

CITY OF BILLINGS

CITY OF BILLINGS' VISION STATEMENT:

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

AGENDA

COUNCIL CHAMBERS

April 14, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ruegamer

ROLL CALL

MINUTES – March 24, 2008

COURTESIES – Lloyd Mickelson, Montana Library Association Trustee of the
Year Award

National Crime Victims Rights Week (Brent Brooks)

PROCLAMATIONS -- National Library Week – April 13-19, 2008

Crime Victims Rights Week – April 13-19, 2008

Administrative Professionals Week – April 20-26, 2008

Fair Housing Month – April, 2008

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Item: 1 ONLY.

Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

1. A. Bid Awards

(1) Phase 3 Landfill Expansion (opened 3/11/08 and delayed to 4/14/08).

Recommend Montana Civil Contractors, Inc., \$1,358,235.

[\(Corresponding Staff Memo A1\)](#)

- (2) **Airport Improvement Program (AIP) 34 Project Taxiway "H" Rehabilitation and ARFF Staging Area Pavement Reconstruction** (opened 3/25/08). Recommend Knife River, \$587,416.25.

[\(Corresponding Staff Memo A2\)](#)

- (3) **Animal Shelter Operations Request for Proposals.** Recommend postponing award of contract until May 27, 2008.

[\(Corresponding Staff Memo A3\)](#)

B. Professional Services Contract for Hazardous Waste Collection Events (3-year term), Burlington Environmental, Inc., \$165,000.

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

C. Change Order #5 for protective netting – New Baseball and Multi-Use Stadium at Athletic Park, Langlas & Associates, Inc., \$13,069.00.

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

D. Amendment #4 – Airport Improvement Program (AIP) 34 Project, Engineering Services, Morrison-Maierle, Inc., \$379,462.00.

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

E. CTEP Project Specific Agreement – Poly Drive Sidewalk -Billings (CN 6633), Montana Department of Transportation, CTEP Grant - \$74,084.00; Local Match - \$11,483.00.

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

F. CTEP Project Specific Agreement – Broadwater Crossing Project – Billings (CN 6634), Montana Department of Transportation, CTEP Grant - \$92,325.00; Local Match - \$14,311.00.

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

G. CTEP Project Specific Agreement – On-Street Bike Lanes Project – Billings (CN 6631), Montana Department of Transportation - \$97,186.00; Local Match - \$15,064.00.

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

H. Right-of-Way Agreements (2) with Montana Department of Transportation for Airport Road Project, 5 parcels, \$80,950.00 total revenue.

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

I. Assignment and Transfer of Limited Commercial Aviation Ground Lease from Corporate Air to Corporate Jet, LLC.

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

J. Assignment of Limited Commercial Aviation Ground Lease with BVDS, Inc. to Western Security Bank.

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

K. Acknowledge Receipt of Petition to annex #08-06: 20.632 acres of Tracts 1A, 1B, 1C, C/S 2055 Amended, generally located north of Alkali Creek Road, Best Development Corp., James Pickens, President, owner and petitioner; and set a public hearing date of April 28, 2008.

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

L. Acknowledge Receipt of Petition to vacate a portion of North 26th Street and 2nd Avenue N., Big Sky Economic Development Agency (BSEDA) and Downtown Billings Partnership (DBP), owners; and set a public hearing date of May 12, 2008.

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

M. Confirmation of Police Officers:

- (1) Karl Rude
- (2) Jeremy Dennler

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

N. Property Transfer to Western Security Bank, Lots 1-6, Block 108, Original Town of Billings, with no revenue to the City.

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

O. Street Closures:

(1) Cinco de Mayo Celebration, 3 p.m. – 10 p.m., May 3, 2008, 100 block of 26th Street North.

[\(Corresponding Staff Memo O1\)](#)

(2) Yellowstone Rimrunners, Montana Women's Run, 6:30 a.m. – 12 Noon, May 10, 2008, 2nd Avenue North from North 10th Street to Division; full closure from North 27th Street to North 19th Street; partial closure from North 19th Street to North 10th Street; full closure from North 27th Street to Division; 3rd Avenue North from North 10th Street to Division; full closure from North 19th Street to Division; partial closure from North 19th to North 10th.

[\(Corresponding Staff Memo O2\)](#)

(3) Montana Pride Network, 9 a.m. – 11:30 a.m., June 21, 2008, 3rd Avenue North from N. 25th Street to North 33rd Street.

[\(Corresponding Staff Memo O3\)](#)

P. Acceptance of Donation to Parks, Recreation and Public Lands from Billings Mustangs Baseball Organization for protective netting behind the dugouts at the new baseball and multi-use stadium at Athletic Park, \$13,069.00.

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

Q. Acceptance of Donation to Police Department from ConocoPhillips to send School Resource Officers to the National Conference in Phoenix, AZ, July 28-August 1, 2008, \$8,000.00.

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

R. (a) Resolution authorizing construction bids for SID 1378, water, storm drain, curb and gutter, and street improvements to the 4200 Block of Clevenger Avenue.
[\(Corresponding Staff Memo Ra\)](#)

(b) Bid Award for SID 1378, water, storm drain, curb and gutter, and street improvements to the 4200 Block of Clevenger Avenue (opened 3/25/08). Recommend Knife River, \$219,444.00.
[\(Corresponding Staff Memo Rb\)](#)

S. Resolution repealing Resolution #07-18687 and creating the South Billings Boulevard Urban Renewal District, declaring blight, intent to create the district and setting a public hearing for April 28, 2008.
[\(Corresponding Staff Memo S\)](#)

T. Resolution of Intent creating expanded PMD #4026, Twin Oaks Subdivision and Uinta Park Subdivision and setting a public hearing date of May 12, 2008.
[\(Corresponding Staff Memo T\)](#)

U. Preliminary Subsequent Minor Plat of Amended Lot 4, Block 1, Shiloh Crossing Subdivision, generally located on the southeast corner of Shiloh Road and King Avenue West; conditional approval of the plat and adoption of the Findings of Fact.
[\(Corresponding Staff Memo U\)](#)

V. Preliminary Plat of Miller Crossing Subdivision, 2nd Filing, 10 lots on approximately 18.15 acres, generally located on the south side of King Avenue East between Newman Lane and east of Calhoun Lane; conditional approval of the preliminary plat and adoption of the Findings of Fact.
[\(Corresponding Staff Memo V\)](#)

W. Final Plat of Eagle View Subdivision.
[\(Corresponding Staff Memo W\)](#)

X. Final Plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision.
[\(Corresponding Staff Memo X\)](#)

Y. Bills and Payroll
(1) March 7, 2008
[\(Corresponding Staff Memo Y1\)](#)

(2) March 14, 2008
[\(Corresponding Staff Memo Y2\)](#)

(3) March 21, 2008
[\(Corresponding Staff Memo Y3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND CONTINUED FIRST READING ORDINANCE FOR ZONE CHANGE #826:** A zone change that allows small retail services to be developed by special review approval within existing residential zoning districts. Action delayed from 11/26/07 and 3/10/08. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)
[\(Corresponding Staff Memo 2\)](#)
3. **PUBLIC HEARING AND RESOLUTION** creating SID 1384, Yellowstone Country Club Estates sanitary sewer extension. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING AND RESOLUTION** amending Resolution #05-18330 and creating SID 1372, Summerhill Subdivision, for construction of public improvements of 13 lots on Winter Green Drive, West Antelope Trail and Antelope Place. Jeff Essman owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND RESOLUTION** setting rates and fees for water and wastewater utilities. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
[\(Corresponding Staff Memo 5\)](#)
6. **PUBLIC HEARING AND ALLOCATION OF CDBG FUNDS** for Housing Authority of Billings grant application for \$62,000 for site development costs for the Lake Elmo Drive affordable housing project. Community Development Board and staff recommend approval. (Action: approval or disapproval of Community Development Board and staff recommendation.)
[\(Corresponding Staff Memo 6\)](#)
7. **PUBLIC HEARING AND FIRST READING ORDINANCE AMENDING NUISANCE WEED REGULATIONS:** Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
[\(Corresponding Staff Memo 7\)](#)
8. **(a) PUBLIC HEARING AND RESOLUTION** reconsidering annexing a 114-acre property located north of King Avenue West between 48th Street West and Shiloh Road and described as Tracts 1-5, C/S 2063 (Annex #08-01). Lenhardt Property,

LP; Lenhardt Farm, LLC and Lenhardt Enterprises, LLC, owners and petitioners. Considered and denied initially on 2/25/08. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 8a\)](#)

(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#829: A zone change from Agriculture-Open Space (A-1), a county zoning district, to Planned Development with three underlying zoning districts - Mixed Use (MU); Multi-family Residential (MF-R); and Single Family, Residential Multi-Family (Four-plex) (MF-4) located at 4345 King Avenue West. Lenhardt Property, LP; Lenhardt Farm, LLC and Lenhardt Enterprises, LLC, owners, Engineering, Inc. and Bill Cole agents. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 8b\)](#)

- 9. 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, April 14, 2008

TITLE: Phase 3 Landfill Expansion, Construction Contract Award
 DEPARTMENT: Public Works
 PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: This project is for the construction of the Phase 3 landfill cell within the licensed landfill area. The project includes excavation and construction of a HDPE liner and leachate collection system and related items. The new cell needs to be completed by October 2008 before the current disposal area is completely filled. The project also includes an additive alternate for excavation in the existing Class IV disposal area. The Class IV disposal area was permitted last year and can only receive construction and demolition waste. The attached map shows the location of the new Phase 3 disposal cell and the Class IV disposal area in relation to the existing waste area. The project was designed by Great West Engineering, with whom the City has a professional services contract. The project was advertised on February 21st and 28th, and again on March 6th, for a bid opening on March 11, 2008. Council took action at their March 24th meeting to delay action on this award until the April 14th meeting.

FINANCIAL IMPACT:

The project is included in the FY-08 CIP and utilizes Solid Waste Division funds. This funding is sufficient for the total bid award. Six bids were received and read with the following results:

	<u>Base Bid</u>	<u>Additive Alternate</u>	<u>Total Bid</u>
Engineer' Estimate	\$1,071,000.00	\$150,000	\$1,221,000.00
Montana Civil Contractors, Inc	\$1,172,235.00	\$186,000	\$1,358,235.00
Shumaker Excavating, Inc.	\$1,209,860.00	\$159,000	\$1,368,860.00
Donnes, Inc.	\$1,245,860.00	\$210,000	\$1,455,860.00
C & S Construction, Inc.	\$1,258,790.73	\$204,600	\$1,463,390.73
Gratech Company, Ltd.	\$1,352,560.49	\$262,800	\$1,615,360.49
JEM Contracting, Inc.	\$1,343,913.00	\$394,200	\$1,738,113.00

RECOMMENDATION

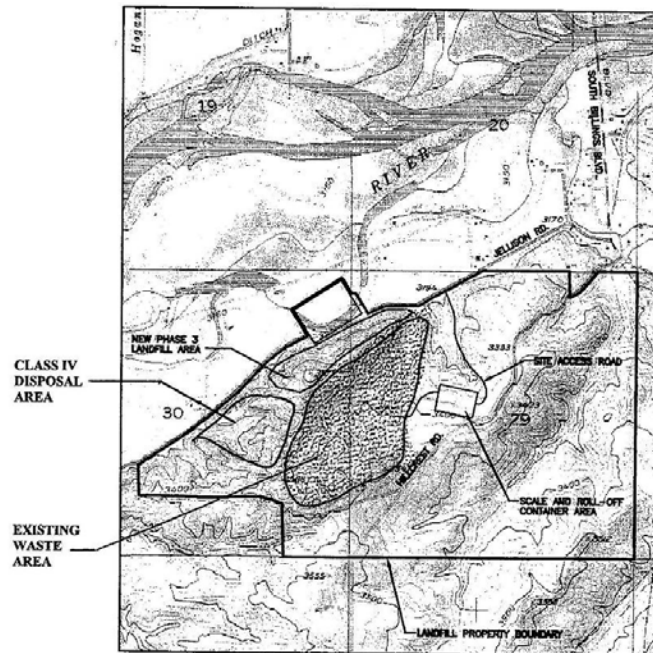
Staff recommends that Council award a construction contract for the Phase 3 Landfill Expansion with the additive alternate to Montana Civil Contractors, Inc for \$1,358,235.

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

ATTACHMENTS

ATTACHMENT 'A': Location Map

PHASE 3 LANDFILL EXPANSION LOCATION MAP



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Award of Airport Improvement Program (AIP) 34 Project Taxiway "H" Rehabilitation and ARFF Staging Area Pavement Reconstruction

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: One of the Airport's approved Capital Improvement Program (CIP) projects is the Taxiway "H" Rehabilitation and ARFF Staging Area Pavement Reconstruction project. Taxiway H serves Runway 10R/28L and was constructed in 1971 and rehabilitated in 1991. The seventeen year old asphalt surface of this taxiway has become rutted and requires significant maintenance to keep it usable for taxing aircraft. The top 2" of the asphalt surface of this taxiway will be removed and replaced with a new dense graded asphalt surface and new taxiway edge lights will replace the existing ones.

The pavement on the north side of the Operations Building is between 17 and 60 years old and is used as a staging area for the Airfield Rescue and Fire Fighting and snow removal equipment. The heavy traffic and large equipment have worn this pavement to the point where it is badly cracked and beginning to break into pieces. This project will remove the old asphalt down to the gravel base material and replace it with a full section of new full strength asphalt. The new asphalt will be re-graded to provide better drainage in this area.

