 reservoir have been designed to allow expansion and provide future service to Zones 6 and 7. Phase 1 of the project involves the construction of a new two million gallon reservoir, which will be a composite elevated tank tower (the base, or stem, of the tower will be concrete and the tank portion will be steel). Phase 2 of the project involves all site work, access road construction, pump station construction (in the stem of the tower), and all associated piping. Phase 2 has additional design requirements and logistics to work out compared to Phase 1, and will therefore bid later in July, 2009.

The project was designed by HDR Engineering, with whom the City has a contract for these professional services. Bids were opened for the project June 23, 2009, and by law, Council must act on the bid opening at this meeting.

**FINANCIAL IMPACT:** This project is being funded by a State Revolving Fund (SRF) loan. The FY 2010 budget includes ample funds to cover the construction costs of Phase 1.

Approved Funding Amount in 2009 CIP:	\$ 8,097,885.00
Previously encumbered for Professional Services:	\$(1,092,585.00)
Amount being requested for Phase 1 construction:	\$(2,468,000.00)
Remaining Funding:	\$ 4,537,300.00

Bids were opened June 23, 2009, with the following results:

Firm(s)	CB&I Constructors	Landmark Structures		Engineer's Estimate
BASE LUMP SUM BID	\$2,468,000.00	\$2,688,000.00		\$3,630,000.00

### **RECOMMENDATION**

Staff recommends that Council award a construction contract for W.O. 04-26—Zone 4 Reservoir, Phase 1 to CB&I Constructors for \$2,468,000.00.

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

## AGENDA ITEM:




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

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**TITLE:** Work Order 09-17, 24<sup>th</sup> Street West Concrete Work

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for WO 09-17 24<sup>th</sup> Street West Concrete Work on June 23, 2009. This project will construct Accessibility Ramps and miscellaneous concrete repairs on 24<sup>th</sup> Street West between Central Avenue and Broadwater Avenue. Per the agreement between the Department of Justice and the City Of Billings, the City is required to construct accessibility ramps on all streets that have been reconstructed or overlaid since 1992. We received two bids on the project from H.L. Ostermiller and CMG Construction. The engineer's estimate is \$160,000. CMG Construction bid \$212,655.00. H.L. Ostermiller did not acknowledge the addendum to the project and therefore the company's bid was non-responsive. The city can reject all bids and rebid the project.

**FINANCIAL IMPACT:** Funding for Work Order 09-17, 24<sup>th</sup> Street West Concrete Work, will be provided from Gas Tax. We received 2 bids for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 160,000.00
H.L. Ostermiller	Non-Responsive
CMG Construction	\$ 212,655.00

**RECOMMENDATION**

Staff recommends that Council reject all bids for Work Order 09-17, 24<sup>th</sup> Street West Concrete Work.

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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 13, 2009

TITLE: SID 1386 East & West MacDonald Drive – Construction Bid Award  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for SID 1386 on June 23, 2009. This project consists of street improvements to East and West MacDonald Drive.

#### ALTERNATIVES ANALYZED:

1. Award SID 1386 to JEM Contracting in the amount of \$241,632.50; or
2. Delay the bids until July 27, after bonds for the project are sold

**FINANCIAL IMPACT:** Six bids were received for this project; the four lowest are shown below:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 310,150.00
JEM Contracting	\$ 241,632.50
CMG Construction	\$ 279,925.00
Winkler Excavating	\$ 295,763.00
HL Ostermiller	\$ 303,577.50

#### SID 1386 Funding Available

SID Construction Assessments with Contingency	\$ 226,137.00
Storm Drain Funds	\$ 34,000.00
Gas Tax Funds	\$ 166,500.00
Contract Amount (This Memo)	\$(241,632.50)
<b>Remaining Funds</b>	<b>\$ 185,004.50</b>

Remaining funds for this project shall be used for construction administration, staking, and change orders.



**RECOMMENDATION**

Staff recommends that Council delay award for SID 1386 in the amount of \$241,632.50 until after bonds are sold on July 27, 2009.

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

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 13, 2009

TITLE: Fusible PVC Pipe Purchase for Pipebursting

DEPARTMENT: Public Works Department

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

**PROBLEM/ISSUE STATEMENT:** The Public Works Distribution & Collection division has a program to pipe burst certain existing water mains in need of replacement. It is necessary to purchase 3,800 feet of 8-inch diameter and 1,840 feet of 12-inch diameter fusible PVC water main pipe for this program.

**ALTERNATIVES ANALYZED:**

1. Approve the pipe purchase.
2. Do not approve the pipe purchase and require the Public Works Department to open cut the water main scheduled for replacement.

**FINANCIAL IMPACT:** The cost for this pipe is \$100,000, funded from the annual water replacement project approved in the Capital Improvement Plan (CIP). The pipe is from Underground Solutions Inc. that has the patent on this fusible PVC pipe and the fusion technology utilized to join the pipe together. The City Of Billings has a license agreement to use this product. As such, it was necessary to obtain a price proposal for the pipe rather than bidding out the material. The cost for pipe bursting is about one-third the cost for conventional construction.

**RECOMMENDATION**

Staff recommends that Council approve the purchase of the fusible PVC pipe from Underground Solutions Inc. for \$100,000.

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

**ATTACHMENT**

A. Price Quote from Underground Solutions Inc.



## ***Firm Proposal***

### **Fusible C-900® Billings Truckload Quantity, Stock Price Billings, MT**

Proposal Number: P09-0463  
Date Prepared: 6/2/2009



Sales Contact:  
Pat Laidlaw

**Underground Solutions, Inc.**  
d/b/a UGSI, Inc. in California

Phone Number: (801) 699-2804

Email: [PLaidlaw@undergroundsolutions.com](mailto:PLaidlaw@undergroundsolutions.com)

Proposal Created by: HM

13135 Danielson Street, Suite 201  
Poway, CA 92064  
Tel: (858) 679-9551  
Fax: (858) 679-9555  
www.underground solutions.com



Date Prepared: 6/2/2009

Mr. Scott Emerick  
City of Billings  
2251 Belknap Ave.  
Billings, MT 59111

Ref: **Billings Truckload Quantity, Stock Price - Billings, MT**  
**Proposal No. P09-0463**

Dear Mr. Emerick,

Underground Solutions, Inc. (UGSI) is pleased to provide the following Firm Proposal for Fusible PVC™ pipe without fusion services for the Billings Truckload Quantity, Stock Price project. Pricing for pipe (including freight) is detailed in the following section on a Unit Cost (\$/ft) and Total Cost (\$) basis.

Fusible C-900® and Fusible C-905® pipe meet all applicable industry standards: AWWA C900/C905, NSF-61 Certification for Drinking Water Components, ASTM cell classification 12454, and formulation requirements of Plastics Pipe Institute TR-2. FPVC™ pressure pipe is tested in accordance with AWWA C900/C905 requirements, meets the same ASTM cell classification and PPI formulation requirements, and is NSF-61 certified when used for potable water.

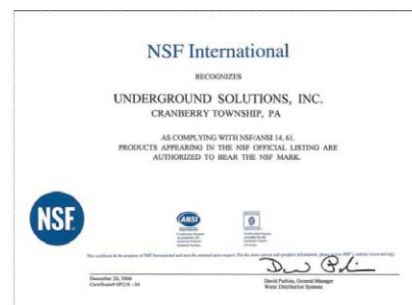
In evaluating Fusible PVC™ for this project, we would like to call your attention to the following total installed cost advantages associated with using Fusible PVC™:

- |                                      |   |
|--------------------------------------|---|
| <b>Maximum Flow Area:</b>            | Fusible PVC™ generally offers the largest internal diameter in a pipe bursting material. This leads to a smaller OD for a given ID, which means a smaller bursting head and less expensive bursting equipment are needed. |
| <b>Superior Material Properties:</b> | Fusible PVC™ has excellent scratch and abrasion resistance.   |
| <b>Standard Fittings:</b>            | Fusible PVC™ utilizes standard mechanical joint fittings. No special fittings or equipment are required for connections. As a result, Fusible PVC™ is easy to connect to and maintain.                                    |
| <b>Safe Pulling Allowance:</b>       | Fusible PVC™ has a safe pulling allowance that is significantly greater than that of most other pipe systems, and does not depend on pull-in duration.  |

Thank you for considering UGSI. Please do not hesitate to contact us for any additional information or with any questions or clarifications.

Sincerely,

*Pat Laidlaw*



\*Underground Solutions, Inc. does business in California as UGSI, Inc.

**Underground Solutions, Inc.**  
**Proposal**



Date Prepared: 6/2/2009  
 Prepared For: City of Billings  
 Prepared By: Pat Laidlaw

Project Reference: Billings Truckload Quantity, Stock Price  
 Proposal No.: P09-0463  
 Project Site: Billings, MT

**PRODUCTS AND SERVICES:**

No.	Pipe Description	Pipe Size	DR	Type	Color	Qty., ft	Unit Cost, \$/ft	Total Cost, \$
1	8" DR 14 Fusible C-900®	8"	14	DIPS	Blue	3,800	\$13.00	\$49,400
2	12" DR 14 Fusible C-900®	12"	14	DIPS	Blue	1,840	\$27.50	\$50,600
Freight to Project Site								Included
Purchase Price								\$100,000

Our Scope of work is limited to the supply of pipe and freight to the project site.

**PULL-HEAD TERMS:**

A pull-head is available for rental from UGSI, subject to prior execution of a Pull-Head Rental Agreement (which can be obtained by contacting Eric Davis at (858) 218-3733, or by downloading from the UGSI website at: <http://www.underground-solutions.com>). Freight costs would be added to the final pull-head rental invoice following return of the pull-head to UGSI. Refer to the Pull-Head Rental Agreement for specific terms and conditions of rental and purchase option.

	Pre-Rental Value	Initial Rental Fee	Weekly Rental Rate (After 1st Week)	Estimated Freight (each way)
8" Pull-head	\$1,960	\$196	\$45	\$200
12" Pull-head	\$2,882	\$349	\$60	\$300

**PAYMENT TERMS:**

100% of contract value on pipe delivery, net 30 days.

**SHIPPING TERMS:**

F.O.B. Shipping Point with full freight allowed to the job site.

**PROPOSAL VALIDITY:**

Price quoted is valid for 10 business days from the date of this Proposal.

**DELIVERY SCHEDULE:**

To be negotiated. UGSI will take reasonable action to meet Buyer's installation schedule.

**TAXES:**

The Purchase Price shown above does not include sales taxes. Any sales taxes or similar taxes are the responsibility of the Buyer (see Section 3 of Terms and Conditions of Sale).

This Proposal is subject to the Terms and Conditions of Sale which are included with, and form an integral part of, this Proposal. The attached Terms and Conditions of Sale will govern the terms of any transaction resulting from this Proposal. Any contract resulting from this Proposal is made subject to prior acceptance by Underground Solutions, Inc. (d/b/a in California as UGSI, Inc.) at its offices in Poway, California. All orders are subject to prior credit approval.

Buyer's signature indicates acceptance of the Underground Solutions, Inc. Proposal and Terms and Conditions of Sale.

Signature

Date

Print Name

Print Company Name

## Pipe Technical Data Sheet

	8" DR 14 Fusible C-900®	12" DR 14 Fusible C-900®
Pipe Material	Fusible C-900®	Fusible C-900®
Total Pipe Length (LF)	3,800	1,840
Nominal Diameter (in)	8	12
Dimension Ratio	DR 14	DR 14
Series	DIPS	DIPS
Pressure Rating (PSIG)	305	305
Outside Diameter (in)	9.05	13.20
Inside Diameter (in)	7.68	11.20
Cross Sectional Flow Area (in <sup>2</sup> )	46.3	98.5
Bend Radius (LF)	189	275
Tensile Strength (PSIG)	7,000	7,000
Safe Pulling Force (lbs)	47,700	101,600
Safe Pulling Stress (PSIG)	2,800	2,800
Relaxation Period (hrs)	0	0
Hydrostatic Design Basis (PSIG)	4,000	4,000
Critical Buckling Pressure (PSIG)	425	426
Connection to Host Pipe	Standard Mechanical Joint	Standard Mechanical Joint
Material Weight (lbs/ft)	11.1	23.6
Total Pipe Weight (lbs)	42,160	43,470

Note: Pressure rating shown is per AWWA C900-07. Delivered pipe may be AWWA C900-97 with marked pressure class conforming to that standard.



#### **TERMS AND CONDITIONS OF SALE**

1. **Applicable Terms.** These terms and conditions govern the purchase and sale of the products (collectively, "Products") referred to in Seller's proposal (excluding the transmittal letter, the "Proposal"). All terms and conditions contained in any other oral or written communication, including, without limitation, Buyer's request for proposal(s) or purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and will not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. These terms and conditions, together with the Proposal, comprise the complete and exclusive statement of the agreement between the parties (the "Agreement") with respect to the sale of the Products and supersede any terms contained in Buyer's documents, unless separately signed by an authorized officer of Seller. If Seller is providing fusion services to Buyer, such services will be provided pursuant to Seller's Supplemental Terms and Conditions for Fusion Services included with the Proposal, which will constitute a part of this Agreement. All references by Seller to technical specifications and similar requirements are only to describe the Products covered hereby, and no warranties or other terms therein shall have any force or effect. This Agreement does not supersede or modify the terms of any license agreement between Seller and Buyer.

2. **Payment.** Buyer agrees to pay for the Products according to the payment terms set forth in the Proposal. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller will become immediately due and payable without notice or demand. Buyer will be charged the lower of 1½% interest per month or the maximum rate allowed by law on all amounts not received by the due date. Buyer hereby grants Seller a purchase money security interest in the Products until such time as Seller is fully paid. Buyer will assist Seller in taking the necessary action to perfect and protect Seller's security interest. No Products furnished by Seller shall become a fixture by reason of being attached to real estate.

3. **Taxes.** The amount of any sales, excise or other taxes, duties or governmental charges (collectively, "Taxes"), if any, applicable to the sale of the Products will be added to the purchase price and will be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the Taxing authorities. Any Taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the Products will be for the account of the Buyer, who will promptly pay the amount thereof to Seller upon demand.

4. **Delivery.** All delivery dates are estimated and are dependent in part upon prompt receipt of all necessary information from Buyer. Seller will make a good faith effort to complete delivery of the Products on the date and to the location specified in the Proposal, but Seller assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller. Seller reserves the right to ship Products in advance of the scheduled delivery date unless Buyer specifically requests in writing that shipments not be made prior to the scheduled date. Unless the Proposal provides otherwise, delivery terms are F.O.B. shipping point. The cost of any special packing or special handling caused by Buyer's requirements or requests will be added to the purchase price. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the Products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or representatives, storage and all other additional costs and risks will be borne solely by Buyer. Any claims for Products damaged or lost in transit ("Transit Losses") must be made by Buyer to the carrier and reported to Seller within one (1) business day following delivery to Buyer.

5. **Returns.** Upon Seller's prior written approval, which may be withheld in Seller's sole discretion, Buyer may return Products purchased under this Agreement. Any authorized return will be subject to payment of a restocking charge and will be allowed only if the subject Product: (i) is in new condition, suitable for resale, and (ii) has not been used, installed, modified, altered or damaged. The restocking charge for authorized returns will be no less than (x) 25% of the purchase price, net of any freight charges included in the purchase price, plus (y) 100% of freight costs incurred by Seller. Buyer is responsible for return freight charges. Returns will be shipped F.O.B. Seller's location. Seller may, but will not be obligated to, treat any cancellation of an accepted order as an authorized return.

6. **Warranty.** Seller warrants Products to be free from defects in material and workmanship for a period of one (1) year from the date of shipment. This warranty applies only when the Products are used as identified in the Proposal and are fused and installed in accordance with Seller's written guidelines. This warranty does not cover, and Seller will not be liable for, general wear and tear, or any malfunction, damage or wear caused by faulty installation, unusual pressure surges or pulsation, water hammer, temperature shocking, misapplication, misalignment, abrasion, vibration, incompatible lubricants or sealants, inadequate or improper storage, U.V. degradation, accident or tampering. This warranty is conditioned upon Seller's verification of the claimed defect. If the claimed defect is verified, then, as Buyer's sole remedy for the defect, Seller will replace the defective Product free of charge. The replacement Product will be delivered transportation prepaid. This warranty is conditioned on Buyer giving Seller written notice of any claimed warranty defect within a reasonable time after the discovery of such defect and, in any event, within eighteen (18) months after the date of shipment.

THE WARRANTIES SET FORTH IN THIS SECTION ARE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO SECTION 8 BELOW. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.



7. Force Majeure. Seller will have no liability for any breach caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war or civil disturbance, delay of carriers, failure of normal sources of supply, act of government or any other cause beyond Seller's reasonable control.

8. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE PRODUCTS WILL NOT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCTS. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY. THE REMEDIES SET FORTH IN THIS AGREEMENT ARE INTENDED TO CONSTITUTE A COMPLETE ALLOCATION OF THE RISKS BETWEEN THE PARTIES AND BUYER ACKNOWLEDGES THAT IT IS KNOWINGLY LIMITING THE REMEDIES THAT MIGHT OTHERWISE BE AVAILABLE TO BUYER. BECAUSE THIS AGREEMENT AND THE PRICE PAID REFLECT SUCH ALLOCATION, THE REMEDIES PROVIDED TO BUYER HEREUNDER WILL NOT HAVE FAILED OF THEIR ESSENTIAL PURPOSE EVEN IF THEY OPERATE TO BAR RECOVERY FOR CERTAIN DAMAGES THAT BUYER MAY INCUR.

9. Inspection and Acceptance. Buyer will have seven (7) days from the date Buyer receives any Products to inspect such Products for defects and nonconformance which are not due to Transit Losses, and to notify Seller, in writing, of any defects, nonconformance or rejection of such Products. After such seven (7) day period, Buyer will be deemed to have irrevocably accepted the Products, if not previously accepted. After such acceptance, Buyer will have no right to reject the Products for any reason or to revoke acceptance.

10. Set-off and Backcharges. Buyer will not be entitled to set-off any amounts due Buyer against any amount due Seller from Buyer. Seller will not be responsible for any backcharges unless approved in writing in advance by an authorized representative of Seller.

11. Remedies of Seller. Buyer agrees that any of the following will constitute an event of default which will enable Seller, at its option and without liability to Buyer, to cancel any unexecuted portion of this order and to exercise any other right or remedy expressed herein or otherwise available at law or in equity: (i) the failure of Buyer to make any payment required hereunder when due or to perform any other term or condition contained herein; (ii) the insolvency of Buyer or its failure to pay its debts as they mature, an assignment by Buyer for the benefit of its creditors, the appointment of a receiver for Buyer or for the materials covered by this order, or the filing of any petition to adjudicate Buyer bankrupt; (iii) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller; or (iv) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of Seller herein are in addition to, and will not exclude, any rights or remedies that Seller may have at law or in equity. Seller's election of any remedy or remedies in the event of a default by Buyer will not preclude Seller from exercising any other remedy or remedies available to Seller for the same or any other default. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including without limitation reasonable attorneys' fees and expenses, will be added to the balance due, and Buyer will pay all such charges.

12. Fusion Services. If Seller is providing fusion services to Buyer, such services will be provided pursuant to the Supplemental Terms and Conditions for Fusion Services included with the Proposal. Seller is not responsible for any defect or failure in fused joints that are fused by any person other than Seller's employees.

13. Patented Technology. Buyer acknowledges that any fusible polyvinyl chloride pipe included in the Products can be fused only by Seller or by a licensee in good standing of Seller's fusion technology covered by patents issued and pending (U.S. Pat. No. 6,982,051 and U.S. Pat. App. No. 11/244,123). Buyer warrants that: (i) if it is the end-user of the Products, it will not fuse the Products nor have the Products fused except by Seller or by a licensee in good standing of Seller's patented fusion technology; and (ii) if it resells the Products, it will (x) inform the purchaser of such Products of the licensing requirements described above; and (y) provide Seller upon request with the name, address, and telephone number of any purchaser purchasing the Products from Buyer, the Products purchased, and the quantity purchased. Upon request, Seller will confirm to Buyer or Buyer's purchaser whether the fusion provider to be utilized by Buyer or Buyer's purchaser is a licensee in good standing of Seller's patented fusion technology.

14. Miscellaneous. No part of this Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term will be used to modify the Agreement. If any of these terms is unenforceable, such term will be limited only to the extent necessary to make it enforceable, and all other terms will remain in full force and effect. Buyer may not assign this Agreement without Seller's prior written consent. This Agreement will be governed by the laws of the State of Delaware without regard to its conflict of laws provisions.

### **Storage, Handling, Installation, Pressure Testing, and Tapping Procedures Applicable to Fusible PVC™ Pipe**

The procedures for storing, handling, installing, testing, and tapping Fusible PVC™ pipe are similar to those used when working with bell and spigot PVC products. Because of the different stresses to which Fusible PVC™ pipe is often subjected, the longer pipe lengths supplied, the monolithic nature of the installed product, and the different installation methods employed when using Fusible PVC™ pipe, there are some additional handling requirements associated with Fusible PVC™ pipe products.

UGSI has developed an Operations Procedural Documents Handbook to provide guidance covering the following topics:

- Pipe Handling and Storage
- Installation
- Pressure Testing
- Tapping

Proper handling and installation of Fusible PVC™ pipe in accordance with the guidelines provided in the Operations Procedural Documents Handbook will preserve your warranty protection.

UGSI will provide a copy of the Operations Procedural Documents Handbook upon the acceptance of your order in accordance with the terms of the Proposal. In the meantime, contact your UGSI representative if you have any questions or concerns regarding the proper handling and use of Fusible PVC™ products.

C

AGENDA ITEM:



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

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**TITLE:** Declaring one (1) Streethawk Lightbar as Surplus Property  
**DEPARTMENT:** Billings Police Department  
**PRESENTED BY:** Chief Rich St. John

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**PROBLEM/ISSUE STATEMENT:** The Billings Police Department has been replacing the 20 year old Streethawk lightbars with new LED lightbars, and there are approximately 25 old lightbars currently in storage at Motor Pool. The City has been approached by Pastor Joe Rockstad of the Assemblies of God District Council Security, for one of those lightbars. Pastor Rockstad is a chaplain for the Billings Police Department. This lightbar will be installed on a vehicle to provide a security presence at their 44 acre campus at Hungry Horse, Montana. We are requesting City Council declare this Streethawk lightbar as surplus property and authorize the Billings Police Department to release one (1) Streethawk lightbar with control box and 2 red lenses to the Assemblies of God District Council Security.

**FINANCIAL IMPACT:** There is no financial impact to the City. The church has signed a release of all claims for the lightbar.

**RECOMMENDATION**

Staff recommends that Council declare one (1) Streethawk lightbar with control box and 2 red lenses as surplus property and authorize the Billings Police Department to release the lightbar to the Assemblies of God District Council Security.

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

**Attachments**

A – Release of all Claims – Assemblies of God District Council Security (2 pages)  
B – Letter from Joe Rockstad

## ATTACHMENT A

### RELEASE OF ALL CLAIMS

IN CONSIDERATION of the City of Billings, Montana, a municipal corporation, donating to the **Assemblies of God District Council Security**, one (1) Streethawk lightbar, receipt of which is hereby acknowledged. **Assemblies of God District Council Security** does hereby release the City of Billings and all of its agents, employees, representatives, insurance companies, and all other persons, corporations, firms, associations or partnership of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, including serious injury or death, and property damage and the consequences thereof resulting or to result from the use of this lightbar.

**Assemblies of God District Council Security**, on behalf of itself, its agents, employees, representatives and insurance companies understands: that this donated lightbar has been in service, is not in new condition, and any manufacturer warranties have expired; that there are no guarantees, warranties or promises, written or implied by the City of Billings, Montana; that it is unknown if the lightbar will function properly; and, that **Assemblies of God District Council Security** is solely responsible for contacting the manufacturer and determining whether this lightbar is fit for use prior to using same.

**Assemblies of God District Council Security** agrees to indemnify, hold harmless, and defend the City of Billings, Montana, from any and all actions, costs, charges, claims, demands, judgments, losses, liabilities, payments, recoveries and suits of any kind by reason of the use, misuse or failure of this lightbar.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

DATED this 24 day of June, 2009

**Assemblies of God District Council Security**

BY:

  
Pastor Joe Rockstad  
Chief Security Officer

STATE OF MONTANA)

County of Yellowstone : ss.

On this 24 day of June, 2009 before me a Notary Public for the State of Montana, personally appeared Joe Cockstad, known to me to be the Chief Security Officer of the Assemblies of God District Council Security, and acknowledged to me that (s)he executed the foregoing instrument.

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

(NOTARIAL SEAL)

Susan K. Loomis (Signature)  
**SUSAN K. LOOMIS** (Printed Name)

Notary Public for the State of Montana  
Residing in Boyd, Montana  
My Commission Expires: 04-01-2012

## ATTACHMENT B

Chief of Police and the  
Billings City Council.

Dear City Leadership,

My name is Joe Rockstad, and I am a Police Chaplain. I also head up the Security state wide for the Assemblies of GOD. We have a 44 acre campus at Hungry Horse that we use for our camping activities.

It is my job to maintain security for the campers and to enforce the ordinances of the District Council.

We run marked patrol vehicles, and are in need of a set of top lights for one of our vehicle. The Flathead County Sheriff's Office allows us to run red and blue lights so we are requesting that the city would donate on of the retired top light to us for our security force.

Thank you for your consideration of this request.

Sincerely,



Joe Rockstad

Chief Security Officer for the Assemblies of GOD, Montana




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**AGENDA ITEM:**


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

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**TITLE:** W.O. 09-12 Inner Belt Loop – Contract for Professional Services  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** Mayor and Council are asked to consider authorizing and executing a Contract for Professional Services with Sanderson Stewart to provide engineering design for W.O. 09-12, Inner Belt Loop. The purpose of this project is to design the Inner Belt Loop from Alkali Creek Road to the intersection of Zimmerman Trail and MT Hwy 3. The alignment will follow the preferred corridor from the Inner Belt Loop Connection Planning Study, dated March 2006. The project will also include the intersection design of the connection of Zimmerman Trail at MT Hwy 3, a preliminary design of the connection with Wicks Lane, Alkali Creek crossing, accommodation of future full build out, and right-of-way acquisition. Sanderson Stewart was selected for this work based on City staff review of project proposals submitted by prequalified firms. Other firms considered were HDR, DOWL HKM, Morrison-Maierle, and Kadrmas Lee and Jackson.

**ALTERNATIVES ANALYZED:**

- Approve the Engineering Contract for Sanderson Stewart.
- Do not approve the Engineering Contract with Sanderson Stewart.

**FINANCIAL IMPACT:** Funding for the design and construction of this project has been approved in the CIP projects (FY'10 \$200,000; FY'11 \$12,000,000).

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract for professional services with Sanderson Stewart for W.O. 09-12, Inner Belt Loop in the amount not to exceed \$782,800.00.

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

## **ATTACHMENTS**

A. Sanderson Stewart Contract (available for viewing in the City Clerk's Office)

## **INTRODUCTION**

This contract will design the Inner Belt Loop from Alkali Creek Road to the intersection of Zimmerman Trail and MT Hwy 3. Alkali Creek Road will be designed from the end of the current pavement, which is approximately 1 mile west of the intersection of Senators Boulevard and Alkali Creek Road, then approximately 3 miles to the west of the intersection of Alkali Creek Road and the Rehberg Ranch Emergency Access Road. The Inner Belt Loop will then turn southerly for approximately 3.25 miles until it connects with the intersection of Zimmerman Trail and MT Hwy 3. The project will also analyze the feasibility of extending Wicks Lane from near its current terminus down to Alkali Creek Road.

## **PROCEDURAL HISTORY**

Completed Items:

- Sanderson Stewart was selected for this work based on Public Works Engineering staff review of project proposals submitted by prequalified firms.

Items to be completed:

- Council Authorizes the Mayor to sign the contract with Sanderson Stewart.
- Sanderson Stewart designs the project.

## **BACKGROUND**

The 1990 Transportation Plan for Billings Montana and the Billings Urban Area 2000 Transportation Plan identified a connection from Wicks Lane to Zimmerman Trail. As a result of the transportation plans, the Inner Belt Loop Connection Planning Study was completed in March 2006. The Inner Belt Loop Connection Planning Study identified the corridor for the Inner Belt Loop that this project will utilize.

## **ALTERNATIVES ANALYSIS**

Delaying project design and construction would ultimately set back the alleviation of traffic in the Billings Heights. This project has been identified in planning documents, traffic studies, citizen advisory groups and City of Billings Transportation Plans as a vital link that would alleviate traffic congestion in the Heights and West End.



### **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract for professional services with Sanderson Stewart for W.O. 09-12, Inner Belt Loop in the amount not to exceed \$782,800.00.

### **ATTACHMENTS**

- A. Sanderson Stewart Contract (available for viewing in the City Clerk's Office)




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**AGENDA ITEM:**


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

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**TITLE:** Work Order 09-13 – Contract for Professional Engineering Services, Redundant Water Main to Staples Pump Station

**DEPARTMENT:** Public Works - Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** Council and Mayor are asked to consider authorizing and executing a Contract for Professional Services with Sanderson Stewart to provide engineering design and construction administration services for W.O. 09-13, Redundant Water Main to Staples Pump Station. A redundant water main feed to the pump station would be extended approximately 6,800 feet from the intersection of Parkhill Drive and 17<sup>th</sup> Street West north to the station which is located north of Rimrock Road between Stanford Drive and 17<sup>th</sup> St. W. In addition, a 16-inch water main would be extended about 1,200 feet in 15<sup>th</sup> Street West between Avenue D and Parkhill Drive in order to complete a critical distribution system loop. Sanderson Stewart was selected for this work based on City staff review of project proposals submitted by prequalified firms. Other firms considered were HDR, Interstate Engineering, Morrison Maierle, DOWL HKM, and Kadrmas, Lee and Jackson.

**ALTERNATIVES ANALYZED:**

1. Authorize a contract with Sanderson Stewart as set forth in this staff memorandum.
2. Request that City staff perform the project design and construction administration.
3. Delay the project.

**FINANCIAL IMPACT:** Funding for the design and construction of this project has been approved in the CIP projects (FY10 \$1.5 million).

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a professional services contract with Sanderson Stewart for the design and construction administration of the Redundant Water Main to Staples Pump Station project in the amount not to exceed \$415,500.00.

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

ATTACHMENT

- A.      Professional Services Contract (10 pages)

**INTRODUCTION**

This contract would design and provide construction administration services for a 6,800-foot long 24-inch water main extension from the intersection of Parkhill Drive and 17<sup>th</sup> Street West to Staples Pump Station which is located north of Rimrock Road between Stanford Drive and 17<sup>th</sup> Street West. The purpose of this extension is to provide a redundant feed to the pump station since the existing 20-inch cast iron main is aging and needs to be replaced. In addition, a 1,200-foot long 16-inch water main would be extended in 15<sup>th</sup> Street West between Avenue D and Parkhill Drive in order to complete a critical distribution system loop.

**PROCEDURAL HISTORY**

Completed Items:

- Sanderson Stewart was selected for this work based on Public Works Engineering staff review of project proposals submitted by prequalified firms.

Items to be Completed:

- Council authorizes the Mayor to sign the contract with Sanderson Stewart.
- Sanderson Stewart designs and provides construction administration of the project.

**BACKGROUND**

The existing 20-inch cast iron water main in 17<sup>th</sup> Street West north of Avenue D is in need of future replacement, and it is the only feed to Staples Pump Station. If this main were to break, one of the City's most important pump stations and reservoirs would be critically hindered until repairs could be made. This contract would design and provide construction administration services for a 6,800-foot extension of a 24-inch water main from the intersection of Parkhill Drive and 17<sup>th</sup> Street West to the pump station which is located north of Rimrock Road between Stanford Drive and 17<sup>th</sup> St. W. The most appropriate routing of this new water main will be determined during the preliminary design phase. In addition, a 1,200-foot long 16-inch water main will be extended in 15<sup>th</sup> Street West between Avenue D and Parkhill Drive in order to complete a critical distribution system loop.

Construction of the project is projected to occur during the summer of 2010.

**ALTERNATIVES ANALYSIS**

Delaying project design and construction places the critically important Staples Pump Station and Reservoir at functional risk. If the aging 20-inch cast iron water main feeding this pump station breaks without a new redundant main in place, water cannot be supplied to the pump station and reservoir until the main is repaired.

### **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a contract for professional services for W.O. 09-13, The Redundant Water Main to Staples Pump Station the in the amount not to exceed \$415,500.00.

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 13, 2009

TITLE: Bill Printing and Mailing Services Agreement

DEPARTMENT: Public Works Department

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

**PROBLEM/ISSUE STATEMENT:** The Commercial Division of the Public Works Department recently prepared a Request for Proposals (RFP) for comprehensive mailing services for water and sanitary sewer billing. The RFP was advertised in the Billings Times on May 8 and 15, 2009 and was advertised on the City web site. Five companies were also sent copies of the RFP via e-mail.

The selection committee consisted of City staff: Dwile Weagel, Gail Rogeness, and Patty Czarny. The RFP included estimated costs for data processing, printing, folding, inserting, presorting, and mailing with all supplies to be provided by the vendor. The committee evaluated the proposals and considered proposal compliance, comprehensive services provided related experience, firm stability, value-added services, quality assurance, and the ability to continue providing services in the event of a catastrophe before considering charges for services.

**FINANCIAL IMPACT:**

The Commercial Division of Public Works will save approximately \$9,000/year on bill printing and mailing expenses by outsourcing to a third party versus performing these services in-house. This service will also eliminate the ordering and storing of a 12-month supply of billing forms and envelopes in the city's warehouse. Twelve proposals were received and reviewed by the committee:

Company	Approx. Annual Price
DataProse	\$42,350
InfoSend	\$39,655
AFTS	\$42,350
DivDat	\$42,350
PSC Info Group	\$47,355
Mailing Technical Service	\$47,740

SouthWest Direct	\$51,975
DataMatX	\$52,360
The Statement Company	\$53,900
PostalPros	\$57,750
Utilitec	\$59,675
Billing Documents Spec.	\$65,450

The committee unanimously selected the proposal from DataProse. The committee also unanimously agreed that the criteria was not met in the proposal submitted by InfoSend.

### **RECOMMENDATION**

The Committee recommends that the City Council approve the agreement from DataProse for the annual amount of \$42,350.

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

### **ATTACHMENTS:**

- A. Agreement between the City of Billings and DataProse
- B. Exhibit A, Scope of Work
- C. Certificate of Liability Insurance
- D. DataProse Production Agreement, Schedules 1 and 4

**[NOT BINDING IF USED FOR AGREEMENTS FOR CONSTRUCTION SERVICES  
COSTING MORE THAN \$25,000 AND FOR NON-CONSTRUCTION SERVICES  
COSTING MORE THAN \$50,000]**

**AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “City,” and DataProse, of Oxnard, CA hereinafter referred to as “Contractor.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

**1. Purpose:** City agrees to hire Contractor as an independent contractor to perform the services of Bill Printing and Mailing Services described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

**2. Effective Date:** This Agreement is effective upon the date of its execution and will terminate on \_\_\_\_\_, 20\_\_\_\_. The parties may extend this agreement in writing prior to its termination.

**3. Scope of Work:** The Contractor shall perform the services outlined in Exhibit “A”. In performing these services, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

**4. Payment:** City agrees to pay Contractor eleven cents per bill (\$ 0.11) for the work described in the Scope of Work in Exhibit “A”. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing. See attached “DataProse Production Agreement schedules 1 and 4” for optional services and pricing.

**5. Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: **(1)** proof of registration as a registered contractor under Title 39, Chapter 9, MCA; **(2)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(3)** proof of exemption from workers' compensation granted by law for independent contractors.

**6. Indemnity and Insurance:** Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees. **For this purpose, Contractor shall provide City with proof of Commercial General liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The insurance must be in a form suitable to City.**

**7. Warranty:** Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty for the lesser for a period of one (1) year from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".

**8. Compliance with Laws:** Contractor agrees to comply with all federal, state, and local laws, ordinances, rules and regulations.

**9. Contractors' Gross Receipts Tax:** Contractor understands that all contractors or subcontractors working on a publicly funded construction project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.



**10. Nondiscrimination:** Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

**11. Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

**12. Liaison:** City's designated liaison with Contractor is Dwile R. Weagel and Contractor's designated liaison with City is Russell Alberti.

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

**14. Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**15. Successors and Assigns:** Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

**16. Ownership of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation

from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**CITY OF BILLINGS, MONTANA**

\_\_\_\_\_  
**CONTRACTOR (Print Name Above)**

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

By \_\_\_\_\_  
Print Name \_\_\_\_\_  
Print Title \_\_\_\_\_

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
BRENT BROOKS, City Attorney

**AGENDA ITEM:**



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

---

**Exhibit A**

**Scope of Work**

The Contractor shall perform the following services:

- Provide implementation and training
- Receive the billing file electronically using the latest security protocols
- Perform data processing
- Print the bills on a two sided form of the City's design (two color with perforation)
- Fold and insert the bills along with a return envelope and an occasional flyer into a #10 mailing envelope. Envelopes are single window with one color printing on the front and back.
- Presort and deliver the bills to the USPS
- Selectively insert flyers, return envelopes, and print assorted messages
- Provide job tracking over the internet
- Allow for the managing of bill messages online
- Provide all supplies and postage
- Maintain adequate security for data, equipment, and facilities

# **DATAprose** A CS Company **PRODUCTION AGREEMENT** Last updated: 6/28/2009

## **Schedule 1.0 - Fees for Goods & Services**

Paper Bill (includes: data processing & simplex, 2-color, laser imaging, 8.5x11, white paper printed 0/1, perforated at 3.5" from bottom, #10 printed (1/1), window env., #6 printed (1/1), window reply env., folding, inserting, presorting and delivery to USPS)

Optional components - use of #10 double window envelope and #9 window return envelope in lieu of printed return envelope

Search & ViewBill (includes: data processing, pdf creation, search & access capabilities & hosting of pdf files for 6 months from creation date)	Per Bill	\$0.11
Additional Search & ViewBill Storage beyond 6 months (As requested by client)	Per Bill	\$0.107
Overlaid PDF Surcharge (Group E only)	Per Bill	\$0.01
ViewBill (includes: data processing, pdf creation)	Per Impression	\$0.005
ViewBill (includes: data processing, pdf creation, client site OR file copied to CDROM)	Per Impression	\$0.0015
Additional Data (if more than one CDROM disk is required for ViewBill Transmission (Quoted above))	Per Transmission/CDROM	\$100.00
NCOALink - Automated address update service	Per Additional CDROM	\$100.00
NetBill (Subscribed users only) (includes: Internet bill presentation (24x7 access to customer bill hosted on DataProse servers posting of invoices, email notification of bill availability to customer) & Payment Facilitation (Real-time credit card payment submission & batch processing of all ACH payments for daily processing, daily credit card payment processing & delivery to client))	Per Address Correction	\$0.50
NetBill Monthly Maintenance Fee	Per Credit Card Transaction	\$0.35
NetBill Set Up	Per ACH Transaction	\$400.00
	Per Month	\$3,000.00
	One Time Fee	\$1,000.00

Other	Per Impression	\$0.05
Additional Impression	Per Bill	\$0.05
Bill Surcharge (data processing only - Group V & Z)	Per Bill	\$0.20
Overlaid Surcharge (6-39 page bills - Group O)	Per Bill	\$4.00
Overlaid Surcharge (100+ page bills - Group D & E)	Per Bill	\$0.005
Additional Impression - Customer Provided	Per Impression	\$0.04
Brochure (1/3 page): DataProse Provided	Per Piece	\$0.045
Brochure (1/3 page): Client Provided	Per Piece	N/A
Basic Set up Fee (Copy/Print or Standard Format and Reports)	Per Hour	\$150.00
Technical Services (including additional set-up beyond standard, formatting or custom reports, conditional logic & insertforms composition)	Per Impression	\$7.50
Freight, Courier & Air Delivery	Per Month	\$500.00
Minimum Monthly Charge	Per Day	\$150.00
Minimum Daily Processing/Production Fee	Per Bill	\$0.335 - \$0.036
Postage (1 oz)		

## **Schedule 2.0 - Permanent Postage Deposit**

Permanent Postage Deposit (based on two (2) months estimated volume)

		\$12,600.00
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## **Schedule 3.0 - Performance Guarantees**

DataProse will deliver clients bills within an average of one (1) Business Day after the applicable Determination Date (as defined herein). Such average time period will be determined by measuring the time period between the Determination Date and the date of delivery of the bills to the Client's designated address. The "Determination Date" is the date which data is received via electronic transmission (FTP or email) prior to 10:00 AM, Pacific Time. If data is received after 10:00 AM, Pacific Time, or not on the date of the agreed upon production schedule, the Determination Date is the Business Day immediately following the date data is received. As to any production run, however, the Performance Guarantee will not apply if Client has not provided all Client data and documentation necessary to permit DataProse to produce the bills in a timely manner, or if Client fails to approve or report required changes in DataProse work product in a timely manner.

**Schedule 4.0 – Glossary of Terms**

Impression	Laser imaging of one side of one piece of paper. Each physical piece of paper can contain two (2) Impressions.
USPS	United States Postal Service
Laser Imaging	The process where the application of dry toner (ink) is electro statically applied and bonded to a piece of paper.
Simplex	Laser imaging of one (1) side of a piece of paper only.
Duplex	Laser imaging of both (2) sides of a piece of paper.
OE	Outer Envelope – This envelope is used as the carrier mechanism for all information contained in a package to be mailed.
RE	Reply Envelope – This envelope is usually utilized by a customer to return information/payment requested by an organization.
Presorting	The act of organizing mail according to the rules and regulations defined by the USPS in order to achieve lower postage rates and increase deliverability of mail.
Business Day	Any day in which the USPS as well as the U.S. Federal Reserve are open for business.
U.S. Federal holiday	All Holidays as defined by the U.S. Federal Reserve.
24x7	24 hours a day, 7 days a week.
Additional Inserts	Any item requested to be placed into the mail container above and beyond (a) the bill and (b) the RE.
Container	One complete piece of mail packaged into one OE.
Electronic Transmission	The act of sending data via DataProse online utility, FTP or Modem
Bill	Data and other information pertaining to one (1) account number and usually in reference to one customer
Group	The term used by DataProse to define how bills are gathered & produced in order to maximize production capabilities. These groups are defined as follows: Group A – 1 ounce bills Group B – 2 ounce bills Group C – 800+ page bills Group D – 100-499 page bills Group E – 500+ page bills Group F – International bills Group G – Postage paid bills Group H – Postage paid bills combined and sent back to client Group X – Fold bills (combined and sent back to client) Group Y – Online only bills (Suppress from print only) Group Z – Suppress all
Suppress or Suppression	The act of excluding records or bills (based on client defined criteria) that have been received in the input data stream received from the client.

<b>ACORD<sup>TM</sup> CERTIFICATE OF LIABILITY INSURANCE</b>						DATE (MM/DD/YYYY) 11/30/2009 1/27/2009	
<b>PRODUCER</b> Lockton Companies, LLC Denver 8110 E Union Avenue Suite 700 Denver 80237 (303) 414-6000				<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>			
<b>INSURED</b> 1313797 CSG Systems International, Inc. DataProse, Inc. 1451 N. Rice Ave. #A Oxnard, CA 93030				<b>INSURERS AFFORDING COVERAGE</b> INSURER A: Federal Insurance Company INSURER B: Lloyd's of London INSURER C: INSURER D: INSURER E:		<b>NAIC #</b> 20281 0	
<b>COVERAGES</b> CSGSY01 NG							
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR	ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	3578-87-28	11/30/2008	11/30/2009	EACH OCCURRENCE	\$ 1,000,000
		<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 10,000
		GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COM/PO/ AGG	\$ 2,000,000
A		AUTOMOBILE LIABILITY	7351-94-12	11/30/2008	11/30/2009	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
		<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$ XXXXXXXX
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$ XXXXXXXX
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$ XXXXXXXX
						AUTO ONLY - EA ACCIDENT	\$ XXXXXXXX
						OTHER THAN AUTO ONLY: EA ACC	\$ XXXXXXXX
						AGG	\$ XXXXXXXX
A		GARAGE LIABILITY	NOT APPLICABLE			EACH OCCURRENCE	\$ 2,000,000
		<input type="checkbox"/> ANY AUTO				AGGREGATE	\$ 2,000,000
		EXCESS/UMBRELLA LIABILITY					\$ XXXXXXXX
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE					\$ XXXXXXXX
						DEDUCTIBLE <input checked="" type="checkbox"/> UMBRELLA FORM	\$ XXXXXXXX
						RETENTION \$	\$ XXXXXXXX
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	7165-57-91	11/30/2008	11/30/2009	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <b>NO</b>				E.L. EACH ACCIDENT	\$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A B		OTHER	3578-87-28 HUTMT23175348	11/30/2008 11/30/2008	11/30/2009 11/30/2009	** SEE ATTACHED **	
		Property Computer Errors & Omissions					
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS							
<b>CERTIFICATE HOLDER</b> 10426193 FOR INFORMATION ONLY				<b>CANCELLATION</b> [M452242] 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. AUTHORIZED REPRESENTATIVE <i>Charles M. McDaniel</i>			

ACORD 25 (2001/08)

For questions regarding this certificate, contact the number listed in the 'Producer' section above and specify the client code 'CSGSY01'.

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## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, July 13, 2009

**TITLE:** Maintenance Agreement between the City of Billings and the State of Montana

**DEPARTMENT:** Public Works Department

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

**PROBLEM / ISSUE STATEMENT:** This maintenance contract was approved in its original form by the City Council on May 11, 2009. Following this approval, the State and the city reviewed the agreement one more time prior to the State signing the agreement. It was determined that the dollar amount for State was higher than the State would fund. The State and the City agreed to the dollar figures shown below in the financial impact section of this memorandum removing the signal maintenance, striping, and sign replacement duties for the routes identified in the agreement. MDT and the City will enter into a second contract to perform emergency work on the traffic signals. This agreement is reduced from a two-year contract to one-year contract with an option for a second year.

**ALTERNATIVES ANALYZED:**

1. Approve the Maintenance Agreement (term is from July 1, 2009, through June 30, 2010 with an option for the second year)
2. Allow the State to maintain its highway system within the Billings city limits

**FINANCIAL IMPACT:** The State of Montana will pay the City of Billings \$392,278 in FY 2010 for regular street maintenance, including a contribution to the City's Equipment Replacement Program. These revenues provide reimbursement for the costs of all actual street maintenance labor and materials, as well as for estimated overhead costs. Revenues, as well as the corresponding expenditures for street maintenance projects for FY 2010, are included in the approved FY 2010 budget. The existing maintenance contract that expired June 30, 2009 is for \$500,000 per year.

**RECOMMENDATION**

Staff recommends that the City Council approve the modified Maintenance Agreement between the City of Billings and the State of Montana.

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

**ATTACHMENTS:**

A. Maintenance Agreement between the City of Billings and the State of Montana



**MAINTENANCE AGREEMENT BETWEEN THE  
CITY OF BILLINGS AND THE STATE OF MONTANA**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between the STATE OF MONTANA DEPARTMENT OF TRANSPORTATION, hereinafter designated "MDT" and the CITY OF BILLINGS, hereinafter designated "City".

WITNESSETH THAT:

WHEREAS, the purpose of this agreement is to define the Street maintenance responsibilities of the City and MDT.

WHEREAS, State law allows the State to enter into an agreement with local government to provide maintenance on state routes with provision for full reimbursement.

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and covenants herein specified, it is mutually agreed as follows:

1. LIMITS OF AGREEMENT. The following listing of streets and intersections is a full and complete listing of areas covered by this agreement. Unless otherwise defined, the list shall include all intersections along the route and intersecting streets for a distance of 15' or to the end of the curb radius return, whichever is greater, and shall include all of the street right-of-way. During the term of this agreement, additional areas may be added by written agreement of the parties.
  - A. Laurel Road from the east side of Parkway Lane to the west abutment of the 6th Street West Overpass.
  - B. Montana Avenue from the west abutment of the 6th Street West Overpass to Division Street, specifically excluding any structural repair, deck repair, or railing repair.
  - C. Division Street from Montana Avenue to 1st Avenue North.
  - D. 1st Avenue North from Main Street to Division Street.
  - E. All of the streets constructed in conjunction with the 6th Street West Overpass excluding specifically the structural portion of this project.
  - F. 1st Avenue South - Minnesota connection from 6th Street West Overpass through the North 13th Street Overpass to 1st Avenue North.
  - G. North 13th from 1st Avenue North to 4th Avenue North.
  - H. 4th Avenue North from North 13th Street to Main Street.

- I. Intersection of 1st Avenue North, Main Street, and Highway 87 East to 500' east on 87 East to the overhead sign.
- J. Main Street from 1st Avenue North to the southwest side of the Roundup Road turnoff.
- K. North and South 27th Street from the north ROW of Belknap Avenue to 100' west of the last merge lane on the Airport intersection, excluding the bridge over the BBWA Canal.
- L. King Avenue from 24th Street West to Daniel Street.
- M. On the 13th and 6th Street West Underpass, the maintenance by the City will include the roadway surface and the storm drainage system.
- N. MDT's designated portion of State Secondary 318.
- O. Sweeping sections:
  - (1) King Avenue West from Daniels to Mullooney Lane-Southbound
  - (2) King Avenue West from Mullooney Lane to Daniels-Northbound
  - (3) City Center loop from King Avenue West to Parkway Lane on Laurel Road-Eastbound
  - (4) Laurel Road from Parkway Lane up ramp to King Avenue West-Westbound
  - (5) Ramp from King Avenue West to Laurel Road-Eastbound
- 2. SCOPE OF AGREEMENT. This agreement covers all of the activities ordinarily associated with street maintenance activities including street patching, sweeping, storm sewer repair, snow plowing, snow removal, ice control, street striping, sign replacement, vegetation control. The agreement specifically excludes any activity commonly known as bridge repair including concrete barrier repair, deck repair, and structural repair.
- 3. ITEMS COVERED. Payment to the City for this agreement shall be for the following:
  - A. TRAFFIC CONTROL MAINTENANCE ACTIVITIES:
    - (1) State shall continue to provide power for those signals that are presently being billed to the State by Northwestern Energy.
    - (2) City will provide no maintenance for traffic control maintenance activities through this agreement.
    - (3) Street lighting facilities on these routes are not covered by this agreement and will remain the responsibility of the State, with the exception of those which are City or State owned and created as Special Improvement Lighting Maintenance Districts.

**B. STREET CLEANING ACTIVITIES:**

The City will clean and sweep the streets on the same sweeping and cleaning schedule that they are providing for all City arterial streets. The State shall reimburse the City for cost of all labor, equipment and material used in this operation in accordance with Appendix B.

**C. STORM SEWER MAINTENANCE:**

The City will provide periodic maintenance of the drainage systems to keep the system in working order. When failure of any part of the system occurs, the City will notify the State for special project type work. Special project work, which may include the installation of extra sumps, replacement of pumps and/or motor controls will be at extra cost to the State, as both the State and City may agree upon.

**D. SNOW REMOVAL AND ICE CONTROL:**

The City will provide snow removal and ice control on the streets detailed herein and the sidewalk under the North 13th Street Underpass on the same snow removal and ice control schedule that they are providing for all City arterial streets. The State shall reimburse the City for cost of all labor, equipment and material used in this operation in accordance with Appendix B. In the event of an emergency snow operation, the State will be requested to furnish additional equipment and/or materials with adequate notification. Costs for additional equipment and/or materials must be pre-approved by the State. These costs are in addition to the payment detailed in Appendix B.

**E. SURFACE PATCHING:**

The City will patch the streets detailed herein on the same patching schedule that they are providing for all City arterial streets. The State shall reimburse the City for cost of all labor, equipment and material used in this operation in accordance with Appendix B.

**4. COSTS.** The costs associated with this agreement shall be as shown in Appendix A.

- A. This shall be a lump sum cost for the maintenance portion of the agreement, and shall be paid to the City on a monthly basis according to the schedule in Appendix C.

**5. RECORDS.** The City presently has a State approved budget system for these affected activities. The labor equipment and materials used on the streets covered in this agreement shall be assigned a special budget category. No record keeping shall be attempted to break contractual costs against individual streets that are covered in this agreement. All City records concerning this project are open for audit by the State at any reasonable time.

**6. PAYMENT.** The City shall submit billing and a narrative summary of the work done in the preceding month on or before the 10th of the current month. MDT agrees to make payment within 20 calendar days of receipt of the billings.