This project has been advertised in the *Billings Times* for three weeks, and was on the City's Web site. On March 25, 2008, we received the following bids on this project:

<u>CONTRACTOR</u>	<u>BID</u>
Knife River	\$587,416.25
Riverside Sand and Gravel	\$623,565
ESTIMATE	\$868,000

FINANCIAL IMPACT: The total cost of the project is \$587,416.25, and will be funded through a 95% Federal Aviation Administration (FAA) AIP entitlement grant with a 5% local match. The FAA's portion will be \$558,045.44, and the City's match is \$29,370.81.

RECOMMENDATION

Staff recommends that City Council approve the award of the AIP 34 Taxiway "H" Rehabilitation and ARFF Pavement Reconstruction project to the low bidder, Knife River for the amount of \$587,416.25.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Animal Shelter Operations RFP
 DEPARTMENT: City Administrator's Office
 PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: A request for proposals (RFP) for Animal Shelter Operations was reviewed with the City Council Jan. 22, 2008, and issued February 22, 2008. Only one response, from Yellowstone County Animal Shelter, Inc., was received by the deadline on March 21, 2008. The process schedule calls for a review committee to make a recommendation on a firm at the April 14 meeting. However, a review committee has not yet been met, due to the budget, Fire Chief selection and other business.

With only one respondent, it seems quicker to move to contract negotiations and then bring a completed contract back to the Council for consideration in May.

ALTERNATIVES ANALYZED:

- Postpone consideration of the RFP until a contract can be negotiated.
- Award the RFP to Yellowstone County Animal Shelter, Inc., before a contract is negotiated.
- Reject all proposals.

FINANCIAL IMPACT: The financial proposal from Yellowstone County Animal Shelter, Inc., was returned in a sealed envelope and will be opened once negotiations commence.

RECOMMENDATION

Authorize staff to negotiate a contract with Yellowstone County Animal Shelter, Inc., and return it to the May 27, 2008, Council meeting.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Professional Services Contract – Hazardous Waste Collection Events – Burlington Environmental Inc.

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The Solid Waste Division uses a Consultant to assist with the collection, sorting, and disposal of hazardous waste collected at annual events. Following an RFP process a Consultant is selected and will be used for three years. The Solid Waste Division recommends approval of the Professional Services Contract with Burlington Environmental Inc. in the amount of \$165,000 to oversee the 2008, 2009, and 2010 Household Hazardous Waste (HHW) and Conditionally Exempt Small Quantity Generator (CESQG) collection events.

FINANCIAL IMPACT: The Solid Waste Division budgets sufficient funds each fiscal year to fund the city's annual hazardous waste collection events.

RECOMMENDATION

Staff recommends that City Council approve the Household Hazardous Waste and CESQG Collection Services Contract with Burlington Environmental Inc. in the amount of \$165,000 to oversee three years of annual HHW and CESQG collection events.

Approved By: City Administrator ____ City Attorney ____

INTRODUCTION

For the past fourteen years, the Solid Waste Division has conducted a one-day household hazardous waste (HHW) collection event where area landfill users can bring unwanted and unused household products containing toxic chemicals to the Solid Waste Division for proper disposal. In addition, the Solid Waste Division sponsors a one-day collection event for area businesses that qualify as Conditionally Exempt Small Quantity Generators (CESQG) of hazardous waste. The Solid Waste Division completed a formal Consultant selection procedure in February 2008, and Burlington Environmental was selected from the three proposals that were evaluated. This contract would provide for necessary services to complete the 2008, 2009 and 2010 events.

BACKGROUND

Since 1995, the Solid Waste Division has sponsored a one-day HHW collection event for area residents to bring unwanted and unused household products containing toxic chemicals to the Solid Waste Division for proper disposal. The program is open to all households served by the Billings Regional Landfill, including residents of Yellowstone, Carbon, Stillwater, Musselshell, Treasure and Big Horn counties. The purpose of this event is to divert household toxic waste from the landfill, provide appropriate disposal options for HHW, and educate the public on the use of alternative non-hazardous products. To date, over 175 tons of pesticides, paint, solvents, antifreeze and used oil have been drummed and transported to hazardous waste disposal facilities for reclaiming, recycling, incineration or disposal in a hazardous waste landfill.

In addition, the Solid Waste Division sponsors a one-day collection event for area businesses that qualify as CESQGs of hazardous waste. The purpose of the business event is to provide an economic alternative to area businesses to safely dispose of their hazardous waste. The 2008 CESQG event is scheduled for Friday, May 30th; the HHW collection event is scheduled for Saturday, May 31st.

RECOMMENDATION

Staff recommends that City Council approve the Household Hazardous Waste and CESQG Collection Services Contract with Burlington Environmental Inc. in the amount of \$165,000 to oversee three years of annual HHW and CESQG collection events.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Award of Change Order #5 to Contract for the New Baseball and Multi-Use Stadium at Athletic Park

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: During the design of the new baseball and multi-use stadium, it was determined by the consultant, HNTB Montana, that protective netting behind the dugouts was not considered industry standard and therefore was not necessary to meet the National Association of Professional Baseball Leagues (NAPBL) guidelines. The NAPBL is an affiliated organization that sets guidelines and standards for fair and safe play at minor league baseball venues. The Mustangs Organization feel the addition of protective netting behind the dugouts is important to provide for fan protection and enjoyment of the baseball game. They have offered to, and have supplied the necessary funding to provide for the materials and installation of this netting.

FINANCIAL IMPACT: The financial impact will be a net *increase* to the project of \$13,069.00 (Attachment A).

Location of Work: At Athletic Park comprising the entire block bounded by North 27th Street, North 25th Street, 9th Avenue North and 10th Avenue North.

Funding Sources: The increase to the project will be paid for by a donation from the Billings Mustangs organization.

ALTERNATIVES ANALYZED:

- Accept Change Order No. Five (5) to fund the protective netting behind the dugouts, or
- Reject the change order.

RECOMMENDATION:

Staff recommends accepting Change Order No. Five (5) to provide and install the protective netting.

Approved By: City Administrator _____ City Attorney _____

CHANGE ORDER

No. Five(5)

PROJECT:	Billings Baseball And Multi-Use Stadium	DATE OF ISSUANCE: April 15, 2008
OWNER: (Name & Address)	City of Billings 510 N. Broadway, 4 th Floor Billings, MT 59101	OWNER'S PROJECT NO. _____
CONTRACTOR:	Langlas and Associates, Inc. 2270 Grant Road Billings, MT 59102	ARCHITECT: HNTB Montana ARCHITECT'S PROJECT NO. _____
CONTRACT FOR:	Construction of a new baseball and multi-use stadium at Athletic Park	

You are directed to make the following changes in the Contract Documents.

Purpose of Change Order: To provide and install protective netting behind the dugouts

Attachments: Exhibit A: Letter from Langlas and Associates (November 27, 2007) cost to supply and install a barrier netting above both dugouts.

CHANGE IN CONTRACT PRICE:

Original Contract Price

\$ 11,459,800.00

Previous Change Orders:

- No. 1 \$(279,358.00)
- NO. 2 \$33,655.00
- No. 3 \$(21,860.00)
- No. 4 \$84,950.00.

Contract Price prior to this Change Order

\$ 11,277,187.00

CHANGE IN CONTRACT TIME:

Original Contract Time

June 30, 2008
days or date

Net Change from previous Change
Orders

None
days

Contract Time prior to this Change
Order

June 30, 2008
days or date

Net *increase* of this Change Order

\$ 13,069.00

Net Increase (decrease) of this Change
Order

None
Days

Contract Price with approved Change Order

\$ 11,290,256.00

Contract Time with approved Change
Order

June 30, 2008
days or date

RECOMMENDED:

By _____
Architect

APPROVED:

By _____
Owner

APPROVED:

By _____
Contractor



Langlas & Associates, Inc.

-- General Contractors --

2270 Grant Road
Billings, Montana 59102

www.langlas.com

Phone (406) 656-0629
Fax (406) 656-1088

November 27, 2007

CTA Architects Engineers
13 North 23rd Street
Billings, MT 59101

RE: Billings Stadium

Mike Radke,

The following is the costs for Proposal Request #3.

The cost to supply and install a barrier netting above both dugouts is \$13,069.00.

The system will consist of 10 steel poles 10' tall, the poles will be painted finish, no galvanizing, the netting will be C&H Baseball Spectra #18. The netting will be supported by a cable running from the top of the poles and attached with eye bolts set in the dug out lid.

Please let me know by January 15 if this additional work is approved.

Regards,

Brad Sinclair

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Amendment Four with Morrison-Maierle, Inc. for Engineering Services
for Airport Improvement Program (AIP) 34 Project

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide engineering services at the Airport. On November 13, 2006, the City approved a five-year contract with Morrison-Maierle, Inc. to provide project design surveys, plans, specifications and bidding documents and contract administration, including coordination meetings, pay requests, etc. The contract also includes full time on-site inspection, construction surveys and development and submittal of the final project closeout documents, as required for all Federal AIP projects. The base five-year contract is amended each time a new project is undertaken, and Amendment 4 for \$379,462 includes all of the services indicated above for next Summer's AIP 34 projects. The scope of work and associated engineering fees have been reviewed and negotiated by Airport staff and have also been approved by the FAA. The projects included in AIP 34 include the replacement of the asphalt pavement surface on Taxiway "H," pavement rehabilitation of the Aircraft Rescue and Fire Fighting equipment staging area and the installation of new security fencing around the perimeter of the Airport. This Amendment will produce an estimated \$2,300,000 of construction projects.

FINANCIAL IMPACT: The total cost of Amendment 4 to the five-year engineering Contract with Morrison-Maierle, Inc. is \$379,462 and will be funded 95% with AIP entitlement grant and 5% local funds. The FAA's portion will be \$360,489 and the City's match is \$18,973. These projects are included in the current budget.

RECOMMENDATION

Staff recommends that the City Council approve Amendment 4 to the Morrison-Maierle, Inc. Contract in the amount of \$379,462 for the engineering services required for Airport Improvement Program Project AIP 34.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: CTEP Project Specific Agreement – Poly Drive Sidewalk Project
DEPARTMENT: Planning and Community Development
PRESENTED BY: Candi Beaudry, AICP, Director/CTEP Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a Montana Department of Transportation (MDT) Community Transportation Enhancement Project (CTEP) grant application for the Poly Drive Sidewalk Project in November, 2007. This project will consist of design and construction of 1,100 linear feet of sidewalks, 550 linear feet of drive approaches, one alley approach, accessibility ramps, one curb extension street crossing, and landscaping. This project was approved through a local selection process and approved by MDT. The Project Specific Agreement represents the formal agreement between the City and MDT for the project's scope, funding and federal aid compliance. Council must authorize the Mayor to execute a Project Specific Agreement for the Poly Drive Sidewalk Project to begin development.

The Poly Drive Sidewalk Project was approved as part of the School Sidewalk Program listed in the FY09 Capital Improvements Plan.

ALTERNATIVES ANALYZED:

- Approve the CTEP Project Specific Agreement.
- Do not approve the CTEP Project Specific Agreement. This would result in the loss of CTEP funding for this project.

FINANCIAL IMPACT: The funding breakdown for this project is as follows:

CTEP Grant	\$74,084 (includes ICAP)
Local Match	\$11,483 (includes ICAP)
<u>Additional Non Grant Funds</u>	<u>\$73,075</u>
Total Funds Available	\$158,642

The local match and non-grant portion of the project will be funded by a combination of three sources; Sidewalk Bonds, Gas Tax, and Storm Sewer Assessments. The CTEP grant and local match figures shown above include the Montana Department of Transportation's Indirect Cost

Accounting Procedures (ICAP). State law requires MDT to charge for indirect or overhead expenses for all projects it administers. This charge is referred to in item 14 of the attached agreement and amounts to 12.25% of the total CTEP and local match amount. The ICAP charge for this project, which will be billed directly to the City, is \$1,406.67.