**7. TERM.** The term of this agreement shall be for a one year period of July 1, 2009 through June 30, 2010 with an option to extend the contract for a second year with

the mutual consent of both parties. This agreement may be terminated upon thirty days written notice by either party except as specifically detailed herein otherwise.

8. QUARTERLY MEETING: There shall, as a minimum, be one meeting per calendar quarter to assess the effectiveness of this program and to assure that budgeting restraints are met. Either party to this agreement may have any staff present.
9. COMPENSATED DAMAGES. It is understood that any damages that are caused by third parties that can be collected from third parties will be repaired by the City, and a billing for these repairs shall be sent to the State along with any documentation which the City has available to help the State in making the collection. The State shall pay the City for these repairs on an actual documented cost plus 10% administration and overhead. Payment under this provision shall be in addition to the payment detailed in Appendix B.
10. CONTROL OF ACCESS AND UTILITIES. The control of access and utilities within these streets shall remain with the State.
11. INDEMNIFICATION. The State agrees to hold harmless and/or indemnify the City for damages resulting from the construction or design done by the State of the streets and areas covered by this agreement. This hold harmless/indemnification clause shall not cover damages which are caused either directly or indirectly by the work done by the City pursuant to this agreement. City agrees to defend, protect, indemnify and save harmless the State against and from all claims, liabilities, demands, causes of action, judgments, and losses claimed to be due to the City's performance of the activities of this agreement, specifically including any claims that any work was not done in a proper or timely manner.
12. CIVIL RIGHTS COMPLIANCE. City must comply with all applicable Federal and State Laws including those laws referred to in the two-page NOTICE attached hereto, which is made a part of this agreement by its reference.

It is further agreed that each party will comply with the provisions of the attached "Agreement" to exchange winter maintenance activities for the Urban Route 1020 (U-1020), Montana Avenue – North 18<sup>th</sup> Street which is part of the State Maintenance System and Urban Route 1001 (U-1001), Zimmerman Trail, owned by the City. IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be executed on the date set forth herein.

**STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION**

BY \_\_\_\_\_, 2009  
Stefan Streeter  
Billings District Administrator

Approved For Legal Content:

BY \_\_\_\_\_, 2009  
MDT Legal Counsel

**CITY OF BILLINGS**

BY \_\_\_\_\_, 2009  
Ron Tussing  
Mayor

ATTEST:

BY \_\_\_\_\_, 2009  
Cari Martin  
City Clerk

Approved As To Form:

BY \_\_\_\_\_, 2009  
Brent Brooks  
Billings City Attorney

## NOTICE

During the performance of this Agreement, the City, 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 City 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 though only State funding is here involved.
- (2) Nondiscrimination: The City, 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 City shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the City for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the City of the City's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The City 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 Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the City's noncompliance with the nondiscrimination provisions of this Agreement, Department may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) Withholding payments to the City under the Agreement until the City complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: City 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. City will take such action with respect to any subcontract or procurement as the Department or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event City is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the City may request the State to enter into the litigation to protect the interests of the State, and, in addition, the City 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, City 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 City will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) City will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The City 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 City. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the City."
- (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 the City (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The City, Subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The City shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the City 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.

**APPENDIX A**

**BUDGET July 1, 2009 - June 30, 2010  
CITY OF BILLINGS - STATE ROUTE MAINTENANCE**

<b>LABOR COSTS:</b>	<b>FY 2010</b>
Salaries & Wages	\$197,841
Overtime/ Callout, etc.	\$7,149
<b>TOTAL LABOR</b>	<b>\$204,990</b>
 <b>MATERIALS:</b>	 <b>FY 2010</b>
Operating Supplies	\$500
Storm Parts	\$1,500
Water, Phone & Underpass pump electricity	\$2,000
Gravel & Sand	\$10,000
Road Oil	\$6,500
Asphalt	\$6,500
Salt & Ice Melt	\$26,000
<b>TOTAL MATERIALS</b>	<b>\$53,000</b>
 <b>EQUIPMENT &amp; INSURANCE:</b>	
Administration & Rent	\$41,464
Gas, Oil & Grease	\$15,145
Motor Veh. Parts	\$11,037
Labor Mot. Veh.	\$16,552
Liability Insurance	\$2,223
Equip.Replacement	\$47,867
<b>TOTAL EQUIPMENT</b>	<b>\$134,288</b>
 <b>Total Street/Traffic Maintenance of State Routes</b>	 <b>\$392,278</b>



## APPENDIX B

### City of Billings - Montana Department of Transportation, Street and Traffic Maintenance Budget July 1, 2009 to June 30, 2010.

	FY 2010
<b>Street Surface Maintenance:</b>	
Labor, Administration & Overhead	46,046
Materials	23,500
Equipment	30,165
Subtotal	<u>99,711</u>
<b>Storm Sewer Repair &amp; Maintenance:</b>	
Labor, Administration & Overhead	11,824
Materials	1,500
Equipment	7,746
Subtotal	<u>21,070</u>
<b>Street Cleaning &amp; Sweeping:</b>	
Labor, Administration & Overhead	84,759
Materials	2,000
Equipment	55,525
Subtotal	<u>142,284</u>
<b>Snow Removal &amp; Ice Control:</b>	
Labor, Administration & Overhead	62,361
Materials	26,000
Equipment	40,852
Subtotal	<u>129,213</u>
<b>TOTAL MAINTENANCE</b>	<b>392,278</b>

**APPENDIX C**

**City of Billings - Montana Department of Transportation, Street and Traffic  
Maintenance Budget July 1, 2009 to June 30, 2010.**

<u>MONTH</u>	<u>TOTAL FY 2010</u>
July	19,614
August	35,305
September	43,151
October	19,614
November	27,459
December	31,382
January	35,305
February	23,537
March	50,996
April	27,459
May	31,382
June	47,074
<b>TOTAL</b>	<b>392,278</b>

# APPENDIX D

## Agreement for Fiscal 2010

### MDT Agreement Street-Traffic Operating & Maintenance Hours

	2008 Hours	% of Total
Street Repair	16,730	21.90%
Storm	7,901	10.34%
St. Maint.	24,216	31.70%
Traffic Control	14,848	19.43%
Street Light	682	0.89%
Forestry	5,684	7.44%
MDT	6,336	8.29%
Total	76,396	100.0%

8.29% – MDT % of total yearly reserve of Street/Traffic Fleet based on FY 2008 actual hours and removing hours spent on traffic control.

REQUESTED BUDGET:		Equipment Reserve Amt.	MDT Share	MDT %	Labor & Benefits	O & M	Maintenance Total
FY 2010	ERP	\$577,138	\$47,867	8.29%	\$204,990	\$139,421	\$392,278

### AGREEMENT

This agreement is entered into this 4<sup>th</sup> day of November, 2005, by and between the STATE OF MONTANA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as MDT) and the CITY OF BILLINGS (hereinafter referred to as City).

### WITNESSETH:

The purpose of this agreement is for the parties to more effectively, safely and efficiently preserve and maintain two Urban System Routes, as defined in Title 60, Chapter 2, Part 1 Montana Code Annotated in Yellowstone County, Montana.

Urban Route 1001 (U-1001) a/k/a Zimmerman Trail is currently owned by Yellowstone County and is maintained by the County. The surrounding property is annexed to the City. Urban Route 1020 (U-1020) is officially a part of the State Maintenance System as provided in Title 60, Chapter 2, Part 1, MCA and is maintained by the City by agreement with the MDT.

The City would like to take ownership of Urban Route 1001 (U-1001), Zimmerman Trail, from Yellowstone County.

Winter maintenance of said Urban Route (U-1001) Zimmerman Trail, is a problem for the City due to its location, cost and distance from other City maintained routes.

MDT is presently reimbursing the City to maintain Urban Route 1020 (U-1020), Montana Avenue - North 18<sup>th</sup> Street, under a formal maintenance agreement between MDT and the City as U-1020 is an official State Maintained Urban Route.

The City and MDT believe it would be mutually beneficial to exchange winter maintenance responsibilities of these routes.

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and covenants herein specified:

IT IS AGREED by and between MDT and the City as follows:

1. That MDT and the City will exchange maintenance responsibilities for the two above described routes for winter maintenance activities only, such as plowing, sanding, ice control, emergency closures, etc. and that the exchange of winter maintenance activities are the only activities covered by this agreement.

2. That this exchange of maintenance responsibility is pursuant to 60-2-204 MCA. The City agrees to waive sub-paragraph (1) of section 60-2-204 as requiring the department to pay the maintenance cost for U-1020 and further agrees to waive sub-paragraph (2) of 60-2-204 (placement and maintenance of traffic control devices) as it pertains to U-1001. MDT will retain the responsibility as described in sub-paragraph (2) for U-1020.
3. MDT and the City agree that the formal City Maintenance Agreement that includes U-1020 remains unchanged for all activities, responsibilities, and other provisions except winter maintenance of Urban Route 1020 and that the City agrees to provide winter maintenance on U-1020, as described in paragraph 1 of this agreement, at no cost to MDT and that MDT will provide winter maintenance on U1001 at no cost to the City.
4. The City agrees to construct a plow truck turn around on U-1001 in proximity to the lower gate presently used by Yellowstone County for road closures and that this turn around location will be the demarcation point between MDT and City responsibility.
5. This agreement is contingent upon the City obtaining ownership of Urban Route 1001 from Yellowstone County. The agreement will take effect when MDT is officially notified by the City that they are in sole possession of the route and that the plow truck turn around denoted in 4 above has been satisfactorily constructed.
6. Either party may cancel this agreement with 30 days written notice with exception of the period November through March during which time neither party may cancel the agreement.

The parties hereto have carefully read the foregoing Agreement and know the contents thereof and enter this agreement as their own free act.

It is further agreed that each party will comply with the provisions of the attached "A" to comply with any civil rights laws and regulations in the event any of the work performed under this agreement is contracted outside of the respective government agencies.

FOR THE MONTANA DEPARTMENT OF TRANSPORTATION:



Bruce H. Barrett  
District Administrator - Billings

FOR THE CITY OF BILLINGS:

*Christine F. "Tina" Volek*

Tina Volek  
Acting City Administrator

*Paul J. Beach*  
Approved for Legal Content

A

**NON-DISCRIMINATION NOTICE**

During the performance of this Agreement, C-177 (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, 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 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 Highway Administration (FHWA) 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 FHWA 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 FHWA 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 FHWA 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

Revised January 7, 2004

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, §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 §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.






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**AGENDA ITEM:**


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

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**TITLE:** Agreement with Billings Housing Authority to Fund One Officer  
 From July 1, 2009, through December 31, 2009

**DEPARTMENT:** Police Department

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

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**PROBLEM/ISSUE STATEMENT:** Since 1991, the Billings Housing Authority has funded one police officer under an agreement with the City of Billings. The funding consists of salary, benefits, and maximum of four (4) hours of overtime per month. Due to the loss of a grant, the Housing Authority is now funding this position from their office budget for a six month period. Staff is recommending City Council approve this agreement for the funding of the officer from July 1, 2009, through December 31, 2009.

**FINANCIAL IMPACT:** The City provides a vehicle and necessary equipment. The Billings Housing Authority pays the salary and benefits for the officer, to a maximum amount of \$40,621.00, for the 6 month period of July 1 through December 31, 2009. This amount is budgeted in the current budget. If the Housing Authority is unable to fund the officer position after December 31, 2009, the position will be absorbed through attrition.

**RECOMMENDATION**

Staff recommends Council approve the agreement with Billings Housing Authority to fund one Police Officer for the period of July 1, 2009, through December 31, 2009.

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

**ATTACHMENT**

A-Billings Housing Authority Agreement-2  
 pages

**CITY OF BILLINGS POLICE DEPARTMENT  
AND  
HOUSING AUTHORITY OF BILLINGS**

This contract is to cover the period from July 1, 2009 to December 31, 2009 by and between the City of Billings, State of Montana, herein after referred to as "City", and the Housing Authority of Billings.

In receipt of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The City shall provide its personnel and other resources in a Drug Elimination Policing role at the Housing Authority of Billings' complexes. A dedicated Community Policing Officer shall be provided 40 hours a week, 26 weeks a year to perform the above baseline services for the Housing Authority of Billings. The designated officer will not be available for dispatched calls except in cases of emergency.
2. The Housing Authority of Billings shall pay the City the officer's salary that shall include the officer's salary and fringe benefits of \$40,621.00. This payment shall be made monthly starting on or before July 1, 2009. This amount allows for an average of 4 hours of overtime monthly for a six-month period.
3. The Housing Authority of Billings shall pay for business only cellular phone costs for assigned officer on a monthly basis. No overage from the Housing Authority selected plan will be paid.
4. The City will have available the necessary equipment for the Police Officer to conduct his job.
5. The City shall keep detailed records regarding the date and time of contacts exclusive of investigating records. The Housing Authority of Billings may inspect these records at all reasonable times and those records shall be available for photocopying at no additional fee.
6. Indemnification – The City assumes full responsibility for the officer's performance. The City shall indemnify the Housing Authority of Billings against, and hold the Housing Authority harmless from any liability costs, damages, claims or causes of action which may arise as a result of

performance by the City of its responsibilities under the terms of this agreement; provided, however, that the City, its officers and employees shall not assume any liability for acts of the Housing Authority of Billings, or any of its officers, employees or agents.

7. This agreement shall cover the period from July 1, 2009 until December 31, 2009.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first herein above written.

CITY OF BILLINGS, MONTANA "CITY"

HOUSING AUTHORITY OF BILLINGS

\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Executive Director

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

AGENDA ITEM:



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

**SUBJECT:** Memorandum of Understanding for 2 Middle School Resource Officers  
**DEPARTMENT:** Police Department  
**PRESENTED BY:** Rich St. John, Chief of Police

**PROBLEM/ISSUE STATEMENT:** Pursuant to City Council approval, the Billings Police Department and the Billings Public Schools have developed a School Resource Officer (SRO) program which places two officers in the middle schools. The attached Memorandum of Understanding (MOU) makes provisions for program objectives and guidelines, officer selection processes, financial consideration and effective date and provisions for termination of the agreement. The MOU is for a period of one year, from July 1, 2009, to June 30, 2010, and was approved by the School Board at its May 18, 2009, meeting. The School Resource Officer Program is a collaborative effort by certified law enforcement officers, educators, students, parents, and the community to offer a liaison program in the schools in an effort to reduce crime, drug abuse, violence, and provide a safe school environment. The Program also provides networking, public relations, and relationship building between the City, Police Department, the School District, and the community. City Council is being asked to approve this MOU and authorize the Mayor to sign.

**FINANCIAL IMPACT:** The total cost of the 2 officers in the middle school SRO positions is \$126,538. The Billings Public Schools will provide a \$52,000 payment to the City of Billings to defray some of the salary and benefit costs of the 2 officers. We did not raise the contribution this year, as we increased it by 4% last fiscal year. The officers do report back to the Police Department during the summer months and help the department accomplish various tasks during those months.

**RECOMMENDATION**

Staff recommends that City Council approve the attached Memorandum of Understanding between the City of Billings and the Billings Public Schools effective July 1, 2009, to June 30, 2010.

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

**ATTACHMENT**

A - Memorandum of Understanding – School Resource Officers for Middle Schools - 7 pages

**MEMORANDUM OF UNDERSTANDING  
SCHOOL RESOURCE OFFICER PROGRAM  
AT BILLINGS MIDDLE SCHOOLS**

**CITY OF BILLINGS POLICE DEPARTMENT  
BILLINGS PUBLIC SCHOOLS**

We do hereby agree that it is mutually beneficial to all parties for Billings Police Officers to be assigned as School Resource Officers to schools within the City of Billings. It is understood by all parties that officers are employees of the City of Billings Police Department.

The purpose of this document is to facilitate a clear understanding of roles, duties, and responsibilities. This Memorandum of Understanding (MOU) is being set forth on this \_\_\_\_\_ day of \_\_\_\_\_, 2009 with full recognition that the agreement and document must be a living document to allow for program evolution and provide for some City of Billings and Billings School District variances, needs, and future changes. It is recognized that the School Resource Officer Program has enjoyed a fourteen (14) year history within the City of Billings, since a limited pilot project at Billings West High School was implemented by the West End Community Oriented Policing team, and has enjoyed an excellent relationship with the schools. This MOU is being set forth to provide universal clarification of expectations, to minimize confusion, and to provide for consistency between officers, schools, principals, and directors.

**The Billings Police Department recognizes and supports the need for safe schools and a safe learning environment for our youth.** In furtherance of that goal, the Billings Police Department School Resource Officers shall work in partnership with school officials toward this end. The schools will provide a private office, office furnishings, telephone, and a computer to the SRO for his/her use in the school. The Police Department will provide any required police equipment, including radios and motorized and non-motorized vehicles to the SROs.

## **MISSION STATEMENT - BILLINGS POLICE DEPARTMENT**

*The Billings Police Department is committed to improving the quality of life through a customer service, problem solving partnership with the community.*

## **MISSION STATEMENT - SCHOOL RESOURCE OFFICER PROGRAM**

*Through education and enforcement and by cooperative efforts with the school staff, the students, the parents, the courts, the surrounding neighborhood, and the community's social service organizations, the SRO program strives to assist the schools with providing a safe school and neighborhood environment, and strives to hold juveniles responsible for their actions and prevent individual problems from developing into patterns of delinquency.*

**BILLINGS POLICE DEPARTMENT  
SCHOOL RESOURCE OFFICER PROGRAM  
PROGRAM OBJECTIVES**

1. Friendly contact between the Police Department and the City's youth.
2. Assistance and information sharing concerning problems and issues affecting the schools and students.
3. Education of children regarding the role of laws, courts, and Police in society.
4. Protection and education of children involving molestation, involvement with older law violators, and other harmful influences.
5. Investigation of cases involving juveniles and use of effective alternatives to court whenever possible.
6. Prevention of crime or delinquent behavior by juveniles within the School Resource Officers' areas of assignment.
7. Effective problem solving and liaison with neighborhoods surrounding the **middle schools**, which are affected negatively by the conduct of students.

It should be recognized that School Resource Officers:

- ◆ are encouraged to be a part of Student Council /Groups and School Staff when requested, and to work as a team with other school officials for the betterment of students and the school and neighborhood environment as a whole;
- ◆ are encouraged to work extra curricular activities as requested by the school administrator. It is recognized by all parties that these assignments provide further opportunities for crime prevention and crime detection. Any work by the SRO in this capacity will be approved by the assigned Police Department Supervisor and will be consistent with the FLSA and Police Union Contract. The SRO will not be used as a replacement officer for off-duty/special duty assignments. It will not relieve the School District of the need to provide adequate security at special events. All after hours work shall be approved by the SRO supervisor in advance;
- ◆ are expected to keep the school principal or his designee informed about law enforcement action which occurs on school property and/or which may involve a student. This, of



course, will not occur if the information is inappropriate for release according to the Montana Criminal Justice Information Act of 1979;

- ◆ are police officers assigned as Uniform Patrol Officers of the Operations Division of the Billings Police Department. As such, their primary responsibilities are to investigate criminal cases involving youth, maintain order through the enforcement of local, state and federal laws, to recover stolen property, bring perpetrators to justice, and support the enforcement policies of the Billings Public Schools;

- ◆ are governed by the rules, policies, shifts, schedules, procedures and practices of the Billings Police Department and the City of Billings, under the supervision of an assigned Sergeant;

- ◆ are expected to attend all training, meetings and appointments assigned by the Police Department. It is recognized that some of these will conflict with officer availability at the school during normal school hours. These conflicts will be minimized as much as possible but the potential exists that such requirements will take precedence over school presence. The officer shall strive to keep the school principal or his representative informed about his/her absences and/or activities as appropriate on a need to know basis;

- ◆ are governed and covered by the current Collective Labor Agreement between City of Billings and the Montana Public Employees Association-Billings Police Unit;

- ◆ are considered by the City of Billings as “non-exempt” employees covered by the Fair Labor Standards Act and subject to it and the Police Union Contract for compensation and pay; Duty assignment in the summer months, when school is not in session, will be under the direction of the Police Operations Commander. SRO's may also be required to work regular police duty assignments, at other times when school is not in session, when so directed by the Police Operations Commander;

- ◆ are not security guards provided to the school district by the Billings Police Department. They should not be viewed by school officials as a replacement for security, although it is recognized that police presence has a crime prevention impact. If security is needed, the school district is encouraged to employ its own or to contract with a private security provider;

- ◆ are police officers and not school teachers, school administrators, nor school counselors. The officers will assist teachers with classroom presentations on relative topics when requested and able. They will also work with families, individual students and other school staff members with counseling and guidance efforts when requested and appropriate. We, the undersigned, encourage team work, partnerships, cooperation and coordination between the officers, their supervisors and the school administrators and their staff, as well as with the surrounding neighborhood;

- ◆ should not be relied upon or scheduled to serve as bus stop monitors, hallway monitors, nor lunch room monitors. Although, time permitting, SROs should assist school officials who are regularly assigned in these capacities since they provide excellent opportunities to achieve program objectives, including professional and friendly contact with youth, positive relationships and crime prevention.

- ◆ SROs, School Administration for the respective middle and/or high schools and the assigned Police Supervisor will meet at the beginning of each school year to determine the goals and objectives of the SRO for the respective school. An assessment mechanism will be developed jointly, in an effort to determine the effectiveness of the SRO program. Quarterly and year end meetings will be held to determine progress and to make adjustments as needed.

- ◆ are not intended to substitute for or relieve the building administrators of their primary responsibility for maintenance of discipline and good order in the school.

## **SELECTION AND FINANCIAL CONSIDERATION**

Two (2) officers will be selected by means of a joint selection committee, comprised of three (3) representatives from the Billings School District who will be appointed by the Superintendent of Schools and three (3) representatives from the Billings Police Department who will be appointed by the Billings Chief of Police. The Selection Committee will make recommendations to the Chief of Police. While he will duly consider the Committee's recommendations, selection of each School Resource Officer is within the sole discretion of the Chief of Police. Two officers will be assigned to the four Billings Public Middle Schools.

In return for services provided by the two officers, the Billings School District will pay to the City of Billings the sum of Fifty Two Thousand Dollars (\$52,000) by July 30, 2009.

## **PROGRAM ASSESSMENT**

The School Resource Officer Program will be assessed annually, and the evaluation will be conducted jointly between the Billings Police Department and Billings Public Schools. The following areas, at a minimum, will be used to evaluate the program:

- ◆ Success of established goals and objectives.
- ◆ An internal survey of high school administration, faculty and student council members, primarily concerning perceptions of safety and security.
- ◆ Traditional police-citizen contacts (citations, arrests, FIRs, etc.).
- ◆ Non-traditional police-citizen contacts (meetings attended, problem areas addressed, student or family interviews, etc.).

- ◆ Surrounding neighborhood feedback and reaction to police efforts to address issues concerning the schools and students.

- ◆ Accomplishment of tasks agreed upon as part of any work plan written in conjunction with the Principal.

Each officer's effectiveness in the program will be evaluated at the end of each school term. The Principal will provide input into the evaluation. This may include a recommendation to the Chief that the officer not be assigned to that school the following year. The Chief will seriously consider the evaluation and the input of the Superintendent when assigning an officer to a building, and will make a good faith effort to address any concerns raised. Ultimately, however, the final decision on which officer will be assigned as a school resource officer is within the sole discretion of the Police Chief.

## **EFFECTIVE DATE**

This Memorandum of Understanding is effective July 1, 2009, and shall remain in effect through June 30, 2010 unless renewed by agreement of both parties or terminated as provided herein.

## **TERMINATION OF AGREEMENT**

Either party may terminate this agreement upon sixty (60) days written notice to the other party. If this agreement is terminated by School District #2, then the full balance of the Fifty Two Thousand Dollars (\$52,000) will be retained by the City of Billings in order to maintain the middle school SRO program. If the agreement is terminated by the City of Billings, then the pro-rated balance of the Fifty Two Thousand Dollars (\$52,000) will be refunded to School District #2. The pro-rated balance will be based on the total number of school days for the 2009/2010 school year and the number of school days remaining after the date of termination of the agreement.

## **NOTICES**

All requests, notices, payments, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage prepaid in the registered or certified mails of the United States, addressed to the City of Billings at:

Chief of Police, Billings Police Department, City of Billings,  
P. O. Box 1554, Billings, MT 59103

or to School District #2 at:

Superintendent, School District #2, Lincoln Center, 415 North 30th Street

Billings, MT 59101

**MODIFICATION; ENTIRE AGREEMENT OF PARTIES EXPRESSED**

No modification of this Agreement shall be valid or binding unless the modification is in writing, duly dated and signed by both parties.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2009.

**SCHOOL DISTRICT #2**

Attest:

\_\_\_\_\_  
LEO HUDETZ  
Clerk

By: \_\_\_\_\_  
JACK COPPS  
Superintendent

**CITY OF BILLINGS**

Attest:

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

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

Approved as to form:

\_\_\_\_\_  
City Attorney

## AGENDA ITEM:



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

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**SUBJECT:** Memorandum of Understanding for 3 High School Resource Officers  
**DEPARTMENT:** Police Department  
**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** Pursuant to City Council approval, the Billings Police Department and the Billings Public Schools have developed a School Resource Officer (SRO) program which places one officer in each of the three public high schools. The attached Memorandum of Understanding (MOU) makes provisions for program objectives and guidelines, officer selection processes, financial consideration and effective date and provisions for termination of the agreement. The MOU is for a period of one year, from July 1, 2009, to June 30, 2010, and was approved by the School Board at its May 18, 2009, meeting. The School Resource Officer Program is a collaborative effort by certified law enforcement officers, educators, students, parents, and the community to offer a liaison program in the schools in an effort to reduce crime, drug abuse, violence, and provide a safe school environment. The Program also provides networking, public relations, and relationship building between the City, Police Department, the School District, and the community. City Council is being asked to approve this MOU and authorize the Mayor to sign.

**FINANCIAL IMPACT:** The total cost of the 3 officers in the SRO positions is \$210,098. The Billings Public Schools will provide a \$62,400 payment to the City of Billings to defray some of the salary and benefit costs. We did not raise the contribution this year, as we increased it by 4% last fiscal year. The officers do report back to the Police Department during the summer months and help the department accomplish various tasks during those months.

**RECOMMENDATION**

Staff recommends that City Council approve the attached Memorandum of Understanding between the City of Billings and the Billings Public Schools effective July 1, 2009, to June 30, 2010.