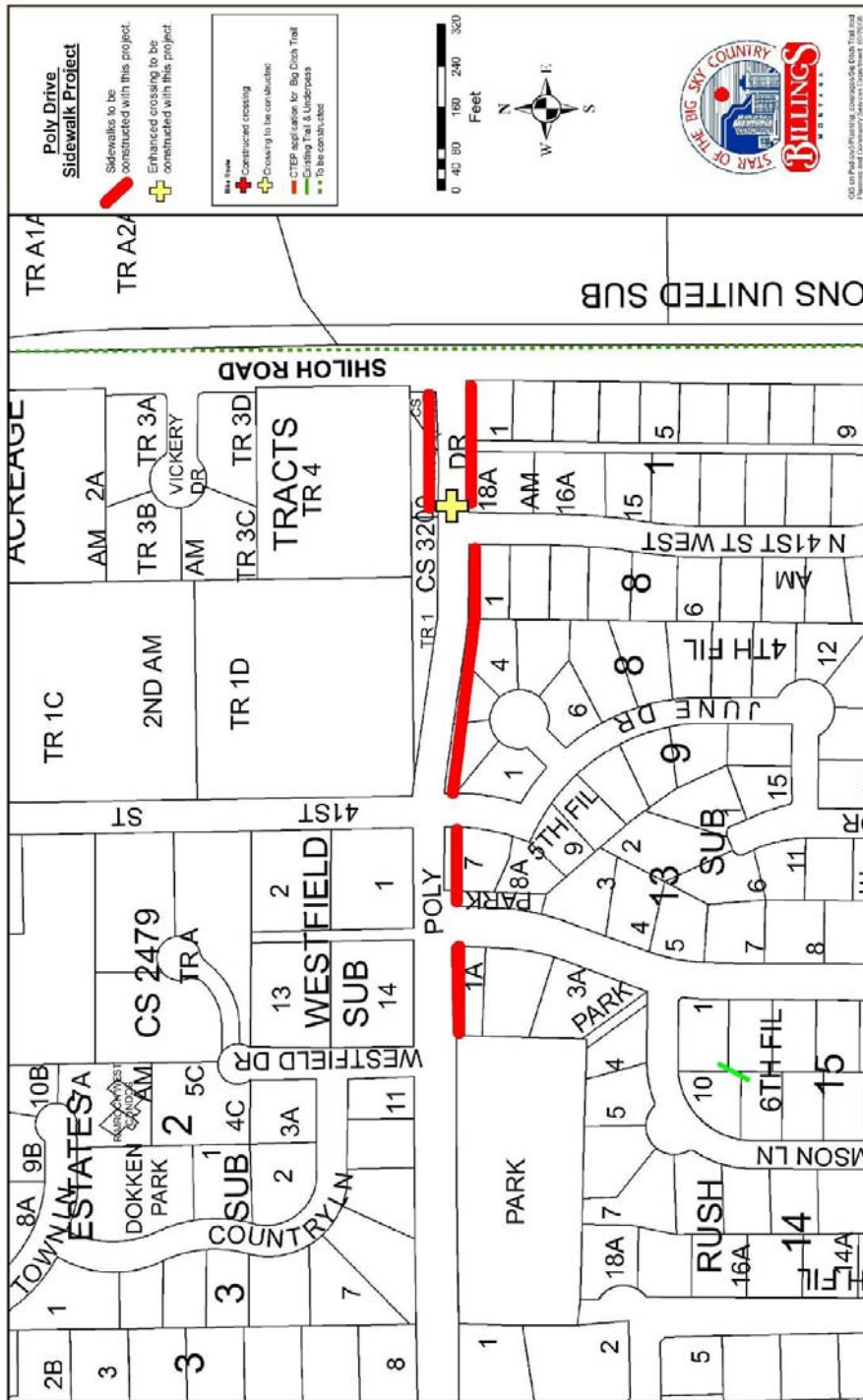
RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the CTEP Project Specific Agreement for the Poly Drive Sidewalk Project.

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

ATTACHMENTS

- A. Map
- B. Project Specific Agreement



CTEP PROJECT AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called the "State," and the City of Billings, hereinafter called the "City".

WITNESSETH THAT:

WHEREAS, the City proposes to develop and construct a Community Transportation Enhancement Program (CTEP) project, Control Number 6633, titled POLY DRIVE SIDEWALKS-BILLINGS (hereinafter the "project"); and,

WHEREAS, the State and the City recognize the need to develop and construct the project, and are willing to share in its costs in accordance with this agreement; and,

WHEREAS, the State and Federal Highway Administration (FHWA) will not participate in the development and construction of the project unless the City agrees to the conditions set forth; and,

WHEREAS, the estimated cost of the project's development and construction is \$158,642; and,

WHEREAS, the financial participation for the project development and construction will in part be with federal-aid funds made available in federal fiscal 2008; and,

WHEREAS, the federal-aid funds provided are described in the Catalog of Federal Domestic Assistance (CFDA), number 20.205, Highway Planning and Construction; and,

WHEREAS, it is understood that all costs associated with the project in excess of these federal-aid funds will be financed by the City; and,

WHEREAS, this document must be executed and submitted to the State before the project development and construction process will be authorized to start; and,

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree that:

1. The City will develop a CTEP project described as: the design and construction of 1100 linear feet of sidewalks, 550 linear feet of drive approaches, one alley approach, accessibility ramps, one curb extension street crossing, and landscaping.
2. The project will be located in Billings on the south side of Poly Drive between Westfield Drive and Shiloh Road, and on the north side of Poly Drive between 41st Street West and Shiloh Road.
3. The purpose of this project is to provide a safe and convenient pedestrian facility.
4. The initial federal-aid program to be requested for the development and construction of this project, by federal-aid account, is as follows:

Federal-Aid Program Account By Project Phase (Maximum CTEP Share)

[9102] Preliminary Engineering (86.58%) (including environmental documentation)	\$	13,613
[9202] Right-of-Way/Easement Acquisition (86.58%)	\$	-0-
[9302] Incidental Construction (64.93%) (utility relocation involvement)	\$	-0-
[9402] Construction Engineering (86.58%) (including contract administration and inspections)	\$	13,613
[9502] Construction (86.58%)	\$	58,341
Total	\$	85,567

	Project	CTEP Funds	Local Match	ADD. Contribution
City of Billings	\$ 158,642	\$ 74,084	\$ 11,483	\$ 73,075
TOTAL	\$ 158,642	\$ 74,084	\$ 11,483	\$ 73,075

5. The general method of development includes: The City will use its own forces for preliminary engineering, contract bid document preparation and construction engineering. Construction must be by competitive bid. The State will perform a final inspection to ensure substantial compliance with project plans, specifications and estimates.
6. The City and any consultant and/or contractor it may employ in pursuit of project completion will comply with applicable Equal Employment Opportunity (EEO) requirements, Disadvantaged Business Enterprise (DBE) goals, Americans with Disabilities Act (ADA) and Federal Labor Requirements.
7. The City will provide documentation necessary to comply with applicable environmental requirements, including the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA) and Section 4(f) of the DOT Act.
8. The City will complete and submit the applicable supporting documentation to the State for review and concurrence prior to beginning the next step in the project's development or construction process, as identified in the CTEP Guidelines.
9. The City will allow inspection of all work and project-related records by the personnel or agents of the State and FHWA.
10. Cities subject to the authority of the Montana Single Audit Act will secure an independent audit in compliance with OMB Circular A-133 and submit a copy to the Montana Department of Administration, Local Government Services Bureau, P O Box 200547, Helena, MT, 59620-0547.
11. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of State employees, the City agrees that it will protect, indemnify, and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), and losses to them from any cause whatever from the project, and including any suits, claims, actions, losses, costs or damages of any kind, including the State and Department's legal expenses, made against the State or Department by anyone arising out of, in connection with, or incidental to the project and its construction or use or maintenance.
12. The City will retain project-related records and documents for a period of three years after the closing of the project.

13. The City will be responsible for \$84,558 and Federal participation will be \$74,084 of the estimated total project cost of \$158,642. The City will be responsible for 100% of all costs exceeding the proposed \$158,642 that may be required to complete the project.
14. **It is understood and agreed between the parties that:** Section 17-1-106, MCA, requires any state agency, including MDT, that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by OMB Circular A-87. MDT's current indirect cost rate is 12.25% for fiscal year 2008 (July 1, 2007 to June 30, 2008).

For this project, indirect costs will be charged to the federal CTEP funding provided and the required local match. MDT will bill the City the indirect costs applicable to the local match. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.]
15. The City may submit a claim once a month detailing items and quantities of acceptable work completed that period to the CTEP Office for the project development and/or construction costs incurred. The request will be accompanied by documentation substantiating the amount requested and identifying the applicable federal share.
16. This agreement shall become effective upon execution by both parties. It may be modified only by prior written agreement of both parties.
17. The City will service, maintain, and pay the cost of operating the project described in this agreement.
18. 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 if 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 Sec. 21.5.
 - (3) Solicitations for Subcontracts, Including Procurement 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 procurement 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, the State 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: The 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. The City 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 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, the 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) The 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 a 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.

IN WITNESS WHEREOF, the Director of Transportation's authorized representative has signed on behalf of the State of Montana, and the Mayor of the City of Billings has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

BY _____, 2008
Chief Engineer, Engineering Division

APPROVED FOR LEGAL CONTENT


MDT Legal Counsel

CITY OF BILLINGS

ATTEST-CLERK & RECORDER

CHAIRMAN

By _____

I, _____, Billings City Clerk, certify that this agreement was regularly adopted by the Billings City Council at a meeting held on the ____ day of _____, 2008, and that the Council authorized the Mayor to sign this agreement on behalf of the City.

[OFFICIAL SEAL]

City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: CTEP Project Specific Agreement – Broadwater Crossing Project
DEPARTMENT: Planning and Community Development
PRESENTED BY: Candi Beaudry, AICP, Director/CTEP Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a Montana Department of Transportation (MDT) Community Transportation Enhancement Project (CTEP) grant application for the Broadwater Crossing Project in November, 2007. This project will consist of design and construction of a street crossing to include a refuge island, signage, street lighting, and sidewalk connectors on each side of Broadwater Avenue. The crossing will be located at Lillis Park. This project was approved through a local selection process and approved by MDT. The Project Specific Agreement represents the formal agreement between the City and MDT for the project's scope, funding and federal aid compliance. Council must authorize the Mayor to execute a Project Specific Agreement for the Broadwater Crossing Project to begin development.

The Broadwater Crossing Project was approved in the FY09 Capital Improvements Plan.

ALTERNATIVES ANALYZED:

- Approve the CTEP Project Specific Agreement.
- Do not approve the CTEP Project Specific Agreement. This would result in the loss of CTEP funding for this project.

FINANCIAL IMPACT: The funding breakdown for this project is as follows:

CTEP Grant	\$92,325 (Includes ICAP)
<u>Local Match (Gas Tax)</u>	<u>\$14,311 (Includes ICAP)</u>
Total Funds Available	\$106,636

The local match portion of the project will be funded by the 1999 General Obligation Bond. The CTEP grant and local match figures shown above include the Montana Department of Transportation's Indirect Cost Accounting Procedures (ICAP). State law requires MDT to charge for indirect or overhead expenses for all projects it administers. This charge is referred to

in item 14 of the attached agreement and amounts to 12.25% of the total CTEP and local match amount. The ICAP charge for this project, which will be billed to the City, is \$1,753.10.

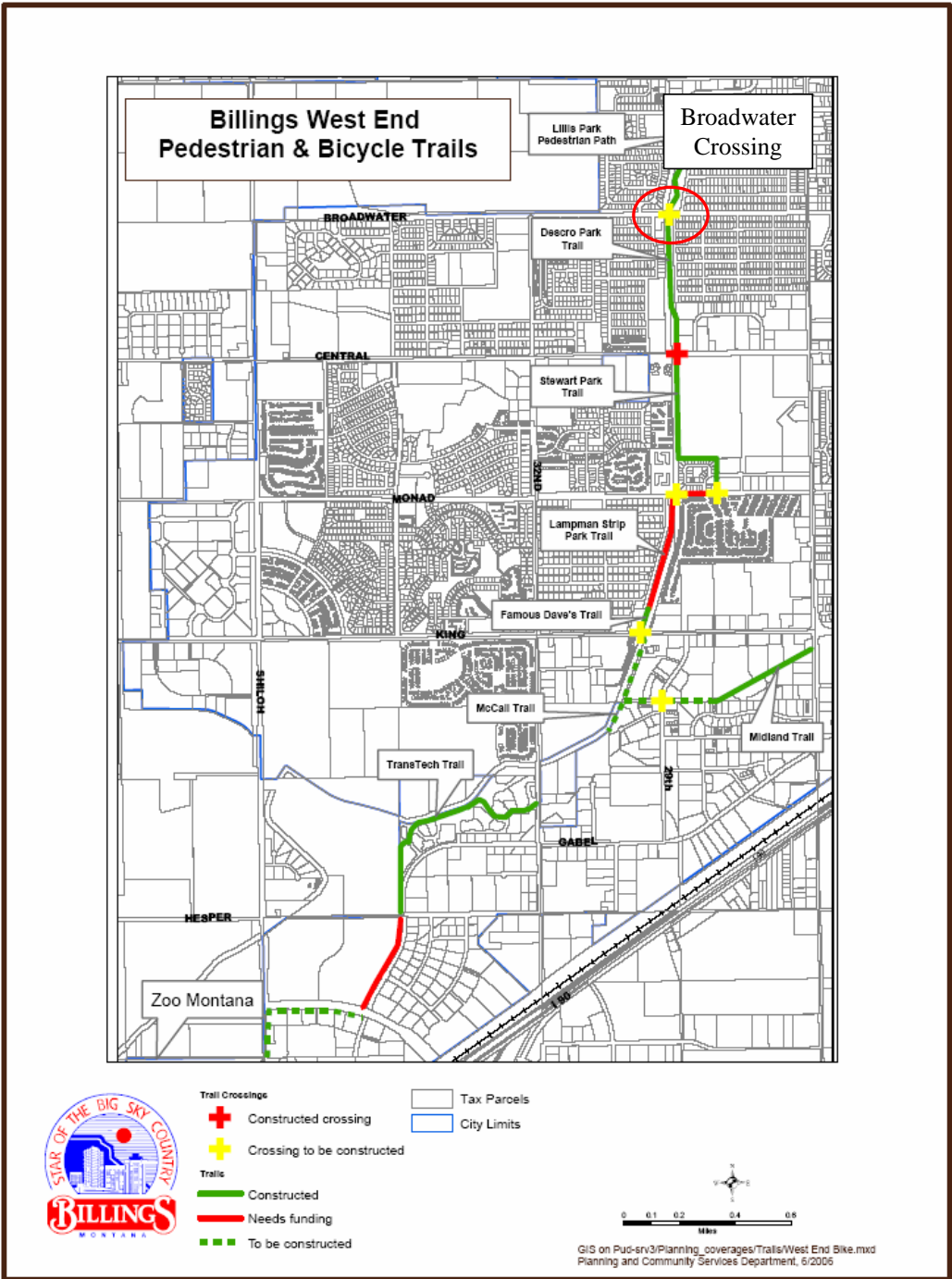
RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the CTEP Project Specific Agreement for the Broadwater Crossing Project.

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

ATTACHMENTS

- C. Map
- D. Project Specific Agreement



BROADWATER CROSSING-BILLINGS
Control No. 6634

CTEP PROJECT AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called the "State," and the City of Billings, hereinafter called the "City".

WITNESSETH THAT:

WHEREAS, the City proposes to develop and construct a Community Transportation Enhancement Program (CTEP) project, Control Number 6634, titled BROADWATER CROSSING-BILLINGS (hereinafter the "project"); and,

WHEREAS, the State and the City recognize the need to develop and construct the project, and are willing to share in its costs in accordance with this agreement; and,

WHEREAS, the State and Federal Highway Administration (FHWA) will not participate in the development and construction of the project unless the City agrees to the conditions set forth; and,

WHEREAS, the estimated cost of the project's development and construction is \$106,636; and,

WHEREAS, the financial participation for the project development and construction will in part be with federal-aid funds made available in federal fiscal 2008; and,

WHEREAS, the federal-aid funds provided are described in the Catalog of Federal Domestic Assistance (CFDA), number 20.205, Highway Planning and Construction; and,

WHEREAS, it is understood that all costs associated with the project in excess of these federal-aid funds will be financed by the City; and,

WHEREAS, this document must be executed and submitted to the State before the project development and construction process will be authorized to start; and,

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree that:

1. The City will develop a CTEP project described as: the design and construction of a street crossing to include a refuge island, signage, street lighting and sidewalk connectors on each side of Broadwater Avenue.
2. The project will be located in Billings on Broadwater Avenue (U-1006) at Lillis Park (RP 1.990).
3. The purpose of this project is to provide a safe and convenient pedestrian crossing.
4. The initial federal-aid program to be requested for the development and construction of this project, by federal-aid account, is as follows:

Federal-Aid Program Account By Project Phase (Maximum CTEP Share)

[9102] Preliminary Engineering (86.58%) (including environmental documentation)	\$	10,663
[9202] Right-of-Way/Easement Acquisition (86.58%)	\$	-0-
[9302] Incidental Construction (64.93%) (utility relocation involvement)	\$	-0-
[9402] Construction Engineering (86.58%) (including contract administration and inspections)	\$	10,663
[9502] Construction (86.58%)	\$	85,310
Total	\$	106,636

	Project	CTEP Funds	Local Match	ADD. Contribution
City of Billings	\$ 106,636	\$ 92,325	\$ 14,311	\$ -0-
TOTAL	\$ 106,636	\$ 92,325	\$ 14,311	\$ -0-

5. The general method of development includes: The City will engage a project engineer for preliminary engineering, contract bid document preparation and construction engineering. Construction must be by competitive bid. The State will perform a final inspection to ensure substantial compliance with project plans, specifications and estimates.
6. The City and any consultant and/or contractor it may employ in pursuit of project completion will comply with applicable Equal Employment Opportunity (EEO) requirements, Disadvantaged Business Enterprise (DBE) goals, Americans with Disabilities Act (ADA) and Federal Labor Requirements.
7. The City will provide documentation necessary to comply with applicable environmental requirements, including the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA) and Section 4(f) of the DOT Act.
8. The City will complete and submit the applicable supporting documentation to the State for review and concurrence prior to beginning the next step in the project's development or construction process, as identified in the CTEP Guidelines.
9. The City will allow inspection of all work and project-related records by the personnel or agents of the State and FHWA.
10. Cities subject to the authority of the Montana Single Audit Act will secure an independent audit in compliance with OMB Circular A-133 and submit a copy to the Montana Department of Administration, Local Government Services Bureau, P O Box 200547, Helena, MT, 59620-0547.
11. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of State employees, the City agrees that it will protect, indemnify, and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), and losses to them from any cause whatever from the project, and including any suits, claims, actions, losses, costs or damages of any kind, including the State and Department's legal expenses, made against the State or Department by anyone arising out of, in connection with, or incidental to the project and its construction or use or maintenance.
12. The City will retain project-related records and documents for a period of three years after the closing of the project.
13. The City will be responsible for \$14,311 and Federal participation will be \$92,325 of the

estimated total project cost of \$106,636. The City will be responsible for 100% of all costs exceeding the proposed \$106,636 that may be required to complete the project.

14. **It is understood and agreed between the parties that:** Section 17-1-106, MCA, requires any state agency, including MDT, that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by OMB Circular A-87. MDT's current indirect cost rate is 12.25% for fiscal year 2008 (July 1, 2007 to June 30, 2008).

For this project, indirect costs will be charged to the federal CTEP funding provided and the required local match. MDT will bill the City the indirect costs applicable to the local match. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.]

15. The City may submit a claim once a month detailing items and quantities of acceptable work completed that period to the CTEP Office for the project development and/or construction costs incurred. The request will be accompanied by documentation substantiating the amount requested and identifying the applicable federal share.
16. This agreement shall become effective upon execution by both parties. It may be modified only by prior written agreement of both parties.
17. The City will service, maintain, and pay the cost of operating the project described in this agreement.
18. 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 if 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 Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement 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 procurement 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, the State 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: The 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. The City 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 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, the 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) The 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 a City (and each subcontract the prime

contractor signs with a subcontractor) must include the following assurance:

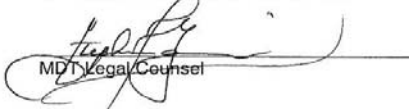
The City, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The City shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the City to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

IN WITNESS WHEREOF, the Director of Transportation's authorized representative has signed on behalf of the State of Montana, and the Mayor of the City of Billings has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

BY _____, 2008
Chief Engineer, Engineering Division

APPROVED FOR LEGAL CONTENT


MDT Legal Counsel

CITY OF BILLINGS

ATTEST-CLERK & RECORDER

CHAIRMAN

By _____

I, _____, Billings City Clerk, certify that this agreement was regularly adopted by the Billings City Council at a meeting held on the _____ day of _____, 2008, and that the Council authorized the Mayor to sign this agreement on behalf of the City.

[OFFICIAL SEAL]

City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: CTEP Project Specific Agreement – On-Street Bike Lanes Project
DEPARTMENT: Planning and Community Development
PRESENTED BY: Candi Beaudry, AICP, Director/CTEP Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a Montana Department of Transportation (MDT) Community Transportation Enhancement Project (CTEP) grant application for On-Street Bike Lanes in November, 2007. This project will consist of planning, design, and construction of striping and signing bicycle lanes along six routes: 1) North 30th Street from 6th Avenue to Grandview Boulevard; 2) Briarwood Road from Blue Creek Road to Cardiff Road; 3) Nutter Boulevard from Wicks Lane to Hilltop Road; 4) South 28th Street from Minnesota Avenue to 8th Avenue South; 5) 6th Avenue South from South 27th Street to South 34th Street; and 6) Poly Drive from North 32nd Street West to North 13th Street West. This project was approved through a local selection process and approved by MDT. The Project Specific Agreement represents the formal agreement between the City and MDT for the project's scope, funding and federal aid compliance. Council must authorize the Mayor to execute a Project Specific Agreement for the On-Street Bike Lanes project to begin development.

On-street bike lane striping is an approved project listed in the FY09 Capital Improvements Plan.

ALTERNATIVES ANALYZED:

- Approve the CTEP Project Specific Agreement.
- Do not approve the CTEP Project Specific Agreement. This would result in the loss of CTEP funding for this project.

FINANCIAL IMPACT: The funding breakdown for this project is as follows:

CTEP Grant	\$97,186 (Includes ICAP)
Local Match (Gas Tax)	\$15,064 (Includes ICAP)
Total Funds Available	\$112,250

The local match portion of the project will be funded by Gas Tax. The CTEP grant and local match figures shown above include the Montana Department of Transportation's Indirect Cost Accounting Procedures (ICAP). State law requires MDT to charge for indirect or overhead expenses for all projects it administers. This charge is referred to in item 14 of the attached agreement and amounts to 12.25% of the total CTEP and local match amount. The ICAP charge for this project, which will be billed to the City, is \$1,845.34.

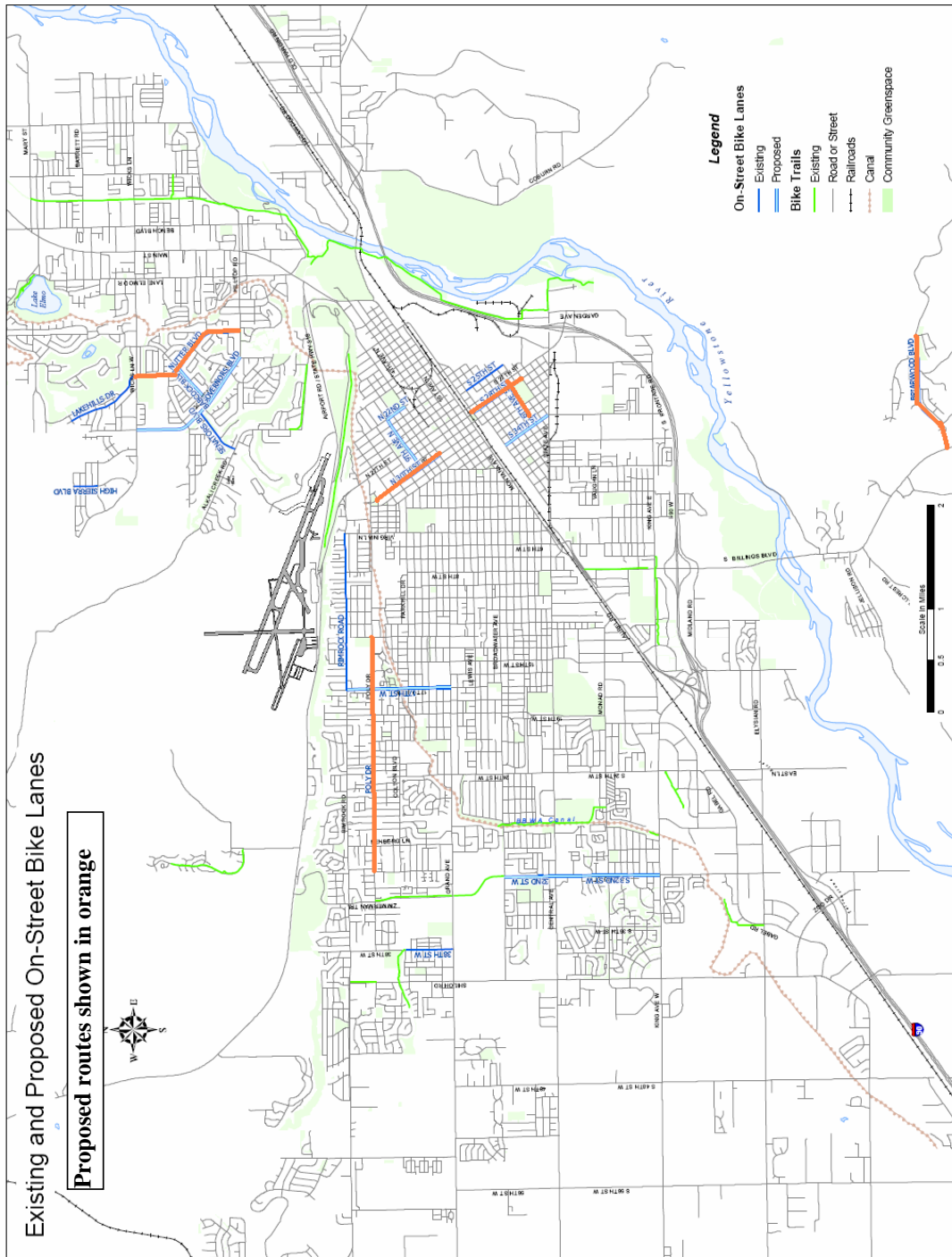
RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the CTEP Project Specific Agreement for the On-Street Bike Lanes Project.

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

ATTACHMENTS

- E. Map
- F. Project Specific Agreement



ON STREET BIKE LANES-BILLINGS
Control No. 6631

CTEP PROJECT AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called the "State," and the City of Billings, hereinafter called the "City".