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

**ATTACHMENT**

A - Memorandum of Understanding –School Resource Officers for High Schools – 7 pages

**MEMORANDUM OF UNDERSTANDING  
SCHOOL RESOURCE OFFICER PROGRAM  
AT BILLINGS WEST, SENIOR AND SKYVIEW HIGH SCHOOLS**

**CITY OF BILLINGS POLICE DEPARTMENT  
BILLINGS PUBLIC SCHOOLS**

We do hereby agree that it is mutually beneficial to all parties for Billings Police Officers to be assigned as School Resource Officers to schools within the City of Billings. It is understood by all parties that officers are employees of the City of Billings Police Department.

The purpose of this document is to facilitate a clear understanding of roles, duties, and responsibilities. This Memorandum of Understanding (MOU) is being set forth on this \_\_\_\_\_ day of \_\_\_\_\_, 2009 with full recognition that the agreement and document must be a living document to allow for program evolution and provide for some City of Billings and Billings School District variances, needs, and future changes. It is recognized that the School Resource Officer Program has enjoyed a fourteen (14) year history within the City of Billings, since a limited pilot project at Billings West High School was implemented by the West End Community Oriented Policing team, and has enjoyed an excellent relationship with the schools. This MOU is being set forth to provide universal clarification of expectations, to minimize confusion, and to provide for consistency between officers, schools, principals, and directors.

**The Billings Police Department recognizes and supports the need for safe schools and a safe learning environment for our youth.** In furtherance of that goal, the Billings Police Department School Resource Officers shall work in partnership with school officials toward this end. The schools will provide a private office, office furnishings, telephone, and a computer to the SRO for his/her use in the school. The Police Department will provide any required police equipment, including radios and motorized and non-motorized vehicles to the SROs.

## **MISSION STATEMENT - BILLINGS POLICE DEPARTMENT**

*The Billings Police Department is committed to improving the quality of life through a customer service, problem solving partnership with the community.*

## **MISSION STATEMENT - SCHOOL RESOURCE OFFICER PROGRAM**

*Through education and enforcement and by cooperative efforts with the school staff, the students, the parents, the courts, the surrounding neighborhood, and the community's social service organizations, the SRO program strives to assist the schools with providing a safe school and neighborhood environment, and strives to hold juveniles responsible for their actions and prevent individual problems from developing into patterns of delinquency.*



**BILLINGS POLICE DEPARTMENT  
SCHOOL RESOURCE OFFICER PROGRAM  
PROGRAM OBJECTIVES**

1. Friendly contact between the Police Department and the City's youth.
2. Assistance and information sharing concerning problems and issues affecting the schools and students.
3. Education of children regarding the role of laws, courts, and Police in society.
4. Protection and education of children involving molestation, involvement with older law violators, and other harmful influences.
5. Investigation of cases involving juveniles and use of effective alternatives to court whenever possible.
6. Prevention of crime or delinquent behavior by juveniles within the School Resource Officers' areas of assignment.
7. Effective problem solving and liaison with neighborhoods surrounding the high schools, which are affected negatively by the conduct of students.

It should be recognized that School Resource Officers:

- ◆ are encouraged to be a part of Student Council /Groups and School Staff when requested, and to work as a team with other school officials for the betterment of students and the school and neighborhood environment as a whole;

- ◆are encouraged to work extra curricular activities as requested by the school administrator. It is recognized by all parties that these assignments provide further opportunities for crime prevention and crime detection. Any work by the SRO in this capacity will be approved by the assigned Police Department Supervisor and will be consistent with the FLSA and Police Union Contract. The SRO will not be used as a replacement officer for off-duty/special duty assignments. It will not relieve the School District of the need to provide adequate security at special events. All after hours work shall be approved by the SRO supervisor in advance;

- ◆ are expected to keep the school principal or his designee informed about law enforcement action which occurs on school property and/or which may involve a student. This, of course, will not occur if the information is inappropriate for release according to the Montana Criminal Justice Information Act of 1979;

◆ are police officers assigned as Uniform Patrol Officers of the Operations Division of the Billings Police Department. As such, their primary responsibilities are to investigate criminal cases involving youth, maintain order through the enforcement of local, state and federal laws, to recover stolen property, bring perpetrators to justice, and support the enforcement policies of the Billings Public Schools;

◆ are governed by the rules, policies, shifts, schedules, procedures and practices of the Billings Police Department and the City of Billings, under the supervision of an assigned Sergeant;

◆ are expected to attend all training, meetings and appointments assigned by the Police Department. It is recognized that some of these will conflict with officer availability at the school during normal school hours. These conflicts will be minimized as much as possible but the potential exists that such requirements will take precedence over school presence. The officer shall strive to keep the school principal or his representative informed about his/her absences and/or activities as appropriate on a need to know basis;

◆ are governed and covered by the current Collective Labor Agreement between City of Billings and the Montana Public Employees Association-Billings Police Unit;

◆ are considered by the City of Billings as “non-exempt” employees covered by the Fair Labor Standards Act and subject to it and the Police Union Contract for compensation and pay; Duty assignment in the summer months, when school is not in session, will be under the direction of the Police Operations Commander. SRO's may also be required to work regular police duty assignments, at other times when school is not in session, when so directed by the Police Operations Commander;

◆ are not security guards provided to the school district by the Billings Police Department. They should not be viewed by school officials as a replacement for security, although it is recognized that police presence has a crime prevention impact. If security is needed, the school district is encouraged to employ its own or to contract with a private security provider;

◆ are police officers and not school teachers, school administrators, nor school counselors. The officers will assist teachers with classroom presentations on relative topics when requested and able. They will also work with families, individual students and other school staff members with counseling and guidance efforts when requested and appropriate. We, the undersigned, encourage team work, partnerships, cooperation and coordination between the officers, their supervisors and the school administrators and their staff, as well as with the surrounding neighborhood;

♦ should not be relied upon or scheduled to serve as bus stop monitors, hallway monitors, nor lunch room monitors. Although, time permitting, SROs should assist school officials who are regularly assigned in these capacities since they provide excellent opportunities to achieve program objectives, including professional and friendly contact with youth, positive relationships and crime prevention.

♦ SROs, School Administration for the respective middle and/or high schools and the assigned Police Supervisor will meet at the beginning of each school year to determine the goals and objectives of the SRO for the respective school. An assessment mechanism will be developed jointly, in an effort to determine the effectiveness of the SRO program. Quarterly and year end meetings will be held to determine progress and to make adjustments as needed.

♦ are not intended to substitute for or relieve the building administrators of their primary responsibility for maintenance of discipline and good order in the school.

## **SELECTION AND FINANCIAL CONSIDERATION**

Three (3) officers will be selected by means of a joint selection committee, comprised of three (3) representatives from the Billings School District who will be appointed by the Superintendent of Schools and three (3) representatives from the Billings Police Department who will be appointed by the Billings Chief of Police. The Selection Committee will make recommendations to the Chief of Police. While he will duly consider the Committee's recommendations, selection of each School Resource Officer is within the sole discretion of the Chief of Police. One officer will be assigned to each of the three Billings Public High Schools.

In return for services provided by the three officers, the Billings School District will pay to the City of Billings the sum of Sixty Two Thousand Four Hundred Dollars (\$62,400) by July 30, 2009.

## **PROGRAM ASSESSMENT**

The School Resource Officer Program will be assessed annually, and the evaluation will be conducted jointly between the Billings Police Department and Billings Public Schools. The following areas, at a minimum, will be used to evaluate the program:

- ♦ Success of established goals and objectives.
- ♦ An internal survey of high school administration, faculty and student council members, primarily concerning perceptions of safety and security.
- ♦ Traditional police-citizen contacts (citations, arrests, FIRs, etc.).

- ◆ Non-traditional police-citizen contacts (meetings attended, problem areas addressed, student or family interviews, etc.).
- ◆ Surrounding neighborhood feedback and reaction to police efforts to address issues concerning the schools and students.
- ◆ Accomplishment of tasks agreed upon as part of any work plan written in conjunction with the Principal.

Each officer's effectiveness in the program will be evaluated at the end of each school term. The Principal will provide input into the evaluation. This may include a recommendation to the Chief that the officer not be assigned to that school the following year. The Chief will seriously consider the evaluation and the input of the Superintendent when assigning an officer to a building, and will make a good faith effort to address any concerns raised. Ultimately, however, the final decision on which officer will be assigned as a school resource officer is within the sole discretion of the Police Chief.

## **EFFECTIVE DATE**

This Memorandum of Understanding is effective July 1, 2009, and shall remain in effect through June 30, 2010, unless renewed by agreement of both parties or terminated as provided herein.

## **TERMINATION OF AGREEMENT**

Either party may terminate this agreement upon sixty (60) days written notice to the other party. If this agreement is terminated by School District #2, then the full balance of the Sixty Two Thousand Four Hundred Dollars (\$62,400) will be retained by the City of Billings in order to maintain the high school SRO program. If the agreement is terminated by the City of Billings, then the pro-rated balance of the Sixty Two Thousand Four Hundred Dollars (\$62,400) will be refunded to School District #2. The pro-rated balance will be based on the total number of school days for the 2009/2010 school year and the number of school days remaining after the date of termination of the agreement.

## **NOTICES**

All requests, notices, payments, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage prepaid in the registered or certified mails of the United States, addressed to the City of Billings at:

Chief of Police, Billings Police Department, City of Billings,  
P. O. Box 1554, Billings, MT 59103

or to School District #2 at:

Superintendent, School District #2, Lincoln Center, 415 North 30th Street  
Billings, MT 59101

**MODIFICATION; ENTIRE AGREEMENT OF PARTIES EXPRESSED**

No modification of this Agreement shall be valid or binding unless the modification is in writing, duly dated and signed by both parties.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2009.

**SCHOOL DISTRICT #2**

Attest:

_____	By: _____
Leo Hudetz	JACK COPPS
Clerk	Superintendent

**CITY OF BILLINGS**

Attest:

_____	By: _____
City Clerk	Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

061.MOU with School District.High Schools

K

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, July 13, 2009**

**TITLE:** Request to Submit 2009 Justice Assistance Grant (JAG) Application and Acceptance of Award in the amount of \$32,377

**DEPARTMENT:** Billings Police Department

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

**PROBLEM/ISSUE STATEMENT:** On June 2, 2009, the City was notified that funding for the 2009 annual JAG grant was posted on line. This grant is a joint application between the Billings Police Department and Yellowstone County Sheriff's Office, with the Billings Police Department acting as administrator of the grant. The City will continue the project of installing new LED lightbars on the 13 police vehicles being replaced in the 09/10 budget; and replacement Simunitions equipment including a pistol and magazine, helmet and Simunitions bullets. Simunitions equipment helps facilitate realistic training scenarios such as active shooter training. The City will share the grant funding in the amount of \$2,000 with Yellowstone County Sheriff's Office. The Sheriff's Office will use those funds towards the purchase of LED lightbars for its cruisers. The Interlocal Agreement has been approved by the County Commissioners and is attached for the Mayor to approve. The Interlocal Agreement is part of the application submittal. Staff is requesting Council approval for submission of the application, acceptance of the \$32,377 grant award, and authorize the Mayor to sign the award documents when they are received.

**FINANCIAL IMPACT:** There will be no cost to the City. No match is required.

**RECOMMENDATION**

Staff recommends that Council approve the 2009 annual JAG application submission in the amount of \$32,377, acceptance of the grant award, and authorize the Mayor to sign the award documents when they are received.

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

**ATTACHMENT**

A – Interlocal Agreement – 2  
pages

**GMS APPLICATION NUMBER 2009 – G9509-MT-DJ**

**THE STATE OF MONTANA, COUNTY OF YELLOWSTONE  
INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF BILLINGS, AND YELLOWSTONE COUNTY  
2009 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD  
\$32,377**

This Agreement is made and entered into this 13th day of July, 2009, between the City of Billings (CITY) acting through its Mayor, and Yellowstone County (COUNTY) acting through its Chairman of the Board of County Commissioners.

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party, and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interest of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, the City agrees to provide the County \$2,000 from the JAG award.

WHEREAS, the CITY and the COUNTY will file a joint application with the CITY serving as applicant/fiscal agent for the JAG funds.

WHEREAS, the CITY and the COUNTY believe it to be in their best interests and the best interests of both of them to reallocate the JAG funds in this matter so as to continue to qualify for future JAG awards and in order to maximize the benefit from this 2009 JAG award.

NOW THEREFORE, the CITY and COUNTY agree as follows:

The purpose of this agreement is to provide a binding promise by the City of Billings to share the proceeds of a \$32,377 JAG award with the County of Yellowstone.

This agreement shall commence on the date the Justice Assistance Grant (JAG) is funded by the U.S. Department of Justice, and the funds are received by the City, and it shall terminate on September 30, 2012, unless the parties mutually agree, in writing, to an earlier termination date. This cooperative undertaking shall be financed exclusively from the JAG proceeds. CITY agrees to pay the COUNTY a total of \$2,000 of JAG funds. The COUNTY agrees to use \$2,000 for the program between the date of this agreement and September 30, 2012, the last day on which these funds may be spent, according to the terms of the JAG.

Nothing in the performance of this Agreement shall impose any liability for claims against the CITY or COUNTY. Each party to this agreement will be responsible for its own actions in providing services under this Agreement and will save the other party harmless from and defend and indemnify them for any claims that arise due to or on account of any activities that are funded in whole or in part by JAG proceeds, and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party. The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement. No separate legal entity shall be created by this contract. The accounting for funds received by each of the local governing bodies shall be done by the City of Billings Finance Department and the County of Yellowstone Sheriff's Office, respectively. The City of Billings Financial Services Manager shall administer the disbursement of JAG proceeds in cooperation with the County of Yellowstone Sheriff's Office. No personnel costs will be funded from these proceeds by either party so neither party will be required to file reports or make payments of retirement system contributions pursuant to §19-2-506, MCA.

In the event that any payment that is expected to be made pursuant to this JAG is not received by the City of Billings, or in the event that either party violates the terms of this Interlocal Agreement, either party may terminate this agreement by giving written notice to the mayor (for notice to the City) or to the commission chair



(for notice to the County) of the manner in which the other party has violated the provisions hereof. If a party so notified does not remedy the default within fifteen (15) days of receipt of the notice of the violation, then the party giving notice of the violation is released and discharged from any further obligation under this agreement and the agreement is of no further legal effect.

By entering into the Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

City of Billings, Montana

County of Yellowstone

\_\_\_\_\_  
/s/ Ron Tussing, Mayor

\_\_\_\_\_  
/s/ James E. Reno, Chairman  
Yellowstone County Commissioners

APPROVED AS TO FORM:

  
\_\_\_\_\_  
/s/ Kelly Adley  
City Attorney's Office

\_\_\_\_\_  
/s/ Mark English  
Yellowstone County Attorney's Office

JAG09 Interlocal Agreement

## AGENDA ITEM:




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


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**TITLE:** STAR Touring and Riding Parade

**DEPARTMENT:** Public Works-Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** The STAR Touring and Riding Organization requests a parade event benefitting the Feed the Children Organization and the local Family Service, Inc. on Saturday, July 23, 2009. The parade will assemble at the Holiday Inn Grand and begin at 9:00 am ending approximately at 9:40 am at the MetraPark. The parade will consist of a semi-truck traveling at a rate of 25 miles per hour with riding participants following behind. Then ending at MetraPark where they will distribute food, books, and toys to needy families in our community.

Recommended conditions of approval include, STAR Touring and Riding Organization to:

1. Contact all businesses and make them aware of the event
2. Clean the area to be used and provide waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured

**ALTERNATIVES ANALYZED:**

1. Approve request to close intersections briefly.
2. Deny the intersection closures.

**FINANCIAL IMPACT:** There are no costs to the City of Billings for this event other than administrative time to process the permit. Police and traffic control are to be paid for by the STAR Touring and Riding Organization.

**RECOMMENDATION:**

Staff recommends that Council approves the parade on July 23, 2009 benefitting the Feed the

Children Organization.

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

**ATTACHMENT**

- A. Special Activity Permit application
- B. Letter
- C. Map of route

D. Certificate of insurance



City of Billings  
RIGHT-OF-WAY ACTIVITY  
PERMIT

Please check the type of activity you are applying for:

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

Submit this application with attachments to either the: Public Works office, 510 N. Broadway, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Kelly McCandless in behalf of STAR

ORGANIZATION MAKING APPLICATION STAR Touring & Riding

PHONE 406.869.3732

ADDRESS 815 S. 27th St. Billings MT 59101  
CITY STATE ZIP

EMAIL ADDRESS kelly@billingschamber.com

APPROXIMATE TIME EVENT WILL:

Assemble 7:30 - 8:30 AM Start 9:00 AM Disband 9:30 - 9:40 AM

DATE OF EVENT 7-23-2009

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

Feed the Children kids. STAR Touring & Riding event  
delegates will follow semi-trucks full of food & books & toys  
to Metra Park where needy families (from our community)  
wait to receive them. The motorcycles travel at a constant rate  
of 25 miles per hour.

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

Stage at the Holiday Inn Grand Montana - overpass to Laurel Rd to  
Montana Ave heading east. North on Division St. East onto  
4th Ave N to Metra Park Carnival Lot. Disband.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

N/A

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

None needed

**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 *Jeffrey M. Henderson* 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**

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

June 8, 2009

City of Billings  
Public Works Office  
2224 Montana Avenue  
Billings, MT 59101

Dear Ms. Volek,

On behalf of the STAR Touring and Riding Organization we are requesting permission from the City of Billings to hold a parade benefitting the Feed the Children Organization and the local Family Service, Inc. The parade would take place July 23, 2009 at 9:00 a.m. with staging to be done at the Holiday Inn Grand Montana. The parade would follow the route outlined in the application, ending at approximately 9:40 a.m. at MetraPark and would not require any actual closures of streets. STAR Touring and Riding participants ride behind semi-trucks at a rate of 25 miles per hour, ending at MetraPark where they distribute the food, books, and toys to needy families in our community. Billings Police will be utilized to block the 18 lighted intersections along the route, as well as any other they deem necessary. Each intersection will be guarded for approximately five minutes as the motorcycles pass through and the event will be highly publicized beforehand so that the public is made aware and can plan accordingly. In addition, the parade will be reported on the local road reports made on television and radio the day of.

This is a fantastic parade and program that will provide a very positive impact on our community. If you have any questions or concerns regarding the application or the mission, please do not hesitate to contact either myself (information below) or STAR Touring's National Director Debi Greene at 520-572-8367 or [nationaldirector@startouring.org](mailto:nationaldirector@startouring.org).

Thank you for your time and consideration.

Sincerely,

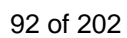


Kelly McCandless  
Guest Services Manager  
Billings Chamber of Commerce/Convention and Visitors Bureau  
406-869-3732  
[kelly@billingschamber.com](mailto:kelly@billingschamber.com)



815 South 27th Street / P.O. Box 31177 / Billings, MT 59107-1177  
ph 406-245-4111 / f 406-245-7333 / [www.billingschamber.com](http://www.billingschamber.com)

it's  
**Billings**  
Billings Chamber of Commerce  
Convention and Visitors Bureau






NJD

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		1524868	DATE (MM/DD/YYYY) 6/18/09
<b>PRODUCER</b> K & K Insurance Group, Inc. 1712 Magnavox Way P.O. Box 2338 Fort Wayne, In 46801		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURED</b> STAR TOURING & RIDING ASSOCIATION, INC. 7320 N. LA CHOLLA BLVD. #154 TUCSON, AZ 85741		<b>INSURERS AFFORDING COVERAGE</b> INSURER A: SCOTTSDALE INSURANCE COMPANY INSURER B: NATIONAL CASUALTY COMPANY INSURER C: INSURER D: INSURER E:	<b>NAIC #</b>      


COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR ADD'L LTR. DESIG	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
B	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR Owners & Contractors <input checked="" type="checkbox"/> \$100,000 E&O GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC	KE00000402101	12:01AM 5/23/09	12:01AM 5/23/10	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300000 MED EXP (Any one person) \$ NONE PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ NONE PRODUCTS - COMP/OP AGG \$ 1000000 Part Lgl Liab \$ 1000000	
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY - AGG \$	
A	<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> STRAIGHT <input type="checkbox"/> DEDUCTIBLE RETENTION \$	XKS0000402201	12:01AM 5/23/09	12:01AM 5/23/10	EACH OCCURRENCE \$ 1000000 AGGREGATE \$ 1000000	
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS OR OTHER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	
	OTHER					
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS TYPE OF EVENT: FEED THE CHILDREN FOOD DROP DATE: 7/23/09 LOCATION: CITY OF BILLINGS, MT SEE ATTACHED ADDENDUM (EXCESS AGGREGATE EXISTS ONLY WHERE APPLICABLE)						

<b>CERTIFICATE HOLDER</b>  CITY OF BILLINGS 815 27TH ST BILLINGS MT 59107-1177	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2001/08)

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NJD

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>						DATE (MM/DD/YYYY) 6/18/09
<b>PRODUCER</b> K & K Insurance Group, Inc. 1712 Magnavox Way P.O. Box 2338 Fort Wayne, In 46801				THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
<b>INSURED</b> STAR TOURING & RIDING ASSOCIATION, INC. 7320 N. LA CHOLLA BLVD. #154 TUCSON, AZ 85741				<b>INSURERS AFFORDING COVERAGE</b> INSURER A: SCOTTSDALE INSURANCE COMPANY INSURER B: NATIONAL CASUALTY COMPANY INSURER C: INSURER D: INSURER E:		
				<b>NAIC #</b>		
<b>COVERAGES</b> 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.						
POLICY	ADDL. LTR. INSUR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR Owners & Contractors <input checked="" type="checkbox"/> \$100,000 E&O GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LOC	KBO0000402101	12:01AM 5/23/09	12:01AM 5/23/10	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300000 MED EXP (Any one person) \$ NONE PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ NONE PRODUCTS - COMP/OP AGG \$ 1000000 Part Lgl Liab \$ 1000000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> STRAIGHT <input type="checkbox"/> DEDUCTIBLE RETENTION \$	XKS0000402201	12:01AM 5/23/09	12:01AM 5/23/10	EACH OCCURRENCE \$ 1000000 AGGREGATE \$ 1000000
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS TYPE OF EVENT: STAR DAYS 2009 DATES: 7/18-25/09 LOCATION: HOLIDAY INN GRAND MONTANA, BILLINGS, MT SEE ATTACHED ADDENDUM (EXCESS AGGREGATE EXISTS ONLY WHERE APPLICABLE)						
<b>CERTIFICATE HOLDER</b>  HOLIDAY INN GRAND MONTANA 5500 MIDLAND RD BILLINGS MT 59101				<b>CANCELLATION</b> 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 ISSUER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE: 		

ACORD 25 (2001/08)

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**AGENDA ITEM:**


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

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**TITLE:** Acceptance of Donation From Phyllis Forshay Trust and Approval of Transfer of the Donation to Yellowstone Valley Animal Shelter

**DEPARTMENT:** City Administrator and City Attorney

**PRESENTED BY:** Brent Brooks, City Attorney

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**PROBLEM/ISSUE STATEMENT:** Prior to her death in early March 2009, Phyllis Forshay, a longtime Billings resident, established a trust that provided for a substantial donation to several local charities including the Animal Shelter of Billings. The Administrator of the Forshay Trust is USBank in Billings. The Bank's Trust Department has advised the City Administrator that the Forshay Trust left \$94,051.76 to be donated to the Shelter. This amount represents 25% of the Trust. The City still owns and has ultimate responsibility to manage the shelter. However, in late 2008, the City entered into an agreement with Yellowstone Valley Animal Shelter, Inc., (YVAS) to operate the shelter. Because the Trust was created and reaffirmed in 2001, and therefore prior to the formation of the YVAS and prior to the City's operations contract with the YVAS in 2008, staff has determined it is necessary for the City Council to accept the donation pursuant to its current policy which requires formal acceptance of donations exceeding \$500.00. If accepted, transfer of the donation to the YVAS for operation expenses would also require Council approval. This accomplishes the intent of the Phyllis Forshay Trust that the funds be used for operation of the shelter, and the other named trust beneficiaries have consented to this distribution.

**ALTERNATIVES ANALYZED:** The City Council may accept or reject the donation. If the City Council rejects the donation, it would result in what is termed a "failed distribution" of this specific donation; and the donation would likely be re-distributed equally to the other named beneficiaries of the Trust. This decision would be made by the Phyllis Forshay Trust Administrator of USBank. If the Council accepts the donation there on no other alternatives available for use of the donated funds because the Trust specifically provides for the Shelter to receive the funds.

**FINANCIAL IMPACT:** The financial impact to the City is additional funds to supplement the continued operation of the Animal Shelter under the 2008 operating agreement between the City and YVAS.

**RECOMMENDATION**

Staff recommends that the Council accept the donation of \$94,051.76 from the Phyllis Forshay Trust and then approve the transfer of this donation to the YVAS for operational expenses of the Animal Shelter.

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, July 13, 2009

**TITLE:** Zone Change #851, Proposed Mont Vista Subdivision, 2<sup>nd</sup> Reading of Ordinance

**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 54<sup>th</sup> Street West and is a 60.4 acre parcel of land described as Tract 1 of Certificate of Survey 2054 excluding the 4.29 acres in the northwest corner, Tract 2 of Certificate of Survey 2054 and Yerger Heights Park (aka Cynthia Park). The City Council held a public hearing and approved the first reading of the zone change on June 22, 2009.

**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: Ordinance

**ATTACHMENT A**

Zone Change #851

**ORDINANCE NO. 09-\_\_\_\_\_**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Certificate of Survey 2054 Tract 1 with the exception of the northwest 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 these zones.

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 27<sup>th</sup> 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 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. Guesthouses 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, florescent, 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 therefore. 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	

If to the City: City of Billings	With copies to: City-County Planning Department
Attn: City Clerk	510 N. Broadway, 4 <sup>th</sup> Floor
P.O. Box 1178	Billings, MT 59101
Billings, MT 59103	

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 parties.

Section 9. Entire Agreement. This Agreement contains the entire agreement between the parties 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 FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.**

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 Seal)

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

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.