WITNESSETH THAT:

WHEREAS, the City proposes to develop and construct a Community Transportation Enhancement Program (CTEP) project, Control Number 6631, titled ON STREET BIKE LANES-BILLINGS (hereinafter the "project"); and,

WHEREAS, the State and the City recognize the need to develop and construct the project, and are willing to share in its costs in accordance with this agreement; and,

WHEREAS, the State and Federal Highway Administration (FHWA) will not participate in the development and construction of the project unless the City agrees to the conditions set forth; and,

WHEREAS, the estimated cost of the project's development and construction is \$112,250; and,

WHEREAS, the financial participation for the project development and construction will in part be with federal-aid funds made available in federal fiscal 2008; and,

WHEREAS, the federal-aid funds provided are described in the Catalog of Federal Domestic Assistance (CFDA), number 20.205, Highway Planning and Construction; and,

WHEREAS, it is understood that all costs associated with the project in excess of these federal-aid funds will be financed by the City; and,

WHEREAS, this document must be executed and submitted to the State before the project development and construction process will be authorized to start; and,

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree that:

1. The City will develop a CTEP project described as: the planning, design and construction of striping and signing of bicycle lanes along six routes in Billings.
2. The bike lanes will be located on: 1) North Avenue from 6th Avenue to Grandview Boulevard; 2) Briarwood Road from Blue Creek Road to Cardiff Road; 3) Nutter Boulevard from Wicks Lane to Hilltop Road; 4) South 28th Street from Minnesota Avenue to 8th Avenue South; 5) 6th Avenue South from South 27th Street to South 34th Street; and, 6) Poly Drive from North 32nd Street West to North 13th Street West.
3. The purpose of this project is to provide safe and convenient bicycle travel lanes within the City of Billings.
4. The initial federal-aid program to be requested for the development and construction of this project, by federal-aid account, is as follows:

Federal-Aid Program Account By Project Phase (Maximum CTEP Share)

[9102] Preliminary Engineering (86.58%) (including environmental documentation)	\$	6,735
[9202] Right-of-Way/Easement Acquisition (86.58%)	\$	-0-
[9302] Incidental Construction (64.93%) (utility relocation involvement)	\$	-0-
[9402] Construction Engineering (86.58%) (including contract administration and inspections)	\$	6,735
[9502] Construction (86.58%)	\$	98,780
Total	\$	112,250

	Project	CTEP Funds	Local Match	ADD. Contribution
City of Billings	\$ 112,250	\$ 97,186	\$ 15,064	\$ -0-
TOTAL	\$ 112,250	\$ 97,186	\$ 15,064	\$ -0-

5. The general method of development includes: The City will engage a project engineer for preliminary engineering, contract bid document preparation and construction engineering. Construction must be by competitive bid. The State will perform a final inspection to ensure substantial compliance with project plans, specifications and estimates.
6. The City and any consultant and/or contractor it may employ in pursuit of project completion will comply with applicable Equal Employment Opportunity (EEO) requirements, Disadvantaged Business Enterprise (DBE) goals, Americans with Disabilities Act (ADA) and Federal Labor Requirements.
7. The City will provide documentation necessary to comply with applicable environmental requirements, including the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA) and Section 4(f) of the DOT Act.
8. The City will complete and submit the applicable supporting documentation to the State for review and concurrence prior to beginning the next step in the project's development or construction process, as identified in the CTEP Guidelines.
9. The City will allow inspection of all work and project-related records by the personnel or agents of the State and FHWA.
10. Cities subject to the authority of the Montana Single Audit Act will secure an independent audit in compliance with OMB Circular A-133 and submit a copy to the Montana Department of Administration, Local Government Services Bureau, P O Box 200547, Helena, MT, 59620-0547.
11. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of State employees, the City agrees that it will protect, indemnify, and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), and losses to them from any cause whatever from the project, and including any suits, claims, actions, losses, costs or damages of any kind, including the State and Department's legal expenses, made against the State or Department by anyone arising out of, in connection with, or incidental to the project and its construction or use or maintenance.

12. The City will retain project-related records and documents for a period of three years after the closing of the project.
13. The City will be responsible for \$15,064 and Federal participation will be \$97,186 of the estimated total project cost of \$112,250. The City will be responsible for 100% of all costs exceeding the proposed \$112,250 that may be required to complete the project.
14. **It is understood and agreed between the parties that:** Section 17-1-106, MCA, requires any state agency, including MDT, that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by OMB Circular A-87. MDT's current indirect cost rate is 12.25% for fiscal year 2008 (July 1, 2007 to June 30, 2008).

For this project, indirect costs will be charged to the federal CTEP funding provided and the required local match. MDT will bill the City the indirect costs applicable to the local match. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.]

15. The City may submit a claim once a month detailing items and quantities of acceptable work completed that period to the CTEP Office for the project development and/or construction costs incurred. The request will be accompanied by documentation substantiating the amount requested and identifying the applicable federal share.
16. This agreement shall become effective upon execution by both parties. It may be modified only by prior written agreement of both parties.
17. The City will service, maintain, and pay the cost of operating the project described in this agreement.
18. 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 if 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 Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement 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 procurement 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, the State 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: The 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. The City 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 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, the 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) The 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 a City (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

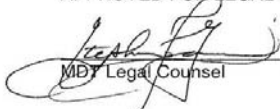
The City, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The City shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the City to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

IN WITNESS WHEREOF, the Director of Transportation's authorized representative has signed on behalf of the State of Montana, and the Mayor of the City of Billings, has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

BY _____, 2008
Chief Engineer, Engineering Division

APPROVED FOR LEGAL CONTENT


MDY Legal Counsel

CITY OF BILLINGS

ATTEST-CLERK & RECORDER

CHAIRMAN

By _____

I, _____, Billings City Clerk, certify that this agreement was regularly adopted by the Billings City Council at a meeting held on the _____ day of _____, 2008, and that the Council authorized the Mayor to sign this agreement on behalf of the City.

[OFFICIAL SEAL]

City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: MDT Airport Road Project, Right of Way Agreement
DEPARTMENT: Public Works Department – Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Montana Department of Transportation has provided a written offer to purchase Right-of-Way from the City in order to complete the road widening project on Airport Road. Approximately 4.72 acres of land are owned by the Parks Department land and one acre is owned by the Public Works Department. The attached map shows the properties. In addition Montana Department of Transportation needs to purchase Right-of-Way from the City for airport property. This Right-of-Way agreement will be presented to Council in a subsequent memo.

ALTERNATIVES ANALYZED:

- Allow Montana Department of Transportation to purchase said Right-of-Way.
- Do not allow Montana Department of Transportation to purchase said Right-of-Way.

FINANCIAL IMPACT: Montana Department of Transportation has offered for all five parcels a total of \$80,950 which is \$69,650 for Parks Department land (Parcels 11 and 16) and \$11,300 for Public Works Department land (Parcels 10, 12, 33).

RECOMMENDATION

Staff recommends that Council agree to sell this portion of Right-of-Way to Department of Transportation.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

- A. Right-of-Way Agreements

- B. Bargain and Sale Deed
- C. Reality Transfer
- D. Quitclaim Deed
- E. Map of Properties

Attachment A

STATE OF MONTANA DEPARTMENT OF TRANSPORTATION
Right-of-Way Agreement

ROWFORSNAC0200 (Revised 2-6-2004)

Billings Airport Road

DESIGNATION

Yellowstone

COUNTY

PE PROJECT ID: MT-0299

ROW PROJECT ID: MT-STPA-0299

UNIFORM PROJECT No.: 4724-082

Parcel	From Section	To Section	Subdivision	Section	Township	Range
10	63-42.5 RT (Baseline)	63-42.5 RT (Baseline)	1/2 Sec 16, 19 Amended COS 1434	28	1N	20E

11	63-41.1 T (Baseline)	63-47.5 LT (Baseline)	Box Logan Park Block 2 76th S28	28		
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12	63-40.5 RT (Baseline)	69-00.5 RT (Baseline)	Tract 1A, Amended Lot 1 COS 1434	28		
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16	63-05.5 LT (Baseline)	63-42.5 LT (Baseline)	Block 1 76th Sub Lots 1, 2, 3, 4, 5, 6	27		
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	63-41.1 T (Baseline)	63-42.5 LT (Baseline)	Block 1 76th Sub Lots 1, 2, 3, 4, 5, 6	27		
--	-------------------------	--------------------------	---	----	--	--

List Names & Addresses of the Grantees
(Contract Purchaser, Contract Seller, Lessee, etc.)

City of Billings
PO Box 1178
Billings MT 59103-1178

- In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions of this agreement. The parties agree that the parties hereto are the only parties who have the right to enforce this agreement and that any encumbrances on the property are hereby released. The agreement is made effective upon execution by the Acquisition Manager or a designated representative, and possession of the property is granted to the Department when it sends the payment(s) agreed to below. Grantees consent that they will, on Department's request, execute a deed and/or easement required by Department for all real property agreed to be conveyed by this agreement.
- COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

8.07 acres (0.647 ha) converting existing easement to deed	\$4,257.00
0.20 acres (0.080 ha) gravel/grass and maintenance easements	\$84,631.00
12,240 sq asphalt paving	\$11,770.00
- OTHER COMPENSATION:

2.70 acre (1.082 ha) Temporary Construction Permit	\$5,140.00
--	------------
- TOTAL COMPENSATION includes all damages to the remainder: \$220,800.00.

5. IT IS UNDERSTOOD AND AGREED THE STATE SHALL MAKE PAYMENT AS FOLLOWS:
1178 per acre in the amount of \$75,800.00 to be made payable to City of Billings and mailed to City of Billings at P.O. Box 1178, Billings MT 59103-1178.
6. Permission is hereby granted the State to enter upon the Grantor's land, where necessary and for the purposes described as follows:

A. Station 82+32.7 (Baseline)	Build farm field approach.	RT SOP
B. Station 88+30 to Station 88+75 (Baseline)	Temporary Construction Permit to build multi-use path.	LT SOP
C. Station 88+80 to Station 82+46 (Baseline)	Temporary Construction Permit to build multi-use path.	RT SOP
D. Station 11+48 to Station 12+80.25 (G-Line)	Temporary Construction Permit to build multi-use path.	LT SOP
E. Station 11+18 to Station 11+61 (G-Line)	Temporary Construction Permit for shopping.	RT SOP
F. Station 11+18.5 to Station 12+56 (F-Line)	Temporary Construction Permit to build multi-use path.	LT SOP
G. Station 10+23 (G-Line)	Build Private Approach	LT SOP
7. It is understood and agreed by the parties hereto that the location of the approaches listed above is subject to adjustment at the time of construction to achieve the best possible results for the project. The Grantor shall maintain, at its sole expense, all approaches identified in this agreement.
8. It is understood and agreed at no expense to the Grantor, the State will construct the fencing (including gates) listed below. The Grantor grants permission to the State to enter upon its property where necessary for the purpose of constructing fences at locations:

A. Station 82+4.5 to Station 82+89.5	Build 4-strand smooth wire fence on steel posts	RT
B. Station 82+32	Remove and reset two steel gates	RT
9. The agreement upon execution by an agent of the Department of Transportation and presentation to the owner so designated constitutes an agreement between the State and the owner to the effect that the State, in consideration of the sum of the property and property rights being acquired and agreed to the possession of the property is granted to the Department when it acquires the property.

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN.

We understand that we are required by law to provide our correct taxpayer identification number(s) to the Montana Department of Transportation and that failing to comply may subject us to civil and criminal penalties. We certify that the number(s) below are our correct taxpayer identification number(s).

Signature:	(Date)	81-6001232
Recommender:	(Date)	Tax ID No.
Record/Title Agent:	2/28/20	RECORDED AND ON BEHALF OF DEPARTMENT:
Consent Project or PM Manager (if applicable):	(Date)	Acquisition Manager
	(Date)	(Date)

STATE OF MONTANA DEPARTMENT OF TRANSPORTATION
RIGHT-OF-WAY AGREEMENT

(Provisional Agreement to be Signed, Delineated and Easement 2023)

PROJECT/STATE/ACQUISITION (Printed 2-25-2024)

PE PROJECT ID: MT.0003

BILLINGS AIRPORT ROAD
DESIGNATION

RW PROJECT ID: MT-STRAJ003

YALOWATON
COUNTY

UNIFORM PROJECT No.: 424.003

Parcel	From Station	To Station	Subdivision	Section	Township	Range
33	65+00 LT	65+07 LT	TRACT 16, KENNEDY GDS No. 131	27	1N	28E

List Names & Addresses of the Grantees
(Contract Purchaser, Contract Seller, Lessee, etc.)

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

- In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions hereinafter set forth. The parties agree that this agreement is binding upon either party. Grantor certifies that any encroachments or encumbrances on the property are hereby acknowledged. This agreement is effective upon execution by the Acquisition Manager or a designated representative of the Department of Transportation. The property is granted to the Department when it ends the payment(s) agreed to below. Grantor agrees that they will, on Department's request, execute a deed and/or easement required by Department for all real property agreed to be conveyed by this agreement.
- COMPENSATION FOR LAND AND IMPROVEMENTS (Lift overage and improvements to be acquired) \$1,150.00
46 square feet (4 square meters) or right-of-way by deed
- OTHER COMPENSATION: None \$0.00
- TOTAL COMPENSATION (includes all damages to the remainder): \$1,150.00
- IT IS UNDERSTOOD AND AGREED THE STATE SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$1,150.00 to be made payable to City of Billings and mailed to City of Billings at P.O. Box 1178, Billings MT 59103-1178.
- This agreement, upon execution by an agent of the Department of Transportation and presentation to the grantor, constitutes a written offer of compensation in the full amount of the determined value, a summary of the Department's determination of the value of the property, and an agreement that possession of the property is granted to the Department when it starts the payment(s).

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN

We understand that we are required by law to provide our correct taxpayer identification number(s) to the Montana Department of Transportation. If we are unable to provide our correct taxpayer identification number(s), we agree that the Department of Transportation may subject us to civil and criminal penalties. We certify that the number(s) below have our correct taxpayer identification number(s).

Signature (Date) Tax ID No.

RECEIVED BY:  (Date)

Right-of-Way Agent

2/28/08

(Date)

R/W

(Date)

Consent Project or R/W Manager (if applicable) (Date) Acquisition Manager (Date)

Montana Department of Transportation
Right-of-Way Bureau
PO Box 201001
Helena, MT 59620-1001

Attachment B

ROWForm(Pin)520

Revised 11/18/04

**State of Montana
Department of Transportation**

Right-of-Way Bureau
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Project ID: MT-STPU (009) Parcel No.: 10 County: Yellowstone
Designation: Billings Airport Road
Project No.: 4743-009

Bargain and Sale Deed

This Deed, made this _____ day of _____, 200__, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration now paid, the receipt of which is acknowledged, **witnesses that**,

City of Billings, Montana, a Montana municipal corporation
P.O. Box 1178
Billings, MT 59103

does hereby **grant, bargain, sell and convey** to the **Montana Department of Transportation** the following-described real property:

Parcel No. 10 on Montana Department of Transportation Project MT-STPU (009), as shown on the Right-of-Way plan for said project recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana. Said parcel is also described as a tract of land within Tract 1B-1, of Amendment of Tract 1B of Certificate of Survey No. 1434 filed under Document #1293867, situated in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, Township 1 North, Range 26 East, P.M., M., Yellowstone County, Montana, as shown by the shaded area on the plat, consisting of 1 sheet attached hereto and made a part hereof, containing an area of 0.022 ha (0.05 acre), more or less.

ROW.4743.P10.rle

Bargain And Sale Deed
Project ID: MT-STPU (009)
Designation: Billings Airport Road

Parcel No.: 10

Excepting and reserving to Grantor(s), however, all gas, oil and minerals beneath the surface of the above-described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right, the surface thereof shall not be disturbed, interfered with or damaged. This exception and reservation does not include sand, gravel and other road building materials, which are conveyed by this Deed.

Further excepting and reserving unto the Grantor(s), its successors and assigns, all water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water rights, bonds, certificates, contracts and any and all other indicia of water, water right and ditch ownership, or any interest in water, appurtenant to the land described therein, save and except groundwater for the use, benefit and purposes of the Grantor(s).

To have and to hold the above-described and conveyed premises unto the Montana Department of Transportation, and to its successors and assigns forever.

This Deed was executed on the date of its last acknowledgment

(Corporate Seal)

State of _____ }
County of _____ }

This instrument was acknowledged before me on _____ (date)

by _____ (name of person(s))

as _____ (type of authority, e.g., officer, trustee, etc.)

_____ (name of party on behalf of whom instrument was executed)

Notary Signature Line

(Seal)

Notary Printed Name

Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

State of _____ }
County of _____ }

This instrument was acknowledged before me on _____ (date)

by _____ (name of person(s))

as _____ (type of authority, e.g., officer, trustee, etc.)

_____ (name of party on behalf of whom instrument was executed)

Notary Signature Line

(Seal)

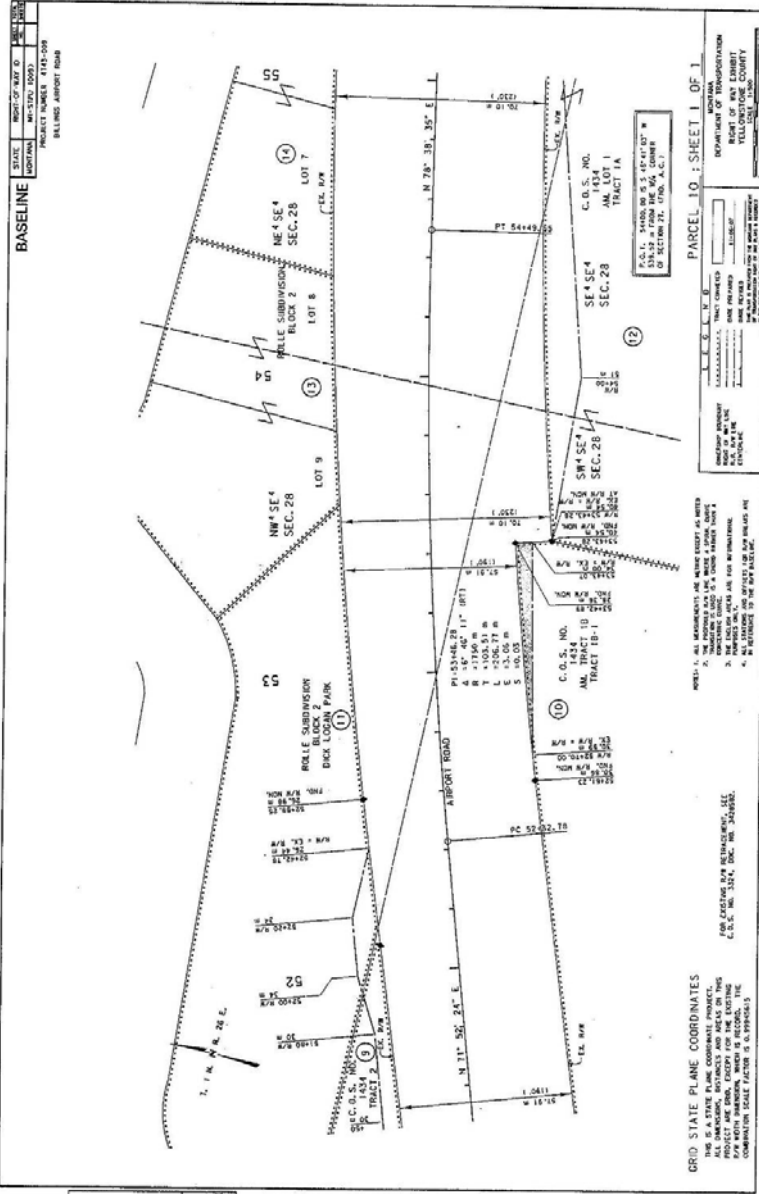
Notary Printed Name

Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

Recording Information



BASELINE
 STATE: IOWA
 COUNTY: LUTHER
 PROJECT NUMBER: 4143-026
 DATED: JANUARY 2004

GRID STATE PLANE COORDINATES
 THIS IS A STATE PLANE COORDINATE SYSTEM.
 ALL DIMENSIONS, DISTANCES AND AREAS ON THIS
 MAP ARE BASED ON THE STATE PLANE COORDINATE
 SYSTEM. THE STATE PLANE COORDINATE SYSTEM
 FOR IOWA IS BASED ON THE NAD 83 DATUM. THE
 COMBINATION SCALE FACTOR IS 0.999999999.

PARCEL 10: SHEET 1 OF 1

NOTES:
 1. ALL DIMENSIONS ARE BASED ON THE
 2. THE DIMENSIONS ARE BASED ON THE
 3. DIMENSIONS ARE BASED ON THE
 4. DIMENSIONS ARE BASED ON THE

Montana Department of Transportation
Right-of-Way Bureau
P.O. Box 201001
Helena, MT 59620-1001

ROW/TransPRD20

State of Montana
Department of Transportation

Right-of-Way Bureau
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620-1001

Revised 11/1/2014

Project ID: MT-STPU (009)

Parcel No.: 12

County: Yellowstone

Designation: Billings Airport Road

Project No.: 4743-009

Bargain and Sale Deed

This Deed, made this _____ day of _____, 200_, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration now paid, the receipt of which is acknowledged, witnesses that:

City of Billings, Montana, a Montana municipal corporation
P.O. Box 173
Billings, MT 59103

does hereby grant, bargain, sell and convey to the Montana Department of Transportation the following described real property:

Parcel No. 12 on Montana Department of Transportation Project MT-STPU (009), as shown on the Right-of-Way plan for said project recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana. Said parcel is also described as a tract of land within Tract 1A, of the Yellowstone County, Montana, Section 28, Township 1 North, Range 12 East, situated in the S.W. 1/4 of Section 28, Township 1 North, Range 12 East, Montana, also a tract of land in Lots 6, 5, 4, 3, 2 and 1, Block 1, of Rolle Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #579481, as shown by the shaded area on the plat, consisting of 2 sheets, attached hereto and made a part hereof, containing an area of 0.3711 ha (0.92 acres), more or less.

ROW-4743-P12.06

Parcel No.: 12

This deed was executed on the date of [REDACTED] acknowledgment.

State of _____

Name of _____

(Name of party concerned)

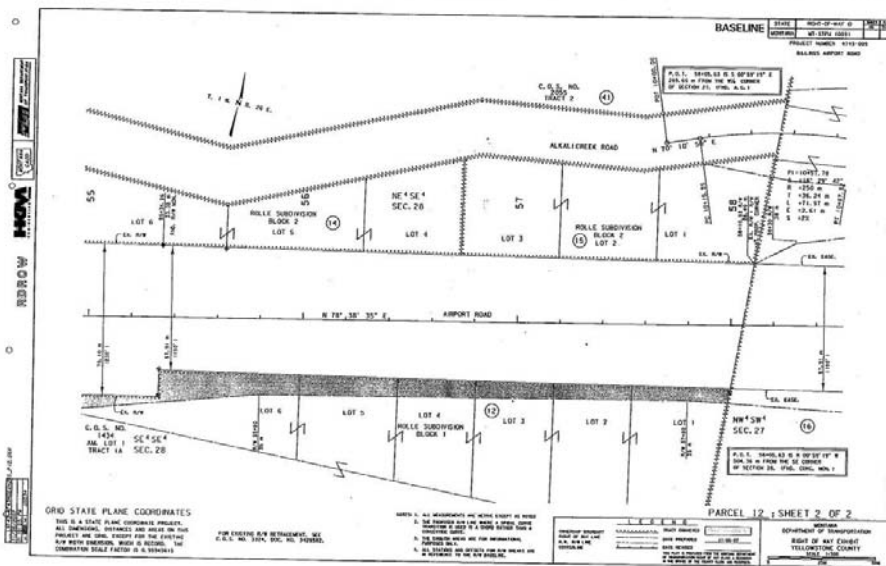
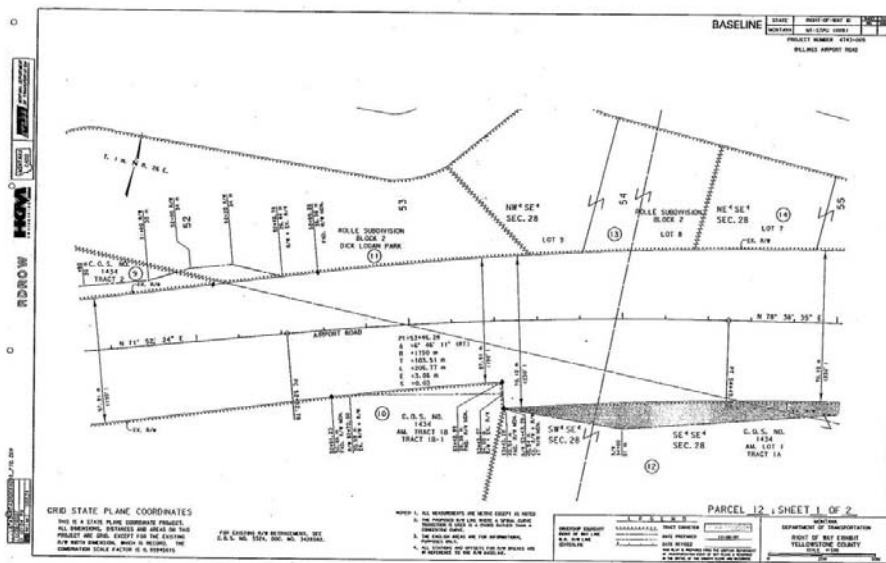
Scale of _____

_____ is a _____

by _____

Type of...

Page 2 of 2



Montana Department of Transportation
Right-of-Way Bureau
PO Box 201001
Helena, MT 59620-1001

ROWForma/P16/522

Revised 11/18/04

State of Montana
Department of Transportation
Right-of-Way Bureau
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Project ID: MT-STPU (009) Parcel No.: 16 County: Yellowstone
Designation: Billings Airport Road
Project No.: 4743-009

Bargain and Sale Deed With Easement

This Deed, made this _____ day of _____, 200__, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration now paid, the receipt of which is acknowledged, witnesses that,

The City of Billings, a municipal corporation, aka
The City of Billings, Montana, a political subdivision
P.O. Box 1178
Billings, MT 59103-1178

does hereby **grant, bargain, sell and convey** to the Montana Department of Transportation the following-described real property:

Parcel No. 16 on Montana Department of Transportation Project MT-STPU (009), as shown on the Right-of-Way plan for said project recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana. Said parcel is also described as a tract of land in the N $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, Township 1 North, Range 26 East, P.M., M., Yellowstone County, Montana, as shown by the shaded area on the plat, consisting of 3 sheets attached hereto and made a part hereof, containing an area of 5.531 ha (13.67 acres), more or less, including 3.647 ha (9.01 acres), which constitute a part of an existing public highway.

ALSO, the Grantor hereby conveys unto the MONTANA DEPARTMENT OF TRANSPORTATION, an easement for the installation and maintenance of riprap in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 27, as shown by the hatched area on said plat, containing an area of 0.080 ha (0.20 acre), more or less.

ROW:4743:P16.r/e

Bargain and Sale Deed With Easement
Project ID: MT-STPU (009)
Designation: Billings Airport Road

Parcel No.: 16

Excepting and reserving to Grantor(s), however, all gas, oil and minerals beneath the surface of the above-described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right, the surface thereof shall not be disturbed, interfered with or damaged. This exception and reservation does not include gravel and other road building materials, which are conveyed by this Deed.

Further excepting and reserving unto the Grantor(s), its successors and assigns, all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, bonds, certificates, contracts and any and all other indicia of water, water right and ditch ownership, or any other appurtenance to the land described therein, save and except groundwater for the use, benefit and purposes of the land described therein.

To have and to hold the above-described and conveyed premises unto the Montana Department of Transportation and to its successors and assigns forever.

This Deed was executed on the date of its last acknowledgment.