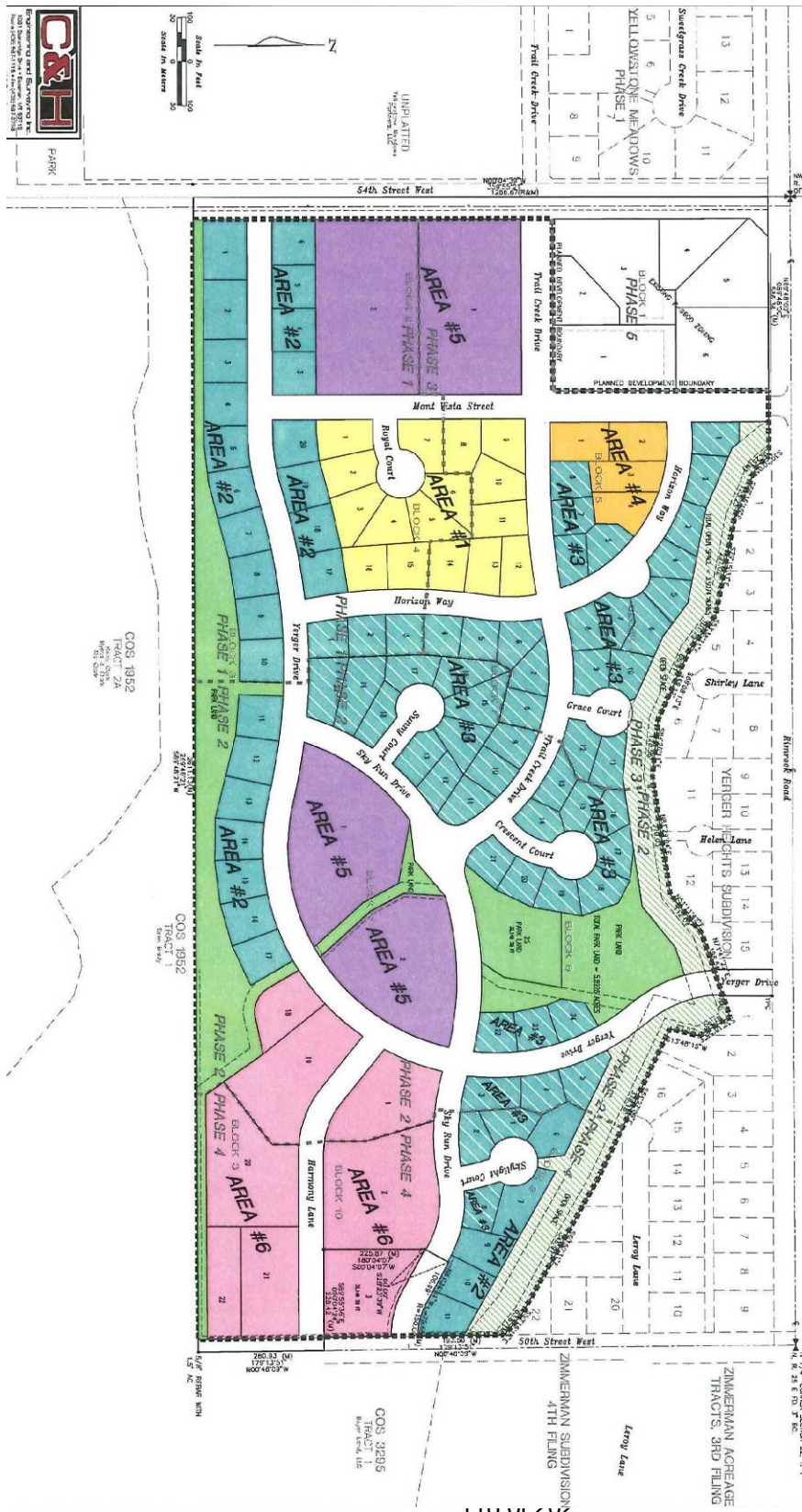
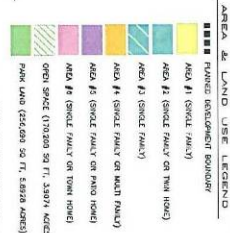
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(Notary Seal)

\_\_\_\_\_  
Notary Signature  
\_\_\_\_\_  
Printed Name  
Notary Public for the State of Montana.  
Residing at Billings, Montana.  
My Commission expires: \_\_\_\_\_

### AREA & LAND USE LEGEND

COS 1834  
TRACT 3-C  
Arlington, Va.





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**AGENDA ITEM:**

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

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**TITLE:** Zone Change #855, 2123 1<sup>st</sup> Ave North, 2<sup>nd</sup> Reading of Ordinance  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Nicole Cromwell, AICP, Zoning Coordinator, Planner II

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**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 1<sup>st</sup> 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. The City Council held a public hearing and approved the first reading of the zone change on June 22, 2009.

**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: Ordinance

**ATTACHMENT A**

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 1<sup>st</sup> Avenue North




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**AGENDA ITEM:**


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

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**TITLE:** Ad-Hoc Council Advisory Committee on Going Out of Business Sales  
**DEPARTMENT:** City Administrator's Office  
**PRESENTED BY:** Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City Council has directed staff to explore the license process for going-out-of-business sales, which is governed by BMCC Article 7-300, Bankrupt, Fire or Closing Out Sale. The current code was adopted 31 years ago, and appears to have been last amended 23 years ago. The code originally was intended as a consumer protection measure but, in recent years, has been used primarily by the business community to ensure that all companies follow the same guidelines. Staff examined the code and found many detailed provisions that are difficult to enforce, leading to discussion of whether that section of the code should be amended or deleted. It is recommended that the code section undergo a review by an ad-hoc Council committee and be amended as necessary to achieve Council's intent.

BMCC Sec. 2-224, Ad Hoc Council Advisory Committees, allows the Mayor and City Council to appoint an ad hoc advisory committee by resolution, and authorizes the City Administrator to assign staff to the committee. Proposed members of the Ad-Hoc Committee on the Going-Out-of-Business Sale Ordinance include Councilmembers Astle, Clark and Pitman, and Brad Griffin of the Montana Retail Association.

**ALTERNATIVES ANALYZED:**

- Approve the resolution as presented;
- Amend the resolution by changing the appointments, scope or timeline for the proposed project;
- Deny the resolution, and find another way to amend or ordinance.

**FINANCIAL IMPACT:** The Council Ad-Hoc Advisory Committee on the Going-Out-of-Business Sale Ordinance will have no cost to the City.

**RECOMMENDATION**

Approve the Resolution creating the Council Ad-Hoc Committee on the Going-Out-of-Business Sale Ordinance.

ATTACHMENT:

Attachment A – Resolution Creating the Ad-Hoc Advisory Committee

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



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

**A RESOLUTION CREATING A CITY OF BILLINGS AD-HOC ADVISORY  
COMMITTEE ON GOING-OUT-OF-BUSINESS SALES**

WHEREAS, BMCC Article 7-300, Bankrupt, Fire or Closing Out Sale, was adopted by the City Council in 1967, and last amended in 1986; and

WHEREAS, liquidation or going-out-of-business sales licensing and enforcement has been a source of complaints from the business community over the past several years; and

WHEREAS, the City Council as a result has created an initiative to re-examine the current ordinance to make its enforcement stricter and to clarify its terms and penalties.

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

1. There is hereby created an Ad-Hoc Advisory Committee on the Going-Out-of-Business Sale Ordinance to recommend to the City Council what changes, if any, should be made to BMCC Article 7-300 to make it reflect the Council's desires for enforcement of licensing provisions.
2. The Ad-Hoc Advisory Committee on the Going-Out-of-Business Sale Ordinance shall be composed of City Council members Mark Astle, Richard Clark and Denis Pitman, and Brad Griffin of the Montana Retail Association.
3. The City Administrator shall appoint such staff as are necessary to assist the Ad-Hoc Advisory Committee with information during its deliberations and to ensure compliance with all applicable open meetings laws.
4. The Ad-Hoc Advisory Committee on Going-Out-Of Business Sale Ordinance shall report its findings to the City Council no later than September 14, 2009.

APPROVED this 13<sup>th</sup> day of July 2009.

THE CITY OF BILLINGS

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, City Clerk

Q

AGENDA ITEM:



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

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**TITLE:** Preliminary Plat of Trails West Subdivision, 1<sup>st</sup> Filing  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** On May 1, 2009, the subdivider, Dorn-Wilson Development, LLC, applied for preliminary major plat approval for Trails West Subdivision, 1<sup>st</sup> Filing. The proposed subdivision contains 74 lots on approximately 67 acres of land. The subject property is located on the south side of Grand Avenue, between 56<sup>th</sup> Street West and 60<sup>th</sup> Street West. The property is zoned Residential-9600 (R-96) and Residential 6000-Restricted (R60-R), and will be developed in single-family housing in two phases. This is the first filing of a multi-filing development. The Yellowstone County Board of Planning reviewed the plat and conducted a public hearing on June 23, 2009. The City Council will review the preliminary plat and approve, conditionally approve, or deny the proposed subdivision at the July 13, 2009, meeting. The representing agent is Sanderson Stewart.

**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 an 8-0 vote recommends conditional approval of the preliminary plat of Trails West Subdivision, 1<sup>st</sup> Filing, 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 May 1, 2009, the subdivider, Dorn-Wilson Development, LLC, applied for preliminary major plat approval for Trails West Subdivision, 1<sup>st</sup> Filing. The proposed subdivision contains 74 lots on approximately 67 acres of land. The subject property is located on the south side of Grand Avenue, between 56<sup>th</sup> Street West and 60<sup>th</sup> Street West. The property is zoned Residential-9600 (R-96) and Residential 6000-Restricted (R60-R), and will be developed in single-family housing in two phases. This is the first filing of a multi-filing development.

## **PROCEDURAL HISTORY**

- The subject property was annexed on April 10, 2006.
- In July, 2008, a preliminary plat for Trails West Subdivision was submitted for preliminary plat review and a zone change application was submitted. Both applications were withdrawn in order to further develop the proposals.
- On October 14, 2008, the City Council approved the request to change the zoning on the subject property to Residential 6000-Restricted, with the exception of a 105-foot buffer on the 56<sup>th</sup> St. West frontage and a 150-foot buffer on the Broadwater Ave. frontage.
- On May 1, 2009, a new revised preliminary plat for Trails West Subdivision, 1<sup>st</sup> Filing was submitted for preliminary plat review.
- On May 14, 2009, a department review meeting was held to review the preliminary plat submittal.
- On June 9, 2009, Planning Board reviewed the plat.
- On June 23, 2009, Planning Board held a public hearing and made a recommendation to the governing body on the plat proposal.
- On July 13, 2009, the City Council will review and take action on the preliminary plat of the proposed subdivision.

## **BACKGROUND**

On May 1, 2009, the subdivider, Dorn-Wilson Development, LLC, applied for preliminary major plat approval for Trails West Subdivision, 1<sup>st</sup> Filing.

General location:	On the south side of Grand Ave., between 56 <sup>th</sup> St. West and 60 <sup>th</sup> St. West
Legal Description:	Tracts 1A & 2A, Certificate of Survey 3139
Subdivider/Owner:	Dorn-Wilson Development, LLC
Engineer and Surveyor:	Sanderson Stewart
Existing Zoning:	R-96 and R60-R
Existing land use:	Irrigated agricultural land

Proposed land use:	Single-Family Residential
Gross area:	67 acres
Net area:	58 acres
Proposed number of lots:	74
Lot size:	Max: 47.58 acres Min.: 6,021 square feet
Parkland requirements:	1.18 acres of parkland required; cash in lieu of land dedication is proposed

### **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 Attachment C, 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 minimize effects on agriculture and agricultural water user facilities, a 15-foot wide ditch easement shall be provided on the northern boundary of the subdivision, outside of the Grand Avenue right-of-way dedication, to ensure the continued use of irrigation water by downstream users to the east. A 15-foot wide ditch easement shall be provided on the western boundary of the subdivision for the benefit of downstream users, unless a signed agreement with all downstream users of this ditch lateral is provided prior to final plat approval, stating that the lateral can be abandoned. (*Required by Section 23-411, BMCC*)
2. To minimize effects on agriculture and agricultural water user facilities, the subdivider shall secure the written approval by the Birely Drain Board and the City of Billings Public Works Department of the transfer of the drain right-of-way parcel to the City of Billings prior to final plat approval. If approvals are not reached, the subdivider shall come up with a solution that is agreeable to all parties. The other possible options could include extending the property lines of the lots fronting the drain to the far westerly boundary line, dedicating the drain right-of-way tract to the Birely Drain, or retaining the drain tract in private ownership. (*Recommended by Engineering*)

3. 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)*
4. 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 prior to final plat approval. *(Recommended by the United States Postal Service)*
5. To bring the subdivision into compliance with state and local laws, the Corrected Certificate of Survey 3139 shall be recorded prior to final plat approval. *(Recommended by Planning Division)*
6. To minimize effects on local services, calculations supporting the percentage contributions at the intersections of 54<sup>th</sup> St. West & Grand Ave., and 56<sup>th</sup> St. West & Grand Ave. 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 Subdivision Improvements Agreement (SIA) Section III.A.4. *(Recommended by Engineering Division)*
7. To minimize effects on local services, the cash payment in lieu of parkland dedication for both phases shall be paid prior to final plat approval, and Section VII. of the SIA shall be amended to reflect this requirement. *(Required by Section 23-1006, BMCC)*
8. To minimize effects on public health and safety Section II.B. of the SIA shall be replaced with the following language: *(Recommended by Planning Division)*

“Lot owners should be aware that a geotechnical investigation and report was completed on 8/11/08 for this property which identified the following recommendations for individual lots prior to house construction.

- For structures with foundations constructed within five feet of natural grade, prior to building permit approval, written verification from a Geotechnical Engineer shall be obtained that foundation preparation and fill material are in compliance with Section 5.3 and Appendix B of the report. Foundations within 3.5 feet of original grade require over-excavation by two feet in width and depth plus installation of geogrid fabric. The new fill requires compaction to 98%.
- For structures with foundations constructed deeper than five feet of natural grade, prior to building permit approval, an engineered design will be required for a deep foundation system.

A copy of the entire geotechnical report is available for review at the City Building and/or Planning Division offices.”

9. To bring the subdivision into compliance with state and local laws, SIA, Section X.A. shall be amended as follows:  
Second paragraph, first sentence shall be rewritten to state “The subdivider and City agree that the subdivider will construct or provide monetary guarantee as outlined herein for Phase I improvements prior to final plat approval.” *(Recommended by Planning Division, required by Section 23-502.D., BMCC)*
10. To minimize effects on local services, a preliminary storm drain report is required to provide an analysis on the capacity of the storm water pond to ensure adequate space is available. This report and a copy of the Stormwater Pollution Prevention Program (SWPPP) application to MDEQ shall be submitted to the City Engineering and City Environmental Affairs divisions. *(Recommended by Engineering and Environmental Affairs Divisions)*
11. To minimize effects on local services, a recordable document for the 30-foot wide temporary emergency access easement through Lot 1, Block 8 to 56<sup>th</sup> St. West shall be provided with the final plat documents. *(Recommended by Planning Division)*
12. 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)*
13. To minimize effects on local services, the Homeowners’ Association articles of incorporation and by-laws shall be provided with the final plat documents, and the documents shall establish a procedure and funding mechanism for maintenance of the private parks. *(Required by Section 23-11002.D., BMCC)*
14. To minimize effects on local services, the parkland strips shown on the north and east side of Lot 4, Block 1, between Lots 11 and 12 of Block 2, and between Lots 16 and 17 of Block 1 shall be dedicated to the City on the final plat as public rights-of-way.  
*(Recommended by Engineering Division)*
15. 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.
16. 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 June 23, 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. Two adjacent property owners from across 56<sup>th</sup> St. West provided testimony on the proposed subdivision. They expressed concerns with the presence of high groundwater, and possible impact of the subdivision on the quality and quantity of their wells. Also, the neighbors noted that there is a lot of agricultural equipment moved on the roads in the area, which could present a possible safety issue when the traffic associated with 73 new houses is added. Other questions were raised in terms of the impact of the subdivision on the wildlife habitat in the Birely Drain, and the distance of the subdivision from the urban area.

The applicant and his agents testified in favor of the application and provided comments on the neighbors' concerns. It was noted that the land will no longer be irrigated, which will likely result in a lower water table. However, a stormwater retention pond constructed for this subdivision will provide some recharge for the aquifer, and hopefully preserve the well depths for the area wells. Also, the applicant noted that the subdivision streets would be built up by one and one-half feet, thus raising the finish grade for the homes and potentially allowing basements to be constructed more easily. Traffic considerations were also discussed and it was noted that reduced speed limits for Grand Ave. and 56<sup>th</sup> St. West could be evaluated by the County after a speed study is conducted by the Montana Department of Transportation (MDT). However, a request for such a study would have to be submitted to MDT by the County.

The applicant also presented a request to phase the payments for cash-in-lieu of parkland dedication in two phases consistent with the public infrastructure phasing plan. Staff indicated that this was not the typical procedure, and that the subdivision regulations require full payment at the time of final plat filing. Staff's concern was that there would not be a "trigger" requiring the 2<sup>nd</sup> phase payment after the final plat was recorded. The applicant was interested in placing a 'Restriction on Transfers and Conveyances' of those 2<sup>nd</sup> phase lots until after the 2<sup>nd</sup> phase park payment was made. The Parks Department staff would have to then sign a release document nullifying the restriction. Planning Board did not take action to change the original staff recommendation, as found in Condition #7, to require payment for both phases prior to final plat approval.

## **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**

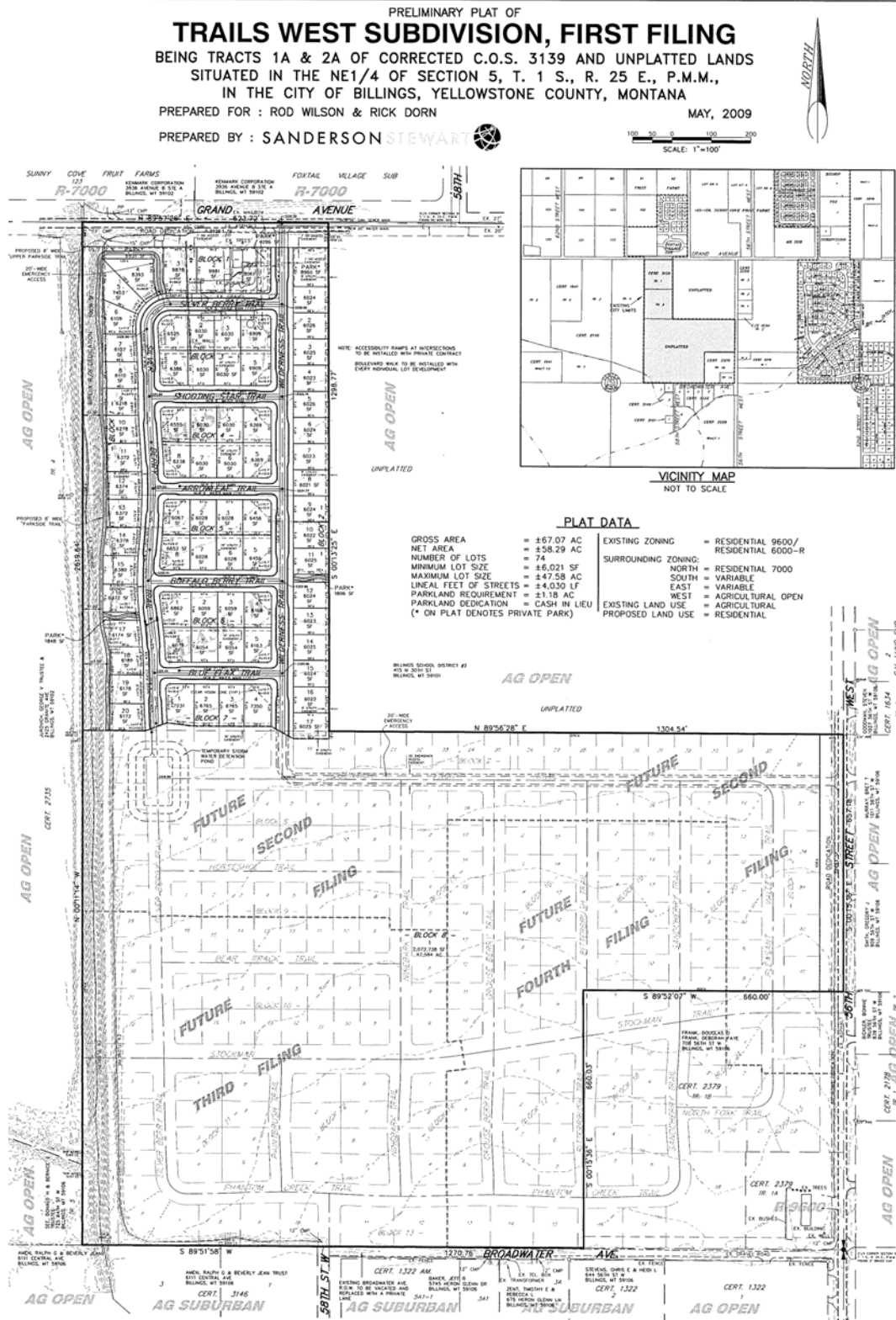


The Planning Board on a 8-0 vote recommends conditional approval of the preliminary plat of Trails West Subdivision, 1<sup>st</sup> Filing, and adoption of the Findings of Fact as presented in the staff report to the City Council.

**ATTACHMENTS**

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

# ATTACHMENT A -- Preliminary Plat of Trails West Subdivision, 1<sup>st</sup> Filing



## **ATTACHMENT B**

### Photos of Site



Figure 1: From SW corner of Grand Ave. and 56<sup>th</sup> St. West, looking west. Fallow field is School District property. Homestead in background is on subject property.



Figure 3: From the southwest corner of the subject property looking north up Birely Drain on western edge of the subject property.



## **ATTACHMENT C**

### **Findings of Fact**

The Planning Board is forwarding the recommended Findings of Fact for the preliminary plat of Trails West Subdivision, 1<sup>st</sup> Filing 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 irrigated agricultural land planted with a wheat crop. The property is irrigated from the High Ditch, which is located about a half mile north of the property. From the ditch, a pipe runs down through Foxtail Village Subdivision to a headgate near the northwest corner of the property. There are lateral ditches running along the north and west sides of the property. The ditch on the north side provides irrigation to the school district property on the southwest corner of 56<sup>th</sup> St. West and Grand Ave. and will need to be preserved in an easement to ensure the school district's continued use of its water rights (**Condition #1**).

The west ditch provides irrigation water to the subject property as well as to two properties to the south (property owners Amen and Smith). The proposal is for the west ditch to go away with this development, as this property will no longer be farmed and adjacent property owners Amen and Smith have signed an agreement with the developers saying that they do not need the ditch anymore for their properties to the south. Evidence of this agreement will need to be provided prior to final plat approval, or an easement will need to be provided on the final plat to ensure the neighboring properties' can continue to use the ditch lateral as they have historically (**Condition #1**). The water rights for the subject property have been released. A note shall be added to the SIA indicating that no water rights are being transferred to subsequent owners.

The Birely Drain is located on the western border of the subject property and is maintained within a prescriptive drainage easement. The subdivider is proposing to dedicate a drain right-of-way ranging from 51 to 69 feet wide to the City of Billings Public Works Department. The Public Works Department is agreeable to this dedication due to the future stormwater management possibilities that the drain may provide. The subdivider shall secure the approval by the Birely Drain Association and the City of Billings Public Works Department of the transfer of this drain right-of-way parcel to the City of Billings prior to final plat approval. If approvals are not reached, the subdivider shall come up with a solution that is agreeable to all parties. The other options would be to extend the lot lines fronting the drain to the far westerly boundary line, to dedicate the drain right-of-way tract to the Birely Drain Association, or to retain the drain tract in private ownership (**Condition #2**).

##### **2. Effect on local services**

- a. **Utilities** – Public water and sewer services will be provided to the future lots through lines within the internal subdivision streets extended from the main lines within Grand Avenue. Because gravity sewer is not feasible for this first filing, the subdivider is proposing to install low-pressure sanitary sewer mains and require the installation of individual low-pressure sanitary sewer lines and grinder pumps in each household. A note regarding this requirement is found in the “Conditions that Run with the Land” section of the SIA. Private electric and gas utilities will be served by Yellowstone Valley Electric Cooperative 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 #3**).
- 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 a temporary retention/detention pond located at the terminus of Silver Berry Trail. This stormwater facility will be abandoned when future filings are developed and retention facilities are created elsewhere in the subdivision. A preliminary storm drain report is required to be submitted to City Public Works prior to final plat approval (**Condition #10**). 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 of Billings can provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** - Access to this proposed 1<sup>st</sup> Filing will be via internal streets from Grand Ave. Street improvements will be done in two phases, as outlined in the SIA. The **internal subdivision streets** will be constructed to 34-foot pavement widths, with curb, gutter, and 5-foot wide boulevard style sidewalks within 56-foot wide rights-of-way. 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 #12**). These reviewing agencies 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 provide a second access to the subdivision, emergency access roads are being proposed in two phases. With the first phase of development, an emergency access will be constructed between Lots 3 & 4, Block 1 out to Grand Ave. This gravel-surfaced road will be abandoned once Phase II development begins. Phase II will trigger the development of an emergency access road down off the end of Wilderness Trail, then east to 56<sup>th</sup> St. West, within a 30-foot wide temporary emergency access easement to be filed with the final plat (**Condition #11**). Both emergency accesses will be built to City standards with an all-weather surface sufficient to hold emergency apparatus, with a width of 20 feet, and gated and posted with the appropriate signage on both ends.

**Grand Avenue**, located on the north property line of the subject property, and **56<sup>th</sup> Street West**, located on a portion of the subdivision’s east boundary, are identified as a principal

arterial streets. As such, 60-foot wide half-width rights-of-way are being dedicated with this plat. In lieu of making partial improvements at this time, the subdivider will make a cash-in-lieu contribution for the construction of Grand Avenue directly adjacent to the subdivision based on one-half the difference in cost between constructing a residential street, and the existing-24 foot wide roadway. The cash-in-lieu contribution will include sub-base, base course, asphalt paving, standard curb & gutter, 5-foot wide boulevard sidewalks, and estimated engineering design and construction administration costs. Regardless of when Grand Ave. is improved with the above contributions, the subdivider is required to construct an auxiliary turn lane on Grand Ave. as part of the Phase II improvements. This should help mitigate traffic congestion at this intersection. This turn lane shall meet applicable AASHTO and City standards for width, tapers, deceleration, and storage length, and will be reviewed and approved by the City of Billings before construction. Contributions for 56<sup>th</sup> St. West improvements will be made when future filings are proposed or when Lot 1, Block 8 is further developed, whichever comes first.