State of _____)
County of _____)

This instrument was acknowledged before me on _____ (date)
by _____ (name of person(s))
as _____ (type of authority e.g., officer, trustee, etc.) of _____
(name of party on behalf of whom instrument was executed)

(Seal)

Notary Signature Line

Notary Printed Name

Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

State of _____)
County of _____)

This instrument was acknowledged before me on _____ (date)
by _____ (name of person(s))
as _____ (type of authority e.g., officer, trustee, etc.) of _____
(name of party on behalf of whom instrument was executed)

(Seal)

Notary Signature Line

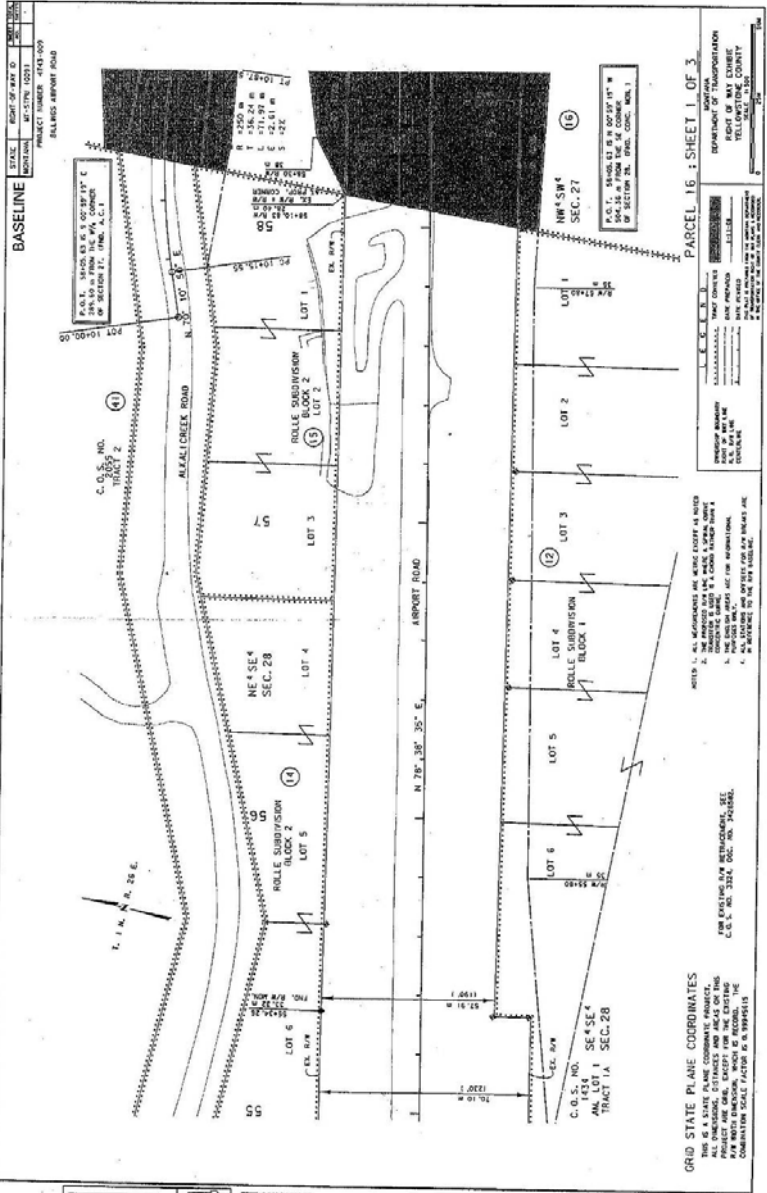
Notary Printed Name

Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

Recording Information



STATE: MONTANA
RIGHT OF WAY ID: 4513-003
PROJECT NUMBER: 4513-003
BASIS: AIRPORT ROAD

SECTION 27
T.1N. R.28 E.
S.1/4

SECTION 28
T.1N. R.28 E.
S.1/4

SECTION 29
T.1N. R.28 E.
S.1/4

SECTION 30
T.1N. R.28 E.
S.1/4

SECTION 31
T.1N. R.28 E.
S.1/4

SECTION 32
T.1N. R.28 E.
S.1/4

SECTION 33
T.1N. R.28 E.
S.1/4

SECTION 34
T.1N. R.28 E.
S.1/4

SECTION 35
T.1N. R.28 E.
S.1/4

SECTION 36
T.1N. R.28 E.
S.1/4

SECTION 37
T.1N. R.28 E.
S.1/4

SECTION 38
T.1N. R.28 E.
S.1/4

SECTION 39
T.1N. R.28 E.
S.1/4

SECTION 40
T.1N. R.28 E.
S.1/4

SECTION 41
T.1N. R.28 E.
S.1/4

SECTION 42
T.1N. R.28 E.
S.1/4

SECTION 43
T.1N. R.28 E.
S.1/4

SECTION 44
T.1N. R.28 E.
S.1/4

SECTION 45
T.1N. R.28 E.
S.1/4

SECTION 46
T.1N. R.28 E.
S.1/4

SECTION 47
T.1N. R.28 E.
S.1/4

SECTION 48
T.1N. R.28 E.
S.1/4

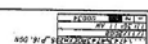
SECTION 49
T.1N. R.28 E.
S.1/4

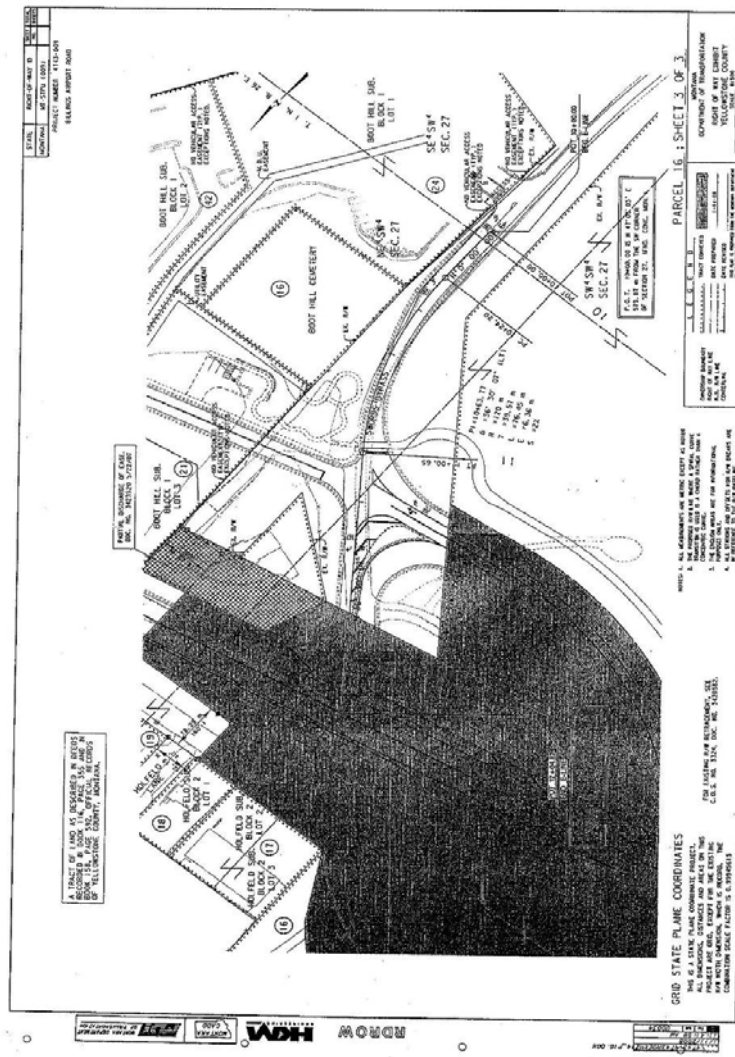
SECTION 50
T.1N. R.28 E.
S.1/4

GRID STATE PLANE COORDINATES
NAD 83
FIPS 4900
UTM
ZONE 18N
Easting: 600000
Northing: 4500000
Scale Factor: 0.9999999999999999
False Easting: 500000
False Northing: 1000000
Datum: NAD 83
Projection: UTM
Units: Meter

NOTES:
1. ALL MEASUREMENTS ARE MADE EXCEPT BY THE
2. THE DISTANCE FROM THE CORNER TO THE
3. THE DISTANCE FROM THE CORNER TO THE
4. THE DISTANCE FROM THE CORNER TO THE
5. THE DISTANCE FROM THE CORNER TO THE

PARCEL 16: SHEET 1 OF 3
DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY EXEMPT
T.1N. R.28 E.
S.1/4





Montana Department of Transportation
Right-of-Way Bureau
PO Box 201001
Helena, MT 59620-1001

ROWForms\Pin\520

Revised 11/18/04

**State of Montana
Department of Transportation**

Right-of-Way Bureau
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Project ID: MT-STPU (009) Parcel No.: 33 County: Yellowstone
Designation: Billings Airport Road
Project No.: 4743-009

Bargain and Sale Deed

This Deed, made this _____ day of _____, 200__, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration now paid, the receipt of which is acknowledged, witnesses that,

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

does hereby grant, bargain, sell and convey to the Montana Department of Transportation the following-described real property:

A tract of land, being a part of Tract 1E of Amended Certificate of Survey No. 331, in Yellowstone County, Montana, on file in the office of the Clerk and Recorder of said County, under Document #1387442; said tract being more particularly described as follows:

Beginning at a point which is the southeast corner of Tract 1E, Amended Certificate of survey No. 331, thence from said point of beginning, N89 degrees 53'00"W a distance of 11.20 feet; thence N63 degrees 56'18"E a distance of 18.41 feet; thence S33 degrees 21'00"W a distance of 9.71 feet to the point of beginning and containing an area of 4 m² (45 sq. ft.), more or less.

ROW:4743:P33.rle

Bargain And Sale Deed
Project ID: MT-STPU (009)
Designation: Billings Airport Road

Parcel No.: 33

Excepting and reserving to Grantor(s), however, all gas, oil and minerals beneath the surface of the above-described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right, the surface thereof shall not be disturbed, interfered with or damaged. This exception and reservation do not include sand, gravel and other road building materials, which are conveyed by this Deed.

Further excepting and reserving unto the Grantor(s), its successors and assigns, all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to shares, bonds, certificates, contracts and any and all other indicia of water, water right and ditch ownership, or any interest therein appurtenant to the land described therein, save and except groundwater for the use, benefit and purposes of the Grantor(s).

To have and to hold the above-described and conveyed premises unto the Montana Department of Transportation, and to its successors and assigns forever.

This Deed was executed on the date of its last acknowledgment.

(Corporate Seal)

State of _____)

County of _____)

This instrument was acknowledged before me on _____ (date)

by _____ (name of person(s))

as _____ (type of authority, e.g., officer, trustee, etc.)

(name of party on behalf of whom instrument was executed)

Notary Signature Line

(Seal)

Notary Printed Name

Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

State of _____)

County of _____)

This instrument was acknowledged before me on _____ (date)

by _____ (name of person(s))

as _____ (type of authority, e.g., officer, trustee, etc.)

(name of party on behalf of whom instrument was executed)

Notary Signature Line

(Seal)

Notary Printed Name

Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

Recording Information

Attachment C

Form 498 (RTC) Revised 7/06

**REALTY TRANSFER CERTIFICATE
CONFIDENTIAL TAX DOCUMENT**

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

The Department of Revenue will charge the name on ownership records used for the assessment and taxation of real property when this form is fully and accurately completed and signed. (Please read the attached instructions for assistance in completing and filing this form.) Montana law requires this form be completed and may impose up to a \$500 penalty for failure to file a Realty Transfer Certificate (15-7-304, 305 and 310, MCA).

PART 2 - PARTIES

Please complete this section in full; if additional space is required, please attach a separate page.

SELLER (Grantor)

Name City of Billings, Montana, a Montana municipal corporation

Mailing Address PO Box 1178

(Permanent)

City Billings ST MT Zip 59103

SSN or FEIN

81-6001237

Daytime Phone (406) 657-8210

BUYER (Grantee)

Name Montana Department of Transportation

Mailing Address 2701 Prospect Avenue

(Permanent) PO Box 201001

City Helena ST MT Zip 59620-1001

SSN or FEIN

81-0302402

Daytime Phone (406) 444-6074

Mailing Address

for Tax Notice

(if different)

City ST Zip

Transfer to Trustee, Custodian, or

other Representative:

Trust FEIN

Minor SSN

PART 3 - PROPERTY DESCRIPTION

Please complete fully; if additional space is required, please attach a separate page.

Legal Description: A tract of land within Tract 1B-1 of Amendment of Tract 1B of Certificate of Survey No 1434 (10) Attachment

Add/Sub

Block

Lot

County Yellowstone

City/Town Billings

Section 28

Township 1N

Range 26E

PART 4 - TYPE OF TRANSFER

Please complete fully; more than one may apply.

Transfer by Recorded Instrument

☒ Sale ☐ Gift ☐ Barter ☐ Part of 1031 or 1033 exchange ☐ Transfer is subject to a reserved life estate

Transfer by Operation of Law

☐ Termination of joint tenancy by death ☐ Termination of life estate by death ☐ Court decree ☐ Merger, consolidation, or other business entity reorganization**PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION**

Please complete fully; more than one may apply.

- | | |
|---|---|
| <input type="checkbox"/> Gift | <input type="checkbox"/> Transfer pursuant to court decree |
| <input type="checkbox"/> Transfer in contemplation of death without consideration | <input type="checkbox"/> Tax deed or sheriff's deed |
| <input type="checkbox"/> Transfer between husband/wife or parent/child for nominal consideration | <input type="checkbox"/> Foreclosure (include trustee transfer under trust indenture and deed in lieu of foreclosure) |
| <input type="checkbox"/> Transfer of property of the estate of a decedent | <input type="checkbox"/> Merger, consolidation or reorganization of business entity |
| <input checked="" type="checkbox"/> Transfer to governmental agency | <input type="checkbox"/> Sale of producing timber land |
| <input type="checkbox"/> Correction, modification, or supplement of previously recorded instrument, no additional consideration | <input type="checkbox"/> Land eligible for Agricultural Classification (15-7-201, MCA) |
| <input type="checkbox"/> Termination of joint tenancy by death | <input type="checkbox"/> Transfer to a revocable living trust |
| <input type="checkbox"/> Termination of life estate by death | <input type="checkbox"/> Purchaser and seller are identical parties |
| | <input type="checkbox"/> Other (specify type) |

PART 6 - SALE INFORMATION

Please complete fully; more than one may apply.

Actual Sale Price: \$ _____ Was an SID payoff included in the sale price? ☐ Yes ☐ No
Financing: ☐ Cash ☐ FHA ☐ VA ☐ Contract ☐ Other Did the buyer assume a SID? ☐ Yes ☐ No
Terms: ☐ New loan OR ☐ Assumption of existing loan Amount of SID paid or assumed: \$ _____
Value of personal property included in sale \$ _____ Was a mobile home included in the sale? ☐ Yes ☐ No
Value of inventory included in sale \$ _____ Value of license(s) included in sale \$ _____ Value of Good Will included in sale \$ _____

PART 7 - WATER RIGHT DISCLOSURE (See page 2 for important information about this section)

☐ Seller (Grantor) has water rights on record with DNRC and some or all transfer to Buyer ☒ Seller (Grantor) does not have water rights on record with DNRC ☐ Seller (Grantor) is exempt from this disclosure requirement

Seller (Grantor) signature X

PART 8 - PREPARER INFORMATION

Preparer's signature is required

Name/Title Don E. Vanio

Way Specialist (please print)

Company Name Montana Department of Transportation

Mailing Address PO Box 20437

Signature

City Billings

Zip 59104-0437

Daytime Phone (406) 657-0237

Clerk and Recorder Use Only

Type of Instrument:

- | | |
|--|---|
| <input type="checkbox"/> Warranty | <input type="checkbox"/> Trust Deed |
| <input type="checkbox"/> Quit Claim | <input type="checkbox"/> Interest |
| <input type="checkbox"/> Grant | <input type="checkbox"/> Notice of Purchase Interest |
| <input type="checkbox"/> Contract For Deed | <input type="checkbox"/> Statement of Acknowledgment |
| <input type="checkbox"/> Bargain & Sale Deed | <input type="checkbox"/> Termination of Joint Tenancy |
| <input type="checkbox"/> Decree | <input type="checkbox"/> Tax Deed |

Recording Information:

Document #

Book

Page

Date

REALTY TRANSFER CERTIFICATE CONFIDENTIAL TAX DOCUMENT

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

Form 488 (RTC) Revised 7/06

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

The Department of Revenue will change the name on ownership records used for the assessment and location of real property when this form is fully and accurately completed and signed. (Please read the attached instructions for assistance in completing and filing this form.) Montana law requires this form be completed and may impose up to a \$500 penalty for failure to file a Realty Transfer Certificate (15-7-304, 305 and 310, MCA).

PART 2 - PARTIES

Please complete this section in full. (If additional space is required, please attach a separate page.)

SELLER (Grantor)

Name City of Billings, Montana, a Montana municipal corporation

Mailing Address PO Box 1178

(Permanent)

City Billings

ST MT

Zip 59103

BUYER (Grantee)

Name Montana Department of Transportation

Mailing Address 2701 Prospect Avenue

(Permanent) PO Box 201001

City Helena

ST MT

Zip 59620-1001

Mailing Address

for Tax Notice

(If different)

City

ST

Zip

PART 3 - PROPERTY DESCRIPTION

Please complete fully, if additional space is required, please attach a separate page.

Legal Description: A tract of land within Tract 1B-1 of Amendment of Tract 1B of Certificate of Survey No 1434

Attachment ☐

Add/Sub

Block

Lot

County Yellowstone

City/Town Billings

Section 28

Township 1N

Range 28E

PART 4 - TYPE OF TRANSFER

Please complete fully, more than one may apply.

Transfer by Recorded Instrument

☒ Sale

☐ Gift

☐ Barter

☐ Part of 1031 or 1033 exchange

☐ Transfer is subject to a reserved life estate.

Transfer by Operation of Law

☐ Termination of joint tenancy by death

☐ Termination of life estate by death

☐ Court decree

☐ Merger, consolidation, or other business entity reorganization

PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION

Please complete fully, more than one may apply.

☐ Gift

☐ Transfer in contemplation of death without consideration

☐ Transfer between husband/wife or parent/child for nominal consideration

☐ Transfer of property of the estate of a decedent

☒ Transfer to governmental agency

☐ Correction, modification, or supplement of previously recorded instrument, no additional consideration

☐ Termination of joint tenancy by death

☐ Termination of life estate by death

☐ Transfer pursuant to court decree

☐ Tax deed or sheriff's deed

☐ Foreclosure (include trustee transfer under trust indenture and deed in lieu of foreclosure)

☐ Merger, consolidation or reorganization of business entity

☐ Sale of producing timber land

☐ Land eligible for Agricultural Classification (15-7-201, MCA)

☐ Transfer to a revocable living trust

☐ Purchaser and seller are identical parties

☐ Other (specify type)

PART 6 - SALE INFORMATION

Please complete fully, more than one may apply.

Actual Sale Price: \$

Was an S/D payoff included in the sale price? ☐ Yes ☐ No

Financing: ☐ Cash ☐ FHA ☐ VA ☐ Contract ☐ Other

Did the buyer assume a S/D? ☐ Yes ☐ No

Terms: ☐ New loan OR ☐ Assumption of existing loan

Amount of S/D paid or assumed: \$

Value of personal property included in sale \$

Was a mobile home included in the sale? ☐ Yes ☐ No

Value of inventory included in sale \$

Value of license(s) included in sale \$

Value of Good Will included in sale \$

PART 7 - WATER RIGHT DISCLOSURE (See page 2 for important information about this section)

☐ Seller (Grantor) has water rights on record with DNRC and some or all transfer to Buyer

☒ Seller (Grantor) does not have water rights on record with DNRC

☐ Seller (Grantor) is exempt from this disclosure requirement

Seller (Grantor) signature

PART 8 - PREPARER INFORMATION

Preparer's signature is required

Name/Title Don E. Vanica, Right-of-Way Specialist (please print)

Company Name Montana Department of Transportation

Mailing Address PO Box 20437

Signature

City Billings

ST MT

Zip 59104-0437

Daytime Phone (406) 657-0237

Clerk and Recorder Use Only

Type of Instrument:

☐ Warranty

☐ Quit Claim

☐ Grant

☐ Contract For Deed

☐ Bargain & Sale Deed

☐ Decree

☐ Trust Deed

☐ Interest

☐ Notice of Purchaser's Interest

☐ Statement of Acknowledgment

☐ Termination of Joint Tenancy

☐ Tax Deed

Recording Information:

Document #

Book

Date

Page

Buyer/Seller Copy

Page 4

DNRC WATER RIGHT OWNERSHIP UPDATE

File in WR #:

GECCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)
 _____ (MM/DD/YYYY)

**SEE IMPORTANT INFORMATION
ON THE BACK OF THIS FORM**

PART 2 - PARTIES Please complete this section in full. If additional space is required, please attach a separate page.

SELLER (Grantor)Name City of Billings, Montana, a Montana municipal corporationMailing Address PO Box 1178

(Permanent)

City Billings ST MT Zip 59103Daytime Phone (406) 657-8210**BUYER (Grantee)**Name Montana Department of TransportationMailing Address 2701 Prospect Avenue(Permanent) PO Box 201001City Helena ST MT Zip 59620-1001Daytime Phone (406) 444-6074

Mailing Address

for Tax Notice

(if different)

City _____ ST _____ Zip _____

PART 3 - PROPERTY DESCRIPTION Please complete fully. If additional space is required, please attach a separate page.

Legal Description: A tract of land within Tract 1B-1 of Amendment of Tract 1B of Certificate of Survey No 1434Attachment ☐

Add/Sub

Block

Lot

County YellowstoneCity/Town BillingsSection 28Township 1NRange 26E

Ownership Update Filing Fee: \$50.00 for 1 water right and \$10.00 for each additional right up to a maximum of \$300.00.

A. WATER RIGHT(S) TO UPDATE

List all water rights which need to have ownership updated. Attach a list if additional space is needed. ☐ Attachment

☐ Statement of Claim No. _____☐ Ground Water Certificate No. _____☐ Provisional Permit No. _____☐ Exempt Right No. _____☐ Powder River Declaration No. _____☐ Other _____

B. SELLER (person relinquishing the water right): If all seller's signatures are not available, attach a copy of the recorded instrument showing conveyance of the property from the seller to the buyer. If the seller listed is not the person identified as the water right owner in the DNRC records, attach copies of the recorded documents showing chain of title including the legal description.

☐ Yes ☐ No

Did the buyer receive 100% of the seller's interest in the water rights shown above? If no, attach a map showing buyer's property.

☐ Yes ☐ No ☐ NA

If the sale is on a contract for deed, does the seller want to remain listed as an owner of the water right?

Seller Signature: _____ Date: _____

Seller Signature: _____ Date: _____

C. FOR QUESTIONS or CLARIFICATION, WHO SHOULD THE DNRC CONTACT?

Name _____ Address _____ Phone # _____

FOR DEPARTMENT USE ONLY

Fee Rec'd _____ Check No. _____ TLMS Receipt Nbr. _____

Payor _____

Refund _____

Date _____

Coder _____

RO# _____

OUID# _____

For Complete Information, See File _____

Date Rec'd _____

Rec'd By _____

COMPLETE AND SEND THIS FORM TO YOUR LOCAL WATER RESOURCES REGIONAL OFFICE

See back for regional office addresses

REALTY TRANSFER CERTIFICATE CONFIDENTIAL TAX DOCUMENT

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

The Department of Revenue will charge the name on ownership records used for the assessment and taxation of real property when this form is fully and accurately completed and signed. (Please read the attached instructions for assistance in completing and filing this form.)
Montana law requires this form be completed and may impose up to a \$600 penalty for failure to file a Realty Transfer Certificate (16-7-304, 305 and 310, MCA).

PART 2 - PARTIES

Please complete this section in full; if additional space is required, please attach a separate page.

SELLER (Grantor)

Name

City of Billings

Mailing Address PO Box 1178

(Permanent)

City Billings

ST MT

Zip 59103

SSN or FEIN

81-6001237

Daytime Phone (406) 657-8210

BUYER (Grantee)

Name Montana Department of Transportation

Mailing Address 2701 Prospect Avenue

(Permanent) PO Box 201001

City Helena

ST MT

Zip 59620-1001

SSN or FEIN

81-0302402

Daytime Phone (406) 444-6074

Mailing Address

for Tax Notice

(if different)

City

ST

Zip

Transfer to Trustee, Custodian, or

other Representative:

Trust FEIN

Minor SSN

PART 3 - PROPERTY DESCRIPTION

Please complete fully; if additional space is required, please attach a separate page.

Legal Description: A tract of land in Dick Logan Park, Block 2 of Rolle Subdivision (1/1) Attachment ☐

Add/Sub Rolle Subdivision

Block 2

Lot

County Yellowstone

City/Town Billings

Section 28

Township 1N

Range 28E

PART 4 - TYPE OF TRANSFER

Please complete fully; more than one may apply.

☒ Sale ☐ Gift ☐ Barter ☐ Part of 1031 or 1033 exchange ☐ Transfer is subject to a reserved life estate

Transfer by Recorded Instrument

Transfer by Operation of Law

☐ Termination of joint tenancy by death ☐ Termination of life estate by death ☐ Court decree ☐ Merger, consolidation, or other business entity reorganization

PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION

Please complete fully; more than one may apply.

☐ Gift ☐ Transfer pursuant to court decree
☐ Transfer in contemplation of death without consideration ☐ Tax deed or sheriff's deed
☐ Transfer between husband/wife or parent/child for nominal consideration ☐ Foreclosure (include trustee transfer under trust indenture and deed in lieu of foreclosure)
☐ Transfer of property of the estate of a decedent ☐ Merger, consolidation or reorganization of business entity
☒ Transfer to governmental agency ☐ Sale of producing Timber land
☐ Correction, modification, or supplement of previously recorded instrument, no additional consideration ☐ Land eligible for Agricultural Classification (15-7-201, MCA)
☐ Termination of joint tenancy by death ☐ Transfer to a revocable living trust
☐ Termination of life estate by death ☐ Purchaser and seller are identical parties
☐ Other (specify type)

PART 6 - SALE INFORMATION

Please complete fully; more than one may apply.

Actual Sale Price: \$ _____ Was an SID payoff included in the sale price? ☐ Yes ☐ No
 Financing: ☐ Cash ☐ FHA ☐ VA ☐ Contract ☐ Other Did the buyer assume a SID? ☐ Yes ☐ No
 Terms: ☐ New loan OR ☐ Assumption of existing loan Amount of SID paid or assumed: \$ _____
 Value of personal property included in sale \$ _____ Was a mobile home included in the sale? ☐ Yes ☐ No
 Value of inventory included in sale \$ _____ Value of license(s) included in sale \$ _____ Value of Good Will included in sale \$ _____

PART 7 - WATER RIGHT DISCLOSURE (See page 2 for important information about this section)

☐ Seller (Grantor) has water rights on record with DNRC and some or all transfer to Buyer ☒ Seller (Grantor) does not have water rights ☐ Seller (Grantor) is exempt from this disclosure requirement
 Seller (Grantor) signature X _____ on record with DNRC

PART 8 - PREPARER INFORMATION

Preparer's signature is required

Name/Title Don E. Vanica

Specialist (please print)

Company Name Montana Department of Transportation

Mailing Address PO Box 20437

Signature

City Billings

Zip 59104-0437

Daytime Phone (406) 657-0237

Clerk and Recorder Use Only

Type of Instrument