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 Grand Avenue and 54<sup>th</sup> Street West, and at Grand Avenue and 56<sup>th</sup> Street West. These intersections were identified in the Traffic Impact Study as being affected by the proposed subdivision. The required 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 #6**).

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located within one mile of the subdivision at 54<sup>th</sup> St. West and Grand Avenue (Station #7). The Fire Department finds the proposed layout will provide adequate emergency access.
- 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. Students from the proposed subdivision will attend Central Heights Elementary School, Lewis and Clark Middle School, and Senior High School. These assignments will necessitate bussing of the students. However, SD#2 also owns property for a potential new elementary school north of Grand Ave. and 54<sup>th</sup> St. West and a new middle school at the southwest corner of 56<sup>th</sup> St. W. and Grand Ave. No plans or funding for those schools have been approved at this time.
- g. **Parks and Recreation** – In accordance with State and City laws, the subdivider is required to provide a minimum of 1.18 acres of parkland. The subdivider has proposed to meet this

requirement by providing cash in lieu of land dedication, with the contribution for the First Filing made in two phases. The Parks Department staff is agreeable to this phased payment schedule provided certain requirements are met as listed in **Condition #7**. Specifically, the first phase payment would need to be made prior to final plat approval, while the second payment would need to be made prior to the release of the second phase. In order to ensure the second phase payment is made, the Parks Department staff will sign off on the Release document for the Restrictions on Transfers and Conveyances that will be recorded with the final plat.

In addition to cash, the developer is proposing to provide five small private parkland tracts as shown on the plat, ranging between 1,806 and 8,960 square feet in size. These tracts serve as entryway features and connections to the trail on the western property line and the future school site on the east. The City Engineering staff has requested that the three park tracts serving as trail connectors be dedicated to the City as public right-of-way, thus removing them from the tax rolls and providing assurance that they will remain as public walkways in the future (**Condition #14**). The two larger entryway parks will remain privately owned by the developer and maintained by the homeowners' association. In addition, an 8-foot wide multi-use trail built to City Standards is proposed on the western property line within the Birely Drain right-of-way tract. This trail is proposed to be for public use, and maintained by the homeowners' association. Because the trail and park amenities are proposed to be maintained privately, it is recommended as a condition of approval that the Homeowners' Association be established, and a funding mechanism for maintenance of the private parks and public trail be detailed prior to final plat approval (**Condition #13**).

- 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 #4**). 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, due to high groundwater levels in the area, foundation designs will require written verification from a Geotechnical Engineer prior to building permit issuance. These specifications are to be listed in the final SIA (**Condition #8**).

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

There are no known endangered or threatened species on the property. The Birely Drain corridor provides habitat for numerous birds and other wildlife, and will be left in a natural state with this subdivision. 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: 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)**

The proposed subdivision is **not consistent** with the following goals:

- **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)**

**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.**

**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.**

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

Grand Ave. and 56<sup>th</sup> St. West are identified as principal arterial streets. The subdivider has provided the necessary right-of-way dedications for these streets, and will contribute to their improvements as noted above in the streets section. All other internal streets will be constructed in two phases to City local street specifications.

#### **5. Heritage Trail Plan**

The Heritage Trail Plan does not identify any trail corridors within the proposed subdivision area. However, the subdivider has indicated plans to construct an 8-foot wide trail system along the east side of the Birely Drain, within the right-of-way proposed to be dedicated to the City. The City is agreeable to the trail, if it is built to City standards and if the connections to the trail are also dedicated to the City as public right-of-way (see **Condition #14**). These voluntary trail improvements will enhance connectivity within this neighborhood and to other surrounding neighborhoods that may be eventually built, and to the possible future school site at the southwest corner of 56<sup>th</sup> St. West and Grand Ave.

#### **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 two exceptions. First, the title on the plat identifies the legal description for the property as a corrected Certificate of Survey that has not yet been recorded. **Condition #5** requires the legal description to be accurate on the final plat. Also, language within the SIA Phasing of Improvements Section (Section X.A.) indicates that the first phase improvements would need to be guaranteed prior to building permit issuance. Section 23-502.D. of the City Subdivision Regulations requires that first phase improvements be guaranteed prior to final plat approval. **Condition #9** requires that the final SIA be amended to reflect this requirement.

#### **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 subject property is zoned R60-R and R-96. 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. **Condition #3** 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 Grand Ave.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Trails West Subdivision, 1<sup>st</sup> Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to some of the 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, July 13, 2009.

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Ron Tussing, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

July 14, 2009

Dorn-Wilson Development, LLC  
100 Emerald Drive  
Billings, MT 59105

Douglas and Deborah Frank  
708 56<sup>th</sup> St. West  
Billings, MT 59106

Ronald Frank  
485 McFarland Rd.  
Molt, MT 59057

Dear Owners/Applicants:

On July 13, 2009, the Billings City Council conditionally approved the preliminary plat of Trails West Subdivision, 1<sup>st</sup> Filing. The conditions of approval are as follows:

1. To minimize effects on agriculture and agricultural water user facilities, a 15-foot wide ditch easement shall be provided on the northern boundary of the subdivision, outside of the Grand Avenue right-of-way dedication, to ensure the continued use of irrigation water by downstream users to the east. A 15-foot wide ditch easement shall be provided on the western boundary of the subdivision for the benefit of downstream users, unless a signed agreement with all downstream users of this ditch lateral is provided prior to final plat approval, stating that the lateral can be abandoned.
2. To minimize effects on agriculture and agricultural water user facilities, the subdivider shall secure the written approval by the Birely Drain Board and the City of Billings Public Works Department of the transfer of the drain right-of-way parcel to the City of Billings prior to final plat approval. If approvals are not reached, the subdivider shall come up with a solution that is agreeable to all parties. The other possible options could include extending the property lines of the lots fronting the drain to the far westerly boundary line, dedicating the drain right-of-way tract to the Birely Drain, or retaining the drain tract in private ownership.
3. 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.

4. 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.
5. To bring the subdivision into compliance with state and local laws, the Corrected Certificate of Survey 3139 shall be recorded prior to final plat approval.
6. To minimize effects on local services, calculations supporting the percentage contributions at the intersections of 54<sup>th</sup> St. West & Grand Ave., and 56<sup>th</sup> St. West & Grand Ave. 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 Subdivision Improvements Agreement (SIA) Section III.A.4.
7. To minimize effects on local services, the cash payment in lieu of parkland dedication shall be paid in phases, with the first phase cash payment in lieu of parkland dedication paid prior to final plat approval. Second phase cash payment in lieu of parkland dedication shall be paid prior to second phase development. An additional, updated comparative market analysis shall be used to determine the parkland dedication amount in accordance with Section 23-1006, BMCC, prior to the second phase cash payment. In addition, the City of Billings Parks and Recreation Department shall be signatory to the release document for the Declaration of Restrictions on Conveyances and Transfers prior to Phase II development. Section VII. of the SIA shall be amended to reflect this requirement.
8. To minimize effects on public health and safety Section II.B. of the SIA shall be replaced with the following language:

“Lot owners should be aware that a geotechnical investigation and report was completed on 8/11/08 for this property which identified the following recommendations for individual lots prior to house construction.

- For structures with foundations constructed within five feet of natural grade, prior to building permit approval, written verification from a Geotechnical Engineer shall be obtained that foundation preparation and fill material are in compliance with Section 5.3 and Appendix B of the report. Foundations within 3.5 feet of original grade require over-excavation by two feet in width and depth plus installation of geogrid fabric. The new fill requires compaction to 98%.
- For structures with foundations constructed deeper than five feet of natural grade, prior to building permit approval, an engineered design will be required for a deep foundation system.

A copy of the entire geotechnical report is available for review at the City Building and/or Planning Division offices.”

9. To bring the subdivision into compliance with state and local laws, SIA, Section X.A. shall be amended as follows:  
Second paragraph, first sentence shall be rewritten to state “The subdivider and City agree that the subdivider will construct or provide monetary guarantee as outlined herein for Phase I improvements prior to final plat approval.”
10. To minimize effects on local services, a preliminary storm drain report is required to provide an analysis on the capacity of the storm water pond to ensure adequate space is available. This report and a copy of the Stormwater Pollution Prevention Program (SWPPP) application to MDEQ shall be submitted to the City Engineering and City Environmental Affairs divisions.
11. To minimize effects on local services, a recordable document for the 30-foot wide temporary emergency access easement through Lot 1, Block 8 to 56<sup>th</sup> St. West shall be provided with the final plat documents.
12. 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.
13. To minimize effects on local services, the Homeowners’ Association articles of incorporation and by-laws shall be provided with the final plat documents, and the documents shall establish a procedure and funding mechanism for maintenance of the private parks.
14. To minimize effects on local services, the parkland strips shown on the north and east side of Lot 4, Block 1, between Lots 11 and 12 of Block 2, and between Lots 16 and 17 of Block 1 shall be dedicated to the City on the final plat as public rights-of-way.
15. 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.
16. 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](mailto:spaldingj@ci.billings.mt.us).

Sincerely,

---

Ron Tussing, Mayor

Pc: Will Ralph, Sanderson Stewart

# R1



AGENDA ITEM:

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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

Monday, July 13, 2009

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TITLE: Final Plat of Bergquist Subdivision, Amended Lots 2 & 3, Block 1

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** The final plat for Bergquist Subdivision, Amended Lots 2 & 3, Block 1 is being presented to Council for approval. On June 12, 2006, the City Council conditionally approved this two-lot subdivision for multi-family residential development. The subject property is located on the north side of Pemberton Lane, just west of Main Street. The subdivision plat does not create any additional lots, but merely relocates a platted one-foot no-access strip along Pemberton Lane. No new Subdivision Improvement Agreement is proposed. The property is zoned Community Commercial and is developed with Residential Multi-Family units. The owner and subdivider is Cal Kunkel of Heritage Designer Homes, and the representing agent is Sanderson Stewart. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

### RECOMMENDATION

Staff recommends that the City Council approve the final plat of Bergquist Subdivision, Amended Lots 2 & 3, Block 1.

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

### ATTACHMENT

A: Final Plat

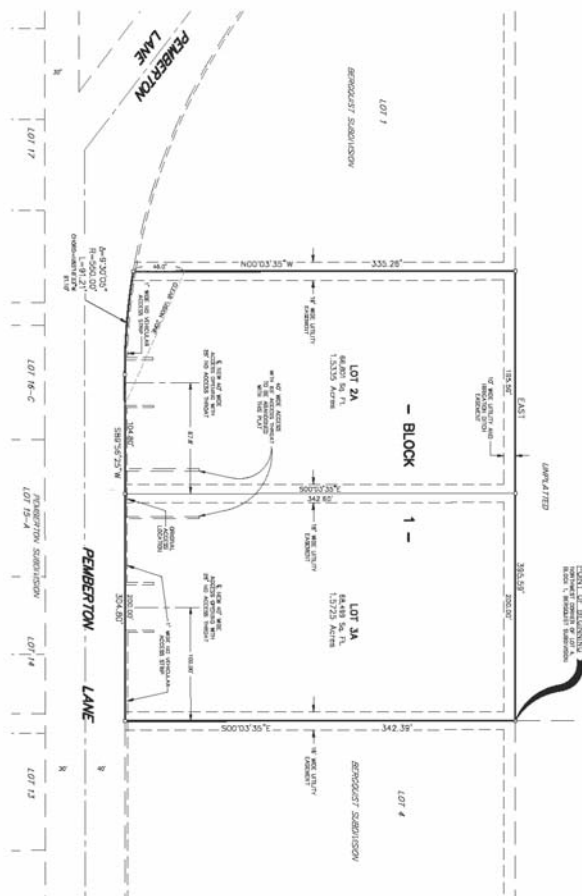
PREPARED FOR : CAL KUNKEL  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1"=40'

PLAT OF AMENDED LOTS 2 AND 3, BLOCK 1,  
**BERGQUIST SUBDIVISION**  
SITUATED IN THE NE1/4 OF SECTION 15, T. 1 N., R. 26 E., P.M.M.  
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

FEBRUARY, 2007  
BILLINGS, MONTANA



BASED ON RECORDS PLAT OF BERGQUIST SUBDIVISION,  
TOWN OF BILLINGS, MONTANA, BEING WITH CAP MARKED  
TOWN OF BILLINGS, MONTANA



**CERTIFICATE OF CITY CLERK, MONTANA**

I, the undersigned, Clerk of the City of Billings, Montana, do hereby certify that the foregoing plat of Block 1, Lots 2A, 3A, and 4, is a true and correct copy of the original plat on file in the City Clerk's Office, and that the same has been duly recorded in the public records of the City of Billings, Montana.

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

**CERTIFICATE OF CITY CLERK, MONTANA**

I, the undersigned, Clerk of the City of Billings, Montana, do hereby certify that the foregoing plat of Block 1, Lots 2A, 3A, and 4, is a true and correct copy of the original plat on file in the City Clerk's Office, and that the same has been duly recorded in the public records of the City of Billings, Montana.

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

**CERTIFICATE OF SURVEY - RELOCATION OF THE ADJACENT STREET**

The undersigned, Surveyor, do hereby certify that the foregoing plat of Block 1, Lots 2A, 3A, and 4, is a true and correct copy of the original plat on file in the City Clerk's Office, and that the same has been duly recorded in the public records of the City of Billings, Montana.

By \_\_\_\_\_  
Surveyor

**CERTIFICATE OF SURVEY**

The undersigned, Surveyor, do hereby certify that the foregoing plat of Block 1, Lots 2A, 3A, and 4, is a true and correct copy of the original plat on file in the City Clerk's Office, and that the same has been duly recorded in the public records of the City of Billings, Montana.

By \_\_\_\_\_  
Surveyor

**CERTIFICATE OF CITY CLERK, MONTANA**

I, the undersigned, Clerk of the City of Billings, Montana, do hereby certify that the foregoing plat of Block 1, Lots 2A, 3A, and 4, is a true and correct copy of the original plat on file in the City Clerk's Office, and that the same has been duly recorded in the public records of the City of Billings, Montana.

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



# R2

AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

Monday, July 13, 2009

---

TITLE: Final Plat of Central West Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** The final plat for Central West Subdivision is being presented to Council for approval. On June 11, 2007, the City Council conditionally approved two lots on approximately 8.87 acres for residential and commercial development. The subject property is located on the southeast corner of the intersection of Central Avenue and Brookshire Boulevard and is addressed as 2810 Central Avenue. Since that time, a final plat was approved by City Council on October 9, 2007, and later rescinded by Council on March 24, 2008 due to legal issues with the plat. The owner is Design Builders, Inc. and the agent is Dowl-HKM Engineering, Inc. The Central Business Park commercial office structure exists on the northern portion of the property along Central Avenue and is zoned Residential Professional (RP); the southern portion of the property is zoned Residential Multi-Family Restricted and has recently been developed with residential condominiums. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

### RECOMMENDATION

Staff recommends that the City Council approve the final plat of Central West Subdivision.

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

### ATTACHMENT

A: Plat

## 150 of 202

# R3

AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

Monday, July 13, 2009

---

TITLE: Final Plat of Lake Hills Subdivision, 31<sup>st</sup> Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

---

**PROBLEM/ISSUE STATEMENT:** The final plat for Lake Hills Subdivision, 31<sup>st</sup> Filing, is being presented to Council for approval. On December 17, 2007, the City Council conditionally approved 5 lots on approximately 90 acres for residential development. Four lots on about 1.5 acres are planned for residential development while the bulk of the subject property depicted as Lot 5 is the existing Lake Hills Golf Course. The subject property is located on the east side of Club House Way and is on both sides of the existing Lake Hills Golf Club. The four residential lots are zoned Residential 8000 and the golf course portion is zoned Public. The owner and subdivider is the Lake Hills Golf Club A Montana Corporation, and the representing agent is Blue Line Engineering. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

### RECOMMENDATION

Staff recommends that the City Council approve the final plat of Lake Hills Subdivision, 31<sup>st</sup> Filing.

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

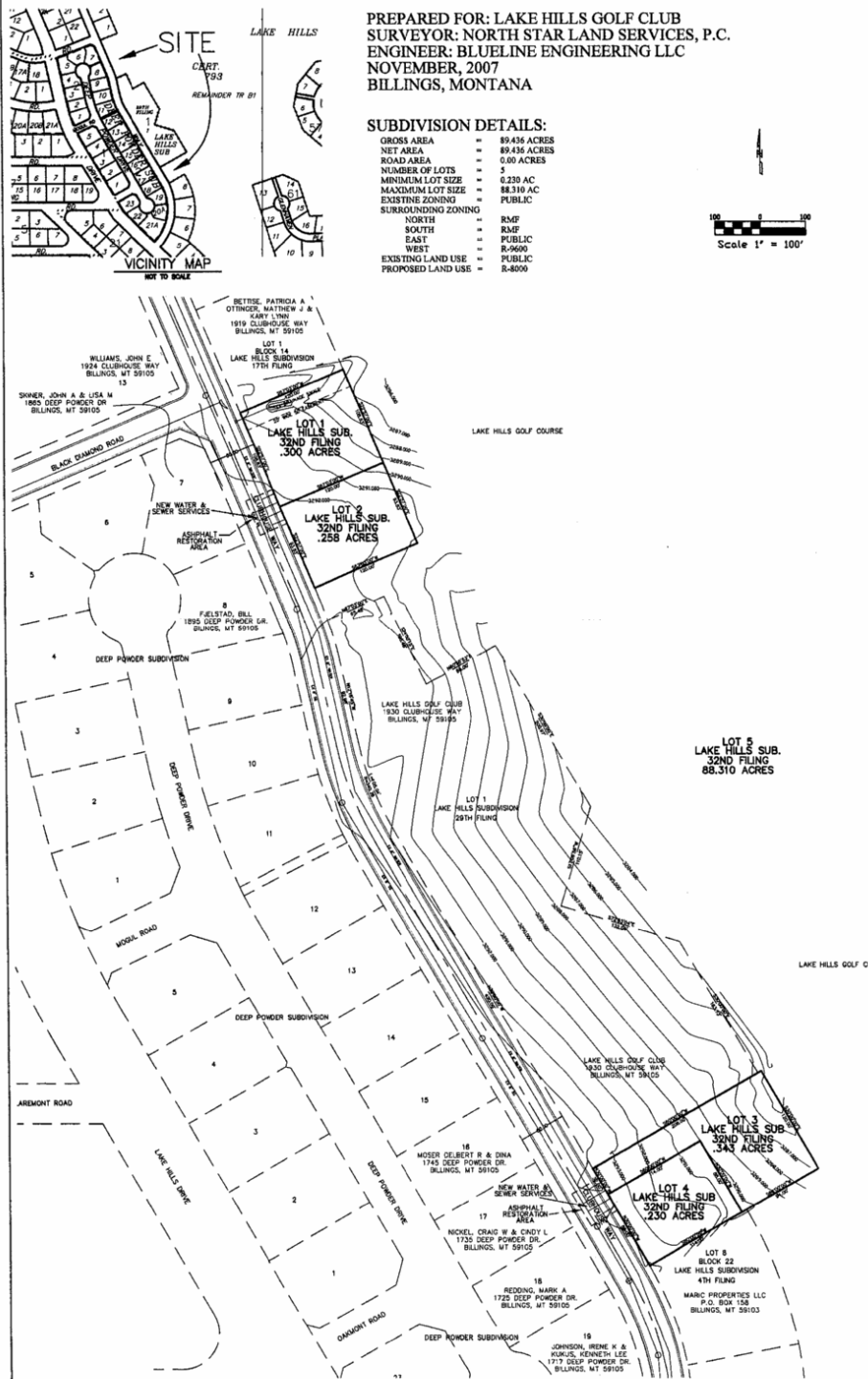
### ATTACHMENT

A: Plat

BEING A PORTION OF TRACT B1, CERTIFICATE OF SURVEY No. 793  
SITUATED IN THE SW 1/4, OF SECTION 16, T. 1 N., R. 26 E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA

**SUBDIVISION DETAILS:**

GROSS AREA	=	89.436 ACRES
NET AREA	=	89.436 ACRES
ROAD AREA	=	0.00 ACRES
NUMBER OF LOTS	=	5
MINIMUM LOT SIZE	=	0.230 AC
MAXIMUM LOT SIZE	=	88.310 AC
EXISTING ZONING	=	PUBLIC
SURROUNDING ZONING		
NORTH	=	RMF
SOUTH	=	RMF
EAST	=	PUBLIC
WEST	=	R-9600
EXISTING LAND USE	=	PUBLIC
PROPOSED LAND USE	=	R-8000



# S1

AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, July 13, 2009

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$744,723.58 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 12, 2009, in the Finance Department.

### RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

# S2

AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

Monday, July 13, 2009

---

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

---

**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,968,281.18 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 19, 2009, in the Finance Department.

### RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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




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

---

**TITLE:** Resolution Relating to \$509,000 Pooled Special Improvement Districts Bonds, Authorizing the Issuance and Calling for the Negotiated Sale Thereof

**DEPARTMENT:** Administration-Finance Division

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

---

**PROBLEM/ISSUE STATEMENT:** The City Council has previously approved Special Improvement District (SID) projects 1372 and 1386. Construction has been completed for SID 1372. The recommendation for awarding the contract for SID 1386 will be on the July 27, 2009 agenda. The following resolution authorizes the sale of \$509,000 in bonds for financing of the projects listed below.

The 2009 Montana Legislative Session increased the amount to \$1 million for negotiated sales with financial institutions. Several banks have stated they don't want to bid on anything under \$1 million. Given the City's recent history on receiving bids for SIDs, and financing is required to finish the construction on SID 1386 and SID 1372 has been completed, the bonds will be sold through a negotiated sale with Wells Fargo.

**FINANCIAL IMPACT:**

SID 1372-Summerhill Subdivision	
Sanitary sewer and water mains, curb, gutter and street improvements	\$292,000
SID 1386- East and West MacDonald Drive	
Water and sewer replacement and street improvements	\$217,000

**RECOMMENDATION**

Staff recommends City Council approve the attached resolution.

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

**CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE**

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO POOLED SPECIAL IMPROVEMENT DISTRICT BONDS, SERIES 2009 (SPECIAL IMPROVEMENT DISTRICT NOS. 1372 AND 1386), IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$509,000; AUTHORIZING THE ISSUANCE AND SALE THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on July 13, 2009, and that such meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following City Council members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_  
\_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of July, 2009.

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



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

**RESOLUTION RELATING TO POOLED SPECIAL  
IMPROVEMENT DISTRICT BONDS, SERIES 2009  
(SPECIAL IMPROVEMENT DISTRICT NOS. 1372 AND  
1386), IN THE ORIGINAL AGGREGATE PRINCIPAL  
AMOUNT OF \$509,000; AUTHORIZING THE ISSUANCE  
AND SALE THEREOF**

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

Section 1.     Recitals.

(a)     This Council has duly and validly created and established in the City various special improvement districts, designated as (i) Special Improvement District No. 1372 ("District No. 1372"), and (ii) Special Improvement District No. 1386 ("District No. 1386") (individually a "District" and, collectively, the "Districts"). The Districts were established by the City for the purpose of financing costs of certain public improvements of special benefit to the properties within the Districts (the "Improvements") and paying costs incidental thereto, including (i) costs associated with the sale and the security of the City's Pooled Special Improvement District Bonds, Series 2009 (Special Improvement District Nos. 1372 and 1386) (the "Bonds"), (ii) the creation and administration of the Districts, and (iii) funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The funds for the payment of the Bonds are to be specially assessed against the property owners in each District.

The Districts were established by the City pursuant to the powers granted under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Districts is \$509,000. With respect to District No. 1372, total estimated costs of the Improvements are \$574,080, of which an estimated \$324,480 will be funded from a cash contribution by Jeff Essman, the owner of 13 of the 23 lots in District No. 1372, , and an estimated \$249,600 will be funded by proceeds of the Bonds, pursuant to City Council Resolution No. 08-18688, adopted March 10, 2008, and City Council Resolution No. 08-18700, adopted April 14, 2008. With respect to District No. 1386, total estimated costs of the improvements are \$333,453, of which \$147,316 will be funded by prepayments by benefited property owners and the City of Billings and \$186,137 will be funded with proceeds of the Bonds, pursuant to City Council Resolution No. 09-18804, adopted April 13, 2009, and City Council Resolution No. 09-18816, adopted May 11, 2009. Pursuant to this Resolution, the Districts will be pooled, and Bonds will be issued in an amount not to exceed \$509,000. The Bonds are to be payable primarily from special assessments to be levied against property in the Districts, which property will be specially benefitted by the Improvements in an amount not less than \$509,000.

(b) It is necessary that the Bonds be issued and sold in an original aggregate principal amount of \$509,000 to finance the costs of the Improvements within each of the Districts, including incidental costs, described in Subsection (a) of this Section 1. The costs of the Improvements are currently estimated as follows:

District Number 1372

Construction	249,599.84
Administrative (design and construction)	10,220
Revolving Fund Deposit	14,600
Costs of Issuance	9,844
Finance Fees	7,300
Rounding	<u>436.16</u>
Total	292,000

District Number 1386

Construction	186,137.48
Administrative (design and construction)	7,595
Revolving Fund Deposit	10,850
Costs of Issuance	7,327
Finance Fees	5,425
Rounding	<u>(334.48)</u>
Total	217,000

(c) As noted above, Jeff Essman, the owner of 13 of the 23 lots in District No. 1372, will pay a cash contribution to the project in the estimated amount of \$324,480. The total cash contribution represents 56.52% of the construction and administrative costs of the Improvements in District No. 1372.

(d) The City is authorized, pursuant to Section 7-12-4193 of the Act, to issue and sell special improvement district bonds of more than one district in a single offering on a pooled basis upon a determination that such pooling is in the best interests of the Districts and the City.

(e) The City is further authorized, pursuant to Section 7-12-4204(1) of the Act, to sell the Bonds at a price less than the principal amount thereof, but including interests thereon to the date of delivery, if this Council determines that such a sale is in the best interests of the Districts and the City.

Section 2. Determination of Public Interest in Allowing Bond Discount and Permitting Pooling of Bonds. Pursuant to the authority described in Section 1, this Council

hereby determines that the issuance and sale of the Bonds in a pooled single offering for the following Districts in the respective principal amounts set forth below is in the best interest of each of the Districts and the City and will facilitate the sale of the Bonds because (i) the size of the issue will attract more interest in the marketplace and thus help to lower interest rate on the Bonds, and (ii) a single issue will reduce the costs of issuance of the Bonds.

<u>District Number</u>	<u>Principal Amount</u>
1372	\$292,000
1386	\$217,000

Section 3. Findings and Determination to Pledge the Revolving Fund. This Council previously found it to be in the public interest and in the best interest of the City and the Districts to secure payment of principal of and interest on the Bonds with a pledge of the Revolving Fund. This Council also previously authorized the City to enter into the undertaking and agreements authorized in the Act in respect of the Bonds. The specific findings required by Section 7-12-4225 of the Act in order to pledge the Revolving Fund to the Bonds were made by this Council pursuant to Resolution No. 08-18688 (with respect to District No. 1372), adopted on March 10, 2008, and Resolution No. 09-18804 (with respect to District 1386), adopted on April 13, 2009, and are hereby ratified and confirmed. It is hereby covenanted and recited that the City has the power under the Act to pledge the Revolving Fund to payment of the principal of and interest on the Bonds

Section 4. Findings and Determination to Negotiate Sale of the Bonds. Montana Code Annotated, Section 7-12-4204, as amended, permits the sale of bonds through a private negotiated sale if the bonds are (i) in an amount less than or equal to \$1,000,000; and (ii) sold to a financial institution, as referred to in Montana Code Annotated 32-1-102, that is authorized to conduct business in the State of Montana. Selling the Bonds in a negotiated sale will facilitate the sale of the Bonds at the lowest interest rates, which is in the best interests of the City and the property owners to be assessed. Because the Bonds will be sold by negotiated sale, notice of sale is not required, pursuant to Montana Code Annotated, Section 7-12-4204(3). The City Council hereby authorizes the negotiated sale of the Bonds and makes the following findings:

(a) The Bonds will be sold in an original aggregate principal amount estimated not to exceed \$509,000, which amount is less than \$1,000,000; and

(b) The Bonds will be sold to Wells Fargo Brokerage Services, LLC (“Wells Fargo”), a division of Wells Fargo Bank, National Association, authorized to do business in the State of Montana. Wells Fargo maintains substantial operations in the City.

Section 5. Terms of the Bonds. The City Council authorizes and directs the City Administrator and the City Clerk to negotiate the sale of the Bonds with Wells Fargo. The Bonds shall be issued as a single term bond and shall be in a minimum denomination of \$5,000 or any integral multiple thereof. The Bonds shall be dated the date of delivery thereof, and shall

bear interest payable semiannually on January 1 and July 1 of each year (each, a “Payment Date”), commencing January 1, 2010, at an interest rate or rates negotiated by the City and Wells Fargo. Principal of the Bonds shall be paid on each Payment Date, commencing January 1, 2010. The Bonds shall mature not later than July 1, 2024, and shall be subject to optional prepayment on any day after July 1, 2014.

The Bonds shall be issuable only as fully registered bonds, in book entry only form, and shall be executed by the manual or facsimile signatures of the Mayor, City Administrator and the City Clerk. The payment of principal and interest due on the Bonds shall be secured by the Revolving Fund.

Section 6. No Official Statement. Wells Fargo is not requiring the preparation of an Official Statement because it is anticipated that the Bonds are being privately placed with Wells Fargo.

Section 7. Continuing Disclosure. Wells Fargo need not comply with the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “Rule”), because the Bonds are in a principal amount less than \$1,000,000. Consequently, the City will not enter into any undertaking to provide continuing disclosure of any kind with respect to the Bonds, however, the City shall provide financial information to Wells Fargo as Wells Fargo reasonably requests.

Passed by the City Council of the City of Billings, Montana, this 13th day of July, 2009.

\_\_\_\_\_  
Mayor

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




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**AGENDA ITEM:**


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

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**TITLE:** Public Hearing and Resolution Authorizing Filing of the Annual Federal Transit Administration Section 5307 Grant

**DEPARTMENT:** Aviation and Transit Department

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

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**PROBLEM/ISSUE STATEMENT:** Each year the City of Billings MET Transit Division applies for a Federal Transit Administration (FTA) Section 5307 formula grant through the U.S. Department of Transportation's Federal Transit Act, SAFETEA-LU. Through this Act, grant funds are allocated each year for the MET, which can be utilized for both operating costs and capital assistance. For FY 09/10, as we have for a number of years, the MET is intending to utilize this grant for assistance with operating costs. This grant is funded on a 50% Federal, 50% local basis. The FTA will reimburse the City for 50% of MET's eligible operating expenses, up to the apportioned allocation for the year, which will be \$1,422,040 for FY 09/10.

In order to apply for this grant, it is necessary to include with the grant application, a resolution formally authorizing the Mayor to execute the grant agreement with the Department of Transportation (DOT). There is also a requirement for a public hearing for this grant application. Public hearing notices were published in the Billings Times on June 4 and June 11, advertising a public hearing on July 13, 2009.

**FINANCIAL IMPACT:** For FY 09/10, the Section 5307 Federal grant application for operating assistance is \$1,422,040, which represents approximately 35% of the MET's operating revenue. Without this grant revenue to offset operating costs, the MET would need to drastically reduce the service it provides to the community. This amount was budgeted in MET Transit's proposed FY 09/10 budget.

**RECOMMENDATION**

Staff recommends that following the public hearing, Council approve a resolution authorizing the filing of a grant application and the execution, by the Mayor, of a grant agreement with the

Department of Transportation, Federal Transit Administration, upon receipt of the grant offer provided under the authorization of the Federal SAFETEA-LU Act.

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

ATTACHMENT

A - Authorizing Resolution (2 pages).

AUTHORIZING RESOLUTION

RESOLUTION NO. 09-

A RESOLUTION AUTHORIZING THE FILING OF ALL APPLICATIONS WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION PLANNING, CAPITAL, TRAINING, DEMONSTRATION, AND/OR OPERATING ASSISTANCE GRANTS AUTHORIZED BY 49 U.S.C. CHAPTER 53, TITLE 23 UNITED STATES CODE, AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION

WHEREAS, the City of Billings has the power to enter into agreements with the Federal Transit Administration; and

WHEREAS, the Federal Transportation Administration has been delegated authority to award Federal financial assistance for mass transportation projects; and

WHEREAS, all contracts for financial assistance will impose certain obligations upon the applicant, including the provision for local share participation of project costs; and

WHEREAS, the applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project.

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

1. That the City of Billings Mayor is authorized to execute and file all applications on behalf of the City of Billings with the U.S. Department of Transportation, Federal Transit Administration to aid in the financing of all planning, capital, training, demonstration and/or operating assistance projects authorized by 49 U.S.C. Chapter 53, Title 23, United States Code, or other Federal statutes authorizing a project administered by the Federal Transit Administration.
2. That the City of Billings Mayor is authorized to execute and file with such applications the annual certifications and assurances, and any other documents required by the U.S. Department of Transportation, Federal Transit Administration effectuating the purpose of the proposed projects, including the local share.

3. That the City of Billings Mayor is authorized to execute grant and cooperative agreements with the U.S. Department of Transportation, Federal Transit Administration, on behalf of the City of Billings.
4. That the Transit Manager is designated to furnish such additional information as the U.S. Department of Transportation, Federal Transit Administration may require in connection with all the applications.

APPROVED this 13th day of July 2009.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

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

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### CERTIFICATE

The undersigned duly qualified and acting City Clerk of the City of Billings certifies that the foregoing is a true and correct copy of a Resolution, adopted at a legally convened meeting of the Billings City Council held on July 13, 2009.

If applicant has an Official Seal, impress here.

(Seal)

\_\_\_\_\_  
Signature of Recording Officer

\_\_\_\_\_  
Title of Recording Clerk

\_\_\_\_\_  
Date






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**AGENDA ITEM:**


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

---

**TITLE:** Public Hearing and Resolution to Create Light Maintenance District  
 SILMD 307 – Shiloh Road from Rimrock Road to Pierce Parkway

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** SILMD 307 is a street light district which will pay the energy and maintenance cost for the street lights along Shiloh Road from Rimrock Road to Pierce Parkway. At the June 8, 2009, and June 22, 2009, City Council meetings, Council respectively passed the Resolution of Intent to Create SILMD 307 and an Amended Resolution of Intent to Create SILMD 307. These resolutions also established a public hearing for creation of the proposed district for the July 13, 2009, Council meeting. Legal notices and a letter explaining the district and all protest procedures were mailed to each of the landowners in the proposed new district on June 25, 2009. Information on the number and percentage of property owner protests received will be presented at the public hearing. SILMD 307 was created on a lineal footage of property that abuts or shares a property boundary with Shiloh Road. The assessments to each property within the district are based on high-pressure sodium lights. There are 254 properties within the district, with an average yearly assessment of \$238.06. The largest yearly assessment of \$3,501.35 is assessed to JTL Group, Inc. and the smallest yearly assessment of \$5.59 is assessed to individual condo owners residing on the east side of Shiloh Road.

**ALTERNATIVES ANALYZED:**

1. Create SILMD 307 to provide a source of funding for operation and maintenance of the street lights.
2. Do not create SILMD 307 and either do not supply power to the street lights potentially creating a safety hazard, or develop another funding mechanism to pay for energy and maintenance.

**FINANCIAL IMPACT:** All maintenance and energy costs for this proposed light district would be paid for by assessments against properties within the district. The City's contribution to the District is \$7,912.74 per year based on City owned properties.

**RECOMMENDATION**

Staff recommends that Council pass Resolution Creating SILMD 307.

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

**ATTACHMENTS**

- A. District Boundary Map SILMD 307
- B. Resolution Creating SILMD 307

### Proposed Shiloh Road Light District Properties



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

A RESOLUTION CREATING SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 307 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF SECURING AND PROVIDING ENERGY AND MAINTENANCE FOR NEW HIGH PRESSURE SODIUM VAPOR LIGHTS, SETTING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATED RATE FOR ENERGY AND MAINTENANCE THEREOF, AN APPROXIMATE ESTIMATE OF THE COST OF MAINTAINING SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFORE FOR THE FIRST YEAR, AND THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COSTS.

WHEREAS, the City Council of the City of Billings, Montana, on the 22nd day of June, 2009, passed an Amended Resolution 09-18841, a Resolution of Intention to Create a Special Improvement Lighting Maintenance District designated as No. 307, setting the hearing on the creation of said District and hearing of protests against the extent and creation of said District, or any matter pertaining thereto, and thereafter gave notice by publication and mailing, all as required by law, and at said hearing which was held at the time and place specified in said Notice, all protests were heard and considered; and

WHEREAS, the City Council finds that the protests are insufficient to stop the creation of said district, and the protests are overruled and denied.

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

SECTION 1:

That the City Council of the City of Billings, Montana does hereby create a District, to be known and designated as Special Improvement Lighting Maintenance District No. 307, hereinafter called the District, for the purpose of securing and providing energy and maintenance for new street lights for lighting said District.

SECTION 2:

That the boundaries of the District are as set forth in Resolution of Intention No. 09-18841, hereinafter called the Resolution, on file in the office of the City Clerk of Billings, Montana, and by this reference is incorporated herein and made a part hereof.

SECTION 3:

That the City Council hereby finds and determines that each of the lots, blocks, pieces and parcels of land, situated within the boundaries of the District, are especially benefited and affected by said improvements, and each and all of the lots, blocks, pieces and parcels, more particularly described in the Resolution are hereby declared to be the property to be assessed for the cost and expense of the electrical energy for and maintenance of said District.

SECTION 4:

That the general character of the improvements to be made is hereby declared to be as described in the Resolution and is by this reference incorporated herein and made a part hereof.

SECTION 5:

That the City of Billings intends to establish the approximate contract rate for supplying electrical energy as \$6.12 per 150-watt high pressure sodium unit, \$10.27 per 250-watt high pressure sodium unit, \$15.26 per 400-watt high pressure sodium unit, and \$7.23 per 70-watt metal halide in accordance with the appropriate rate schedule approved by the Montana Public Service Commission. That NorthWestern Energy shall provide energy to the lighting fixtures. The City shall provide normal maintenance to lighting fixtures, poles, cables and other incidental equipment, and at all times own said lighting fixtures, poles, cables and other incidental equipment. Property owners within said district shall be assessed for the costs thereof.

SECTION 6:

That based upon the above figures, the estimate of the cost of the District for one year is the sum of \$60,466.65, and that the entire cost of said District shall be paid by the owners of property within said District. The estimated cost of the District per year for the property owners is on the basis of approximately \$1.29 per lineal foot, per year, of property that abuts the District. All of such costs of said District shall be paid by the owners of the property within the District with each lot, parcel or piece of land within said District to be assessed for that portion of the whole cost which its assessable abutting property boundary bears to the assessable boundary of the entire District, exclusive of streets, avenues, alleys, and public places.

SECTION 7:

That the entire cost of the District shall be paid by an annual assessment against the property in the District. That all monies derived from the collection of such assessments shall be paid into a fund to be known as the "Special Improvement Lighting Maintenance District No. 307 Maintenance Fund",

and warrants shall be drawn on said fund for the payment of such cost of maintaining said lights and supplying electrical current therefore.

SECTION 8:

That reference is hereby made to the Resolution, the maps, specifications, boundaries, perimeter and data pertaining to the District, on file in the offices of the City Clerk and City Engineer, for further particulars, all of which are made a part hereof.

PASSED by the City Council of the City of Billings, Montana and approved this 13th day of July, 2009.

THE CITY OF BILLINGS:

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

ATTEST:

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



## AGENDA ITEM:

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

**TITLE:** Public Hearing and Resolution for Vacation of a Portion of Clark Avenue within the 2300 Block

**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 23<sup>rd</sup> Street West to a dead end at their property. Clark Avenue will not be extended to 24<sup>th</sup> Street West due to the fact that a building is constructed on 24<sup>th</sup> 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 which will remain in an easement pursuant to state law. If the Parkins ever decide to build a structure over the vacated property, they will responsible to move the water line as approved by the City Engineer's Office.

**ALTERNATIVES ANALYZED:**

1. After holding a public hearing, approve the vacation of the above-mentioned right of way.
2. Do not approve the vacation of the right of way.

**FINANCIAL IMPACT:** 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 approve the vacation of a portion of Clark Avenue within the 2300 Block.

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

ATTACHMENT

- A. Map Depicting Area to be Vacated
- B. Resolution vacating a portion of Clark Avenue
- C. Comparison Sales letter from Realtor





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

A RESOLUTION OF THE CITY OF BILLINGS,  
MONTANA, DISCONTINUING AND VACATING **portion of  
Clark Avenue.**

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of **portion of Clark Avenue** as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

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

1. **DISCONTINUANCE AND VACATION.** Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., **portion of Clark Avenue** more particularly described as follows:

A tract of land situated in Amended Plat of Arnold Subdivision 2<sup>nd</sup> Filing in Billings, Yellowstone County, Montana, more particularly described as:

A portion of Clark Avenue adjacent to Lot 7, Block 5, Arnold Subdivision 2<sup>nd</sup> Filing, beginning at the northeast corner of Lot 7, Block 5 of Arnold Subdivision 2<sup>nd</sup> Filing said point being the southeast corner of the area of road to be vacated; thence S 89°57' W for a distance of 80 feet to the northwest corner of Lot 7, Block 5 said point being the southwest corner of the area of road to be vacated and a point on the west line of said subdivision; thence along the west line of said subdivision N 00°16' W a distance of 60 feet to the north right of way of Clark Avenue; thence along the right of way of Clark Avenue said line being the south line of Block 8 of Arnold Subdivision 2<sup>nd</sup> Filing N 89°57' E a distance of 80 feet; thence S 00°16' E a distance of 60 feet to the Point of Beginning. Containing 4,800 square feet.

Is hereby discontinued, abandoned and vacated and reverted to Lot 7, Block 5, Amended Plat of Arnold Subdivision 2<sup>nd</sup> Filing. The water main within the vacated portion of Clark Avenue will remain in an easement pursuant to Section 7-14-4115, M.C.A.

2. **PUBLIC INTEREST.** The discontinuance, vacation and abandonment of the above described **portion of Clark Avenue** is in the best interest of the public and can be done without any public detriment.  
PASSED by the City Council and APPROVED this 13<sup>th</sup> day of July 2009.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_

Cari Martin  
CLERK

CITY



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 lock 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", with a long, sweeping horizontal line extending to the right.

Kendal Mayer

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




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**AGENDA ITEM:**


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

---

**TITLE:** Public Hearing for Site Development Ordinance Variance # OP - 09 - 02  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** Dave Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** RiverStone Health desires to construct a new office building. The building will be located at 123 South 27<sup>th</sup> Street, Block 141, Billings Original Town. This property is located between South 27<sup>th</sup> and South 26<sup>th</sup> Streets along the south side of 1<sup>st</sup> Avenue South. RiverStone Health requests variance for Section 6-1203(a) and Section 6-1203(j) of the Site Development Ordinance. Section 6-1203(a) pertains to when the off-street parking requirements apply and Section 6-1203(j) pertains to the number of off-street parking stalls required. The ordinances require 312 off- street parking spaces and 259 spaces are provided.

**ALTERNATIVES ANALYZED:**

1. Approve the variance. Approval of the variance will allow RiverStone Health to operate the new office facility without meeting the Site Development Ordinance which covers the requirements for off-street parking needs as proposed in the Parking Variance Request Presentation (Attachment A).
2. Do not approve the variance. If the variance is denied, the Site Development Ordinances will require redesign of the facility to provide the additional off-street parking.

**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 reduced number of required off-street parking spaces.

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

**ATTACHMENTS**

**A.** Parking Variance Request Presentation for RiverStone Health New Office Building

## **INTRODUCTION**

RiverStone Health desires to construct a new office building. The building will be located at 123 South 27<sup>th</sup> Street, Block 141, Billings Original Town. This property is located between South 27<sup>th</sup> and South 26<sup>th</sup> Streets along the south side of 1<sup>st</sup> Avenue South. RiverStone Health requests variance for Section 6-1203(a) and Section 6-1203(j) of the Site Development Ordinance. Section 6-1203(a) pertains to when the off-street parking requirements apply and Section 6-1203(j) pertains to the number of off-street parking stalls required. The ordinances require 312 off- street parking spaces and 259 spaces are provided.

## **BACKGROUND**

CTA Architects/Engineers is the consultant for the design of the RiverStone Health office building. CTA has provided a Parking Variance Request Presentation (Attachment A) which includes a letter from the owner, an owner's survey of parking and Site Plans for the variance showing the current parking lot lay out for the facility's off-street parking and the proposed the project's off-street parking.

In accordance with past City practices, City staff and the owner have calculated the required parking needed to meet the off-street parking requirements for the existing facility and the new office building is 312 spaces, based on Section 6-1203(a) and 6-1203(j).

- For the requested variance, the Site Development Ordinance reads as follows:
- Section 6-1203(a)
- *Required:* There shall be provided at the time of erection of any building or structure or at the time of any change in occupancy of any building or structure minimum off-street parking accommodations meeting the provisions of this section.
- Section 6-1203(j):
- *Table of minimum standards.* Required parking spaces shall be in conformance with the following table and where alternative standards are indicated, the greater requirement applies in conflicting computation; where the total quota results in a fraction the next highest full unit shall be provided.

Medical doctor and dental clinics or offices located outside the medical corridor -  
1 per 200 sq. ft. of gross floor area.

The number of required parking stalls by the Site Development Ordinance for the new and existing facilities is 312 spaces. On street parking is not recognized in this district as meeting part of the off-street parking requirements.



CTA has collected data on RiverStone Health's existing facilities parking needs. Based on the data collected (Parking Variance Request Presentation -Attachment A) there should be adequate parking spaces.

The proposed site does have the additional property available for additional parking on the east side of South 26<sup>th</sup> Street, for construction of a parking lot for additional parking stalls. In addition, South 26<sup>th</sup> Street has been vacated for RiverStone Health facilities usage.

### **ALTERNATIVES ANALYSIS**

1. Approve the variance. Approval of the variance will allow RiverStone Health to operate the new office facility without meeting the Site Development Ordinance which covers the requirements for off-street parking needs as proposed in the Parking Variance Request Presentation (Attachment A).
2. Do not approve the variance. If the variance is denied, the Site Development Ordinances will require redesign of the facility to provide the additional off-street parking.

### **SUMMARY**

RiverStone Health is proposing to provide 259 of the 312 required parking stalls with the site development (Parking Variance Request Presentation -Attachment A).

The parking that is being proposed or provided is less than what is required parking by City Ordinance.

However, based on the data collected by CTA (Parking Variance Request Presentation - Attachment A) there should be adequate parking spaces.

### **RECOMMENDATION**

Staff recommends that Council approve the variance allowing the reduced number of required off-street parking spaces.

### **ATTACHMENTS**

- A. Parking Variance Request Presentation for RiverStone Health New Office Building

Attachment " A "  
Part 1  
RiverStone Health  
Parking Variance  
# OP - 09 - 02

## **Parking Variance Request RiverStone Health New Office Building**



### **TABLE OF CONTENTS**

- 1. Variance Application**
- 2. Variance Application Letter**
- 3. Site Photos**  
A series of photos showing the existing site conditions and character
- 4. Parking Needs Assessment**  
A parking count study assessing the parking needs for the RiverStone Health organization.
- 5. Existing Overall Site Plan**  
Shows vicinity location map and existing site holdings and property lines.
- 6. Existing Developed Area Site Plan**  
Shows existing developed on site parking counts and site dimensions.
- 7. Proposed Building and Improvements Site Plan**  
Shows proposed new structures and parking lot layout with parking stall counts.
- 8. Proposed Site Amenities and Landscaping Plan**  
Shows proposed Landscaping and Site Amenities.
- 9. Site 3D Images**  
Images showing aesthetic impact of the proposed new building along with site amenities and improvements in lieu of added paved parking area.



Application # \_\_\_\_\_

**APPLICATION FOR VARIANCE**

1. Legal description of property: LOTS 1-24 OF BLOCK 141  
IN THE N. 1/4 OF SECTION 3, T.1S., R.26E., P. MM.
2. Address (if unknown, contact the City Engineer's office) or general location: 123 SOUTH 27TH STREET, BILLINGS, MT
3. Owner(s): YELLOWSTONE HEALTH PARTNERSHIP  
(Recorded Owner)  
(Address)  
(Phone Number)
4. Agent(s): CTA ARCHITECTS ENGINEERS  
(Name)  
13 N. 23RD STREET, BILLINGS, MT 59101  
(Address)  
(Phone Number)
5. Section of the Site Development Ordinance that this request for variance applies to: 6-1202, (ON SITE PARKING)
6. Reason for request: 1. LACK OF NEED FOR THE REQUIRED NUMBER OF PARKING STALLS.  
2. DESIRE TO MITIGATE HARDSCAPE & ADDED RUNOFF.  
3. SEE ATTACHED LETTER FOR DETAILED REASONS.
7. Covenants for deed restrictions on the property: Yes \_\_\_ No ☒  
(if yes, please include a copy)

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:  Date: 6/1/09  
(Recorded Owner)

Fee: \$60.00

Receipt #: \_\_\_\_\_

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

May 29, 2009

City of Billings  
Engineering Division  
2224 Montana Avenue  
Billings, MT 59101

Re: RiverStone Health – New Office Building

RiverStone Health, the name under which Yellowstone City – County Health Department, a multi-jurisdictional health service district created under an interlocal agreement between the City of Billings, the City of Laurel, and Yellowstone County, does business, currently provides public health, personal healthcare services, and educational programs for Yellowstone County at its “primary” facility located at 123 South 27<sup>th</sup> Street. The organization also provides community and healthcare related services at multiple other locations within Billings. In an effort to consolidate and enhance those services, RiverStone Health intends to construct a New Office Building at the South 27<sup>th</sup> Street site to free up space in the existing Clinic for direct patient and client services and to consolidate its administrative and service delivery functions in one location.

Reasons for Variance Application:

1. **A. Compliance to Zoning Ordinance requirements:** This request pertains to a variance for the number of required parking spaces, although RiverStone Health is not directly prevented from complying with the Zoning Ordinance requirement due to any property constraints. Our reasons include, but are not limited to, the best use of the currently owned property while providing adequate parking based on actual needs. Please reference Item 2 below for further delineation of the reasons for the requested variance.

**B. Intended use of the property:** RiverStone Health is a governmental agency that through its non-profit and wholly owned subsidiary Yellowstone Health Partnership currently owns the property being improved. RiverStone Health provides public and personal healthcare services as well as various educational and social service programs and associated administrative services for the Yellowstone County area. Clinical healthcare and administrative services are currently housed at 123 South 27<sup>th</sup> street and three (3) other locations within Billings. The goal of providing a new office building at the South 27<sup>th</sup> Street site is to consolidate administrative and healthcare services at one location for reasons of economics and enhancement of ongoing healthcare and community services. The new facility will actually be built and owned by Yellowstone Health Partnership.

## **2. Written Statement of intended use and reasons for Variance Request:**

RiverStone Health through its non-profit and wholly owned subsidiary Yellowstone Health Partnership (Owner) intends to construct a new administrative office building at its currently owned site located to the southwest of the corner of South 27<sup>th</sup> Street and 1<sup>st</sup> Avenue South. The existing property is located partially within the Central Business District (CBD) zoning area. The existing 2-story, approximately 27,000 SF clinic / administrative building and the proposed new 4-story, 43,200 SF office building and associated site improvements are located within the CBD.

The site is not located within the South 27<sup>th</sup> Street Corridor Zoning District, although the Owner and the Design Team have chosen to address the downtown proximity. An effort is being made to provide added site landscaping and outdoor amenities while minimizing paved areas, thus enhancing and contributing to the aesthetic perception of the arrival into the Downtown Area.

A detailed parking needs assessment was conducted in December of 2008 in order to gain insight into the actual vehicular parking needs of the organization and its patrons. This study was based on actual vehicular counts, three times a day for one week. Those results are included as part of this application.

The zoning Ordinance for the proposed Business Occupancy building type calls for a required parking count of 312 spaces based on the Gross Square Footage (GSF) of both the existing and the proposed new office building.

The actual required parking needs based on the week long assessment showed a daily maximum need of 217, a daily average need of 183, and a daily minimum need of 138 spaces.

The number of parking spaces being proposed is 259. (See the attached "*Parking Assessment*" and Site Plans)

There are numerous reasons for the parking needs being considerably less than what is required by the Zoning Ordinance. They are as follows:

1. RiverStone Health operates a large home care and hospice service as well as other healthcare programs for which services are delivered in patients' residences. The staff members who work in these programs will be considered to be located at the new facility but they will spend very little time at the facility. These individuals are currently primarily located at the 711 Central building and represent an important reason behind the relatively modest parking requirements.
2. The largest program currently housed at the 123 S. 27<sup>th</sup> Street facility is the RiverStone Health Clinic, including the RiverStone Health Clinic Dental Practice. This is a community health center that focuses its efforts on the uninsured, underinsured, and low income populations. Accordingly, it is located on the south side of Billings. Since many of the patients served by the Clinic have insufficient resources to own a car, many travel to appointments on foot, by bus, or by taxicab. As a result, there are surprisingly few cars in the parking lot for patients despite the large practices located at the facility.

3. RiverStone Health operates the Montana Family Medicine Residency Program, the only graduate medical education (i.e., residency) program in Montana. The medical staff includes 18 resident physicians, one sports medicine fellow, and eight (8) faculty (i.e., teaching) physicians. The nature of family medicine residency programs requires that these physicians work at many different sites, including the RiverStone Health Clinic, both hospitals in Billings, all of the local nursing homes, patients' homes, and various medical offices inside and outside of Billings. Much like the staff who treat patients in their homes discussed in item #1 above, these residency staff members consider this site to be their home base but they spend very little time actually on the campus.
4. The new facility is an office building only. No new clinical services are being developed that will increase either the number of staff accessing the campus or the number of patients / clients seeking care and services on the campus. As such, the results of the December parking study are considered to be entirely consistent with the actual parking demand on the existing campus when all services are located at one site.
5. RiverStone Health has a compelling business interest in ensuring that there is adequate parking to accommodate its employees and patients / clients. At the same time, there is a business interest, as well as certainly a public interest, in not spending scarce resources better directed toward service delivery on developing unnecessary parking capacity. The organization owns the largest portion of the half block just east of S. 26<sup>th</sup> Street south of 1<sup>st</sup> Avenue South. This space is currently undeveloped. Should actual experience indicate that additional parking capacity is required after the completion of the new office building, this lot can be improved to create parking capacity without disrupting the delivery of care and services, so approval of this variance request does not preclude future actions to remedy inadequate parking if need be.

There are also numerous reasons for the Owner and the Design Team not wanting to provide the required, but seemingly unnecessary, paved parking area.

Although the Owner will not be pursuing a LEED (Leadership in Energy and Environmental Design) accreditation we were prompted by, and have tasked the Design Team to implement LEED and GREEN practices wherever possible and practical. Considering the impact of the building and site design, with its proximity to the Downtown Area, was also a key factor in both building and site design considerations.

The reasons for minimizing the paved site area are as follows:

1. Although not pursuing LEED accreditation, we are following LEED protocols to mitigate unnecessary paved area to reduce run off and avoid added heat buildup in the Downtown Area.
2. Provide additional outdoor green space and public / user site amenity space to enhance the 27<sup>th</sup> Street downtown access corridor rather than add unnecessary paved parking area.
3. Meet needed parking requirements based on actual needs versus the somewhat impartial "Gross Square Foot of Building" applications for parking needs for reasons stated in items 1 and 2.
4. Continue to promote alternative transportation methods for employees, patients and the public.

Parking Variance  
5/29/09  
Page 4

5. Avoid expending public funds for unneeded paved areas that contribute negatively to many aspects of the environment and the visual impacts of the site and surrounding area.

**Summation:**

Designing intelligently with energy, resources, and the environment in mind is the goal of RiverStone Health and CTA. Providing visual and usable site amenities for the users and the public, while addressing the pedestrian aspects of the corner of South 27<sup>th</sup> Street and 1st Avenue South, are significant reasons for applying for the parking space variance based on actual needs.

Addressing the Downtown Area and providing added CBD entry corridor enhancement is a second, but no less significant reason to apply for the variance based on actual vehicular parking needs.

We appreciate the Board's consideration in this matter and would like to convey that our logic for this variance request is sincere and well founded. Much of the outdoor landscaping and usable space would be given over to ordinance required parking as there is little requirement for the landscaping and outdoor space being provided under the CBD Zoning Regulations.

Sincerely,



Shelli Ritz  
President and CEO  
Yellowstone Health Partnership





PHOTO A



PHOTO B

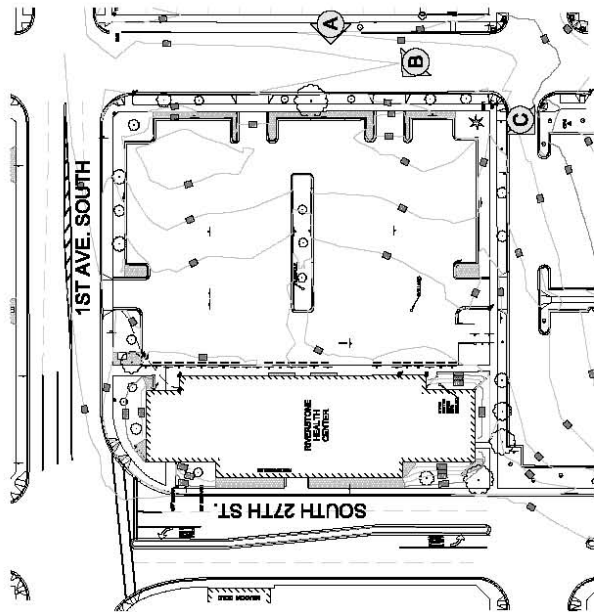


PHOTO C





PHOTO A



PHOTO B

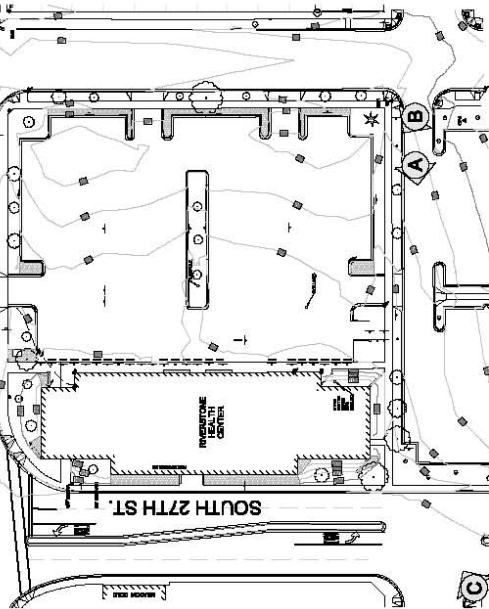


PHOTO C



PHOTO A



PHOTO B

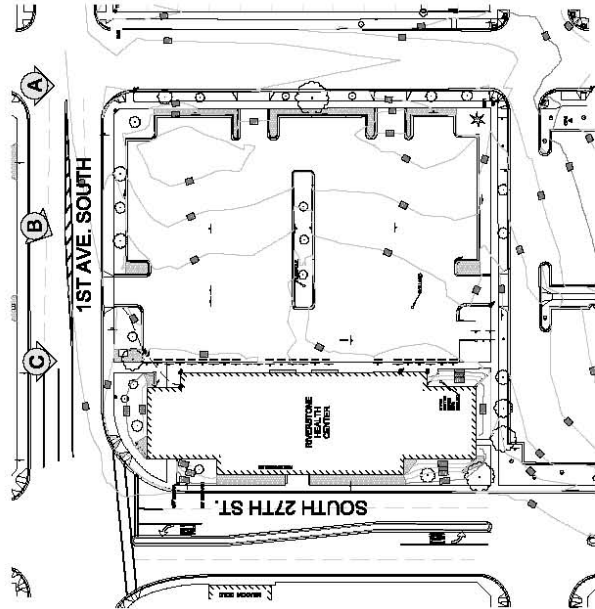


PHOTO C

**Parking Assessment (mid December, 2008)**

New Building - B Occupancy – Office Building

Existing Building - B Occupancy – Medical Office Building

- City of Billings Parking Requirements:
    1. Existing Building (MOB Reqt.)  $1/200 \text{ SF} = 31,486 \text{ GSF}/200 = 158$   
 Partial Basement  $10/1^{\text{st}} 20,000 \text{ SF} = 5,719 \text{ GSF} = 10$   
 (Warehouse / Storage Reqt.)
    2. New Office Building (B Occ. Reqt.)  $1/300 \text{ SF} = 43,200 / 300 = 144$
- Total Spaces Required per Ordinance 312**  
**Total Spaces On-Site Proposed 259**

**Actual Parking Count Study – Three Times Daily for One Week****RiverStone Health Parking Utilization Study**

Five days: early morning (~8:30AM), midday (~11:30 AM), and later afternoon (~3:30 PM)

Four sites: 123 S. 27th, Industrial Ave., 711 Central, and Courthouse

(Note: "Courthouse" includes staff vehicles and RiverStone Health vehicles)

**123 S. 27th****Street**

	<b><u>AM</u></b>	<b><u>midday</u></b>	<b><u>PM</u></b>	<b><u>overall</u></b>
average	106	117	108	110
range	89-122	106-123	92-121	89-123

**Industrial Ave.**

	<b><u>AM</u></b>	<b><u>midday</u></b>	<b><u>PM</u></b>	<b><u>overall</u></b>
average	9	9	8	9
range	8-10	8-9	7-9	7-10

**711 Central**

	<b><u>AM</u></b>	<b><u>midday</u></b>	<b><u>PM</u></b>	<b><u>overall</u></b>
average	60	50	55	55
range	54-70	40-55	49-60	40-70

**Courthouse**

	<b><u>AM</u></b>	<b><u>midday</u></b>	<b><u>PM</u></b>	<b><u>overall</u></b>
average	13	6	7	9
range	10-14	5-9	2-13	2-14

**Overall parking utilization**

	<b><u>AM</u></b>	<b><u>midday</u></b>	<b><u>PM</u></b>	<b><u>overall</u></b>
average	188	182	178	183
range	161-216	159-196	150-203	138-217



Attachment "A" Part 2  
River Stone Health  
Parking Variance # OP - 09 - 02

1  
A1

EXISTING OVERALL SITE PLAN

1"=40'-0"

0 20' 40' 80'

N

CTA

REVISIONS

PARKING AND  
SITE EVALUATION

RIVERSTONE  
HEALTH

RIVERSTONE HEALTH  
NEW OFFICE BUILDING  
BILLINGS, MT

LEGAL DESCRIPTION:  
LOTS 1 THRU 24 OF BLOCK 14, AS SHOWN ON THE ORIGINAL TOWN P.L.T.  
BEING LOCATED IN THE N. & E. SECTION 2, T15N, R20E, PAUL AND BROS.  
RIDGE OF 1975, 13.4 AC. AND IS AS PARCELED FOR RIGHT OF WAY BY  
TOWN OF BILLINGS, AND IS AS PARCELED FOR RIGHT OF WAY BY  
TOWN OF BILLINGS.

LOCATION MAP

PROJECT SITE

FIRST AVE. SOUTH

VACATED S. 26TH ST.

SECOND AVE. SOUTH

SOUTH 26TH STREET

THIRD AVE. SOUTH

SOUTH 27TH ST

PROPERTY LINE

EXISTING OVERALL SITE PLAN

1"=40'-0"

0 20' 40' 80'

N

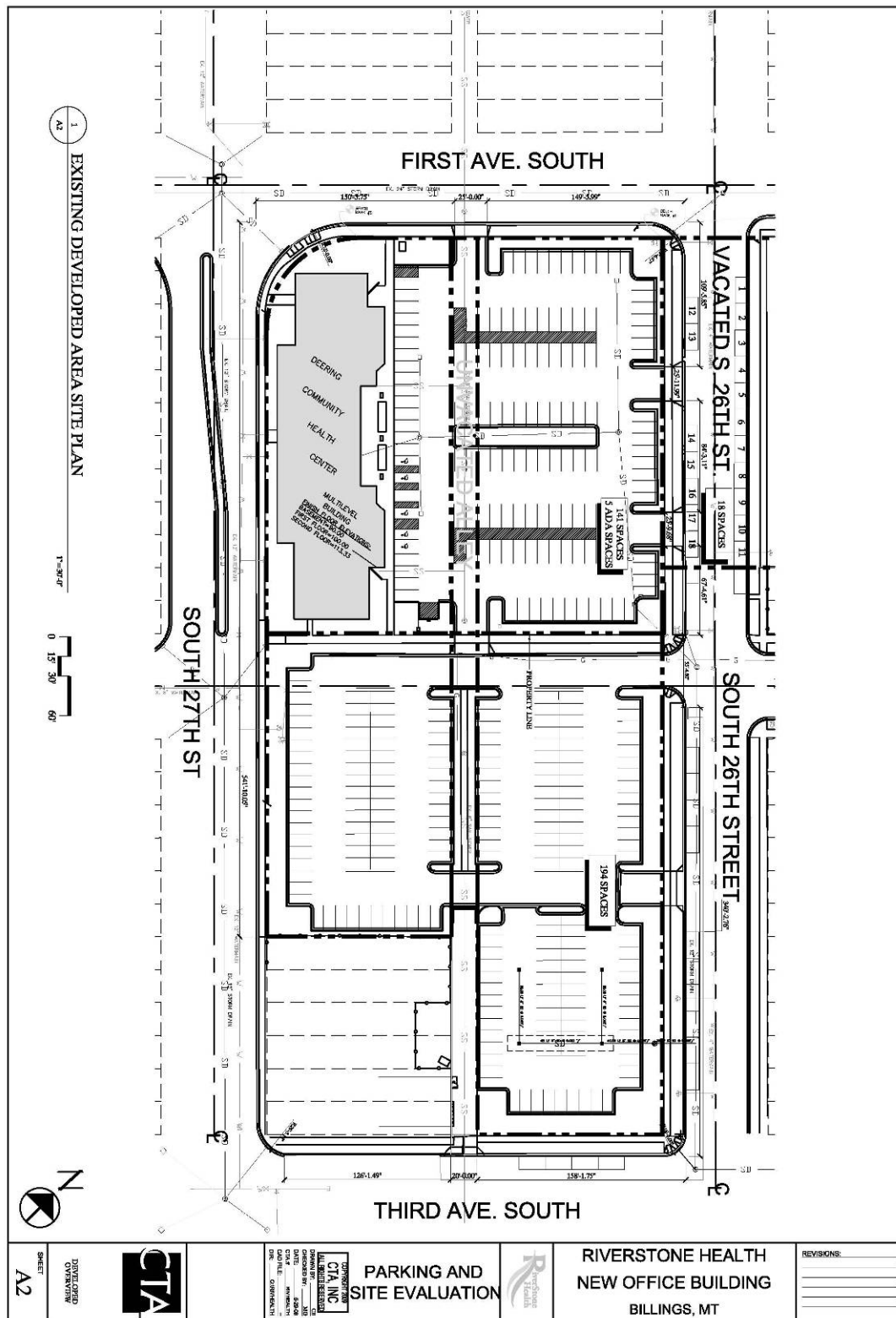
CTA

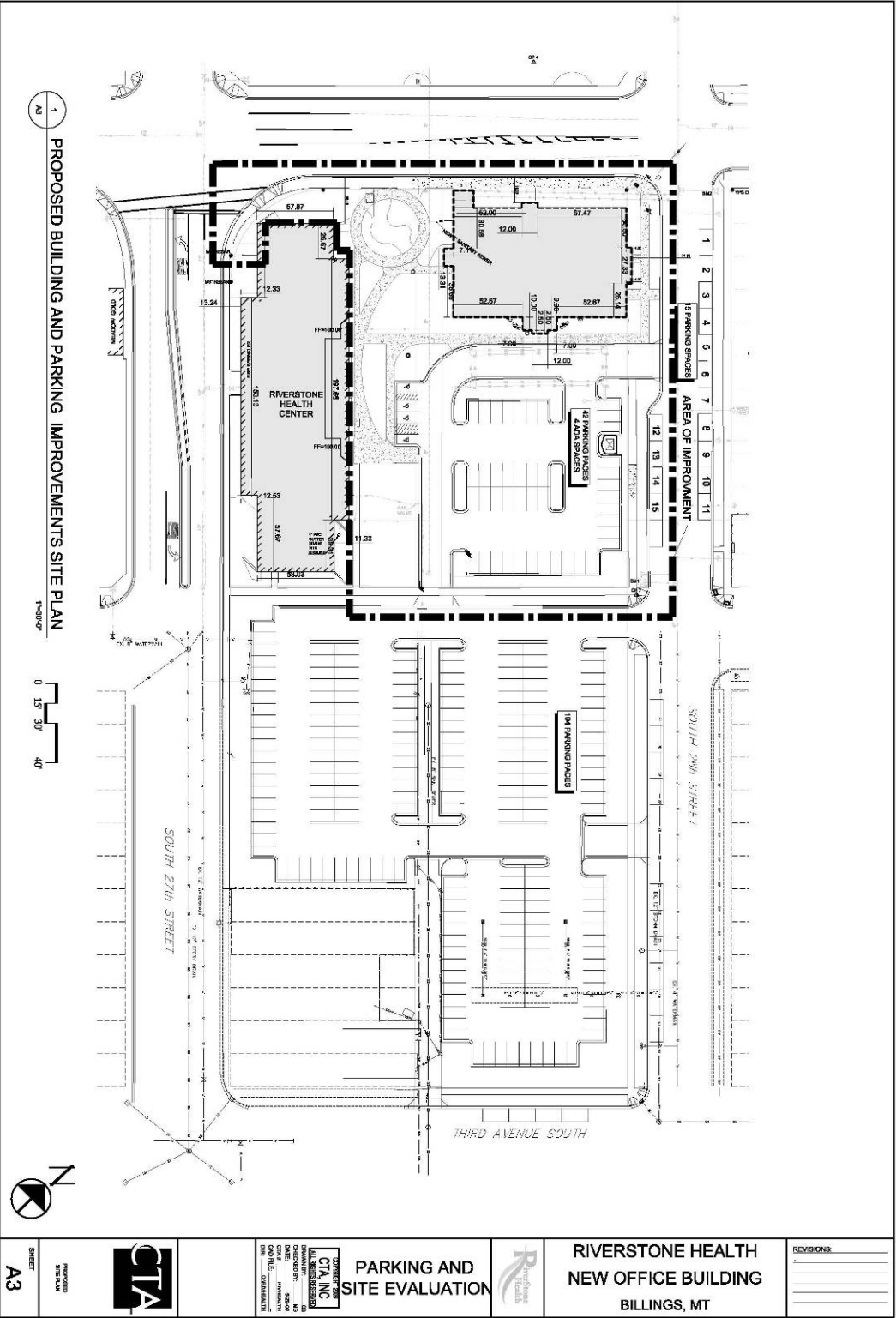
REVISIONS

PARKING AND  
SITE EVALUATION

RIVERSTONE  
HEALTH

RIVERSTONE HEALTH  
NEW OFFICE BUILDING  
BILLINGS, MT





1  
A3  
PROPOSED BUILDING AND PARKING IMPROVEMENTS SITE PLAN  
1"=30'-0"

0 15' 30' 40'



PROPOSED  
BUILDING  
SHEET  
A3



OWNER  
CTA, INC.  
DATE  
10/1/2010  
DRAWN  
J. J. JENSEN  
CHECKED  
J. J. JENSEN  
DATE  
10/1/2010  
PROJECT  
RIVERSTONE HEALTH CENTER

PARKING AND  
SITE EVALUATION



RIVERSTONE HEALTH  
NEW OFFICE BUILDING  
BILLINGS, MT

REVISIONS














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**AGENDA ITEM:**


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

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**TITLE:** Stipulation to a 2009-2011 Collective Bargaining Agreement with Montana Public Employees Association, Billings Police Unit

**DEPARTMENT:** Administration

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

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**PROBLEM/ISSUE STATEMENT:** All police officers below the rank of Sergeant are represented by the Montana Public Employees Association, Billings Police Unit (MPEA). The Collective Bargaining Agreement (CBA) between the City of Billings and MPEA expired on June 30, 2009. The parties have negotiated since March and were able to tentatively agree on all items except one. Since state law requires mediation and then arbitration of police CBA impasses, resolving the outstanding issue could take several months. Neither City Administration nor MPEA officials want to delay implementation of the tentatively agreed items but the new CBA cannot be approved by either party until all issues are resolved. Therefore, the parties have developed a document that stipulates that all items except one are agreeable, that those tentatively approved items should be implemented and that the single disputed issue will proceed through mediation and arbitration. Staff recommends that the City Council approve the stipulation at the July 13 meeting so that a majority of the CBA can go into effect early in the fiscal and the contract year.

**ALTERNATIVES ANALYZED:** The City Council may approve the stipulation, reject the stipulation or reject it with instructions to staff regarding the disputed issue.

**FINANCIAL IMPACT:** The Finance Division estimates that the new CBA adds on-going wage and benefit increases of approximately \$345,000. The second year adds \$233,000 of on-going costs. Both years exclude the cost of budgeted step increases that would have occurred under the existing CBA. The total costs are within the range that staff used for the five (5) year budget projections that Council reviewed during the budget process. The first year costs (FY 2010) are not included in the Public Safety Fund budget and will require a first quarter budget amendment.

**RECOMMENDATION**

Staff recommends that Council approve the stipulation that allows implementation of all tentative agreements in a new MPEA Billings Police Unit CBA and submits one item to mediation and arbitration.

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

ATTACHMENTS will be transmitted separately.

## **INTRODUCTION**

All police officers below the rank of Sergeant are members of the Montana Public Employees Association, Billings Police Unit (MPEA). The Collective Bargaining Agreement (CBA) between the City of Billings and MPEA expired on June 30, 2009. The parties have negotiated since March and were able to tentatively agree on all items except one. Since state law requires mediation and then arbitration of CBA impasses, the process of resolving the outstanding issue could take several months. Neither City Administration nor MPEA officials want to delay implementation of the tentatively agreed items but the new CBA cannot be approved by either party until all issues are resolved. Therefore, the parties have developed a document that stipulates that all items except one are agreeable, that those tentatively approved items should be implemented and that the single disputed issue will proceed through mediation and arbitration. Staff recommends that the City Council approve the stipulation at the July 13 meeting so that a majority of the CBA can go into effect early in the fiscal and the contract year.

## **BACKGROUND**

The City of Billings and the MPEA Billings Police Unit have traditionally negotiated two or three year contracts. The last CBA was dated July 1, 2006 – June 30, 2009. The City and MPEA began negotiating a new contract in March. The initial meeting was a full day training session on the interest based bargaining method and that process was used throughout the negotiations. The parties tentatively agreed on many items, including all compensation issues, but are not able to agree on one of the City's proposals. Montana police officers may not strike over a contract dispute, so the next required step for resolving the dispute is mediation. The parties will jointly request state mediation and will probably meet with the mediator in late July. State law requires the mediator to attempt to settle the dispute but if she is unable, she is required to post the two final proposals. If a settlement isn't achieved within 30 days, either party may request binding arbitration. City Administration believes that it is unlikely that mediation will be successful and that the issue will go to an arbitrator.

The mediation and arbitration process requires at least sixty (60) days to complete and it will probably take much longer. City Administration and MPEA leadership would like to implement the tentatively agreed upon items without waiting for the mediation/arbitration process to run its course. The parties cannot approve a new contract because the contract is not complete without mutual agreement on all contract changes. Therefore, the parties have tentatively agreed to prepare a document that contains a description of all the issues, allows the City to implement the tentatively agreed upon items and submits the one disputed issue to mediation/arbitration. If the issue is resolved through arbitration, this stipulation is the only vote that the MPEA membership or the City Council will make because the arbitrator's decision is final and binding.

The tentative agreements include the following items:

- Two year contract; July 1, 2009 - June 30, 2011
- Cost of living adjustments equal to 3% in 2009 and 2.9% in 2010
- Add two steps to the officer pay range
- Mandatory, random drug and alcohol testing program

- Additional physical fitness testing protocol
- Change longevity pay: eliminate the formula and replace it with cents X years of service and for officers hired after July 1, 2009, longevity will be paid after the 3<sup>rd</sup> year of employment instead of the 1<sup>st</sup> year.
- Change vacation bidding procedure
- Increase certification pay
- Increase specialty pay
- Increase the uniform and equipment reimbursement limit
- Extend the time period to investigate officer misconduct
- Change the requirements and schedule for tuition reimbursement
- Increase compensatory time for Field Training Officers
- Increase compensatory time maximum accrual and more frequent cash-out
- Increase weekend shift differential pay

The outstanding, unresolved issue involves grievance and arbitration. The CBA dispute resolution procedure allows officers to choose the contractual grievance process or other forums such as court or state agencies. City management proposes that all grievances, disputes and claims be processed through the grievance procedure. Allowing officers to use other forums circumvents the union's representation and puts the City in double jeopardy because an officer can initiate a grievance and a legal or agency challenge simultaneously or sequentially. The MPEA does not want to restrict individual officers' ability to seek remedies that may not be available from the grievance process. However, during the negotiations, MPEA was willing to change the current contract and to require officers to use the grievance process before proceeding to arbitration or another forum.

### **ALTERNATIVES ANALYSIS**

If Council approves the stipulation, all items will be implemented with an effective date of July 1, except grievance/arbitration. The tentative agreements and the disputed issue will be submitted to a state mediator and she will attempt to negotiate an agreement between the parties. If that is not successful, the mediator's recommendation will be published for 30 days and then either party may request binding arbitration. Both parties will present their final proposals to the arbitrator and the two proposals should be identical except for the one disputed issue. The arbitrator must pick one proposal in its entirety, but since there will be only one difference, this so-called "baseball arbitration" is not as meaningful for either party as if there were several disputed issues. The arbitrator's decision is final, so the CBA will be implemented according to his/her decision and neither party will vote on the final contract.

The Council may reject the stipulation without further instructions to staff. That action would probably cause the parties to follow the same path as if Council approved it, except that the tentatively agreed items will not be implemented until an arbitrator makes his/her final decision. The arbitrator would probably make the contract provisions retroactive to July 1.

The Council may reject the stipulation and instruct staff on renegotiating the disputed issue. If further negotiations are unsuccessful, the CBA would follow the same path; mediation and then arbitration.

### **RECOMMENDATION**

Staff recommends that Council approve the stipulation that allows implementation of all tentative agreements in a new MPEA Billings Police Unit CBA and submits one item to mediation and arbitration.

ATTACHMENTS will be transmitted separately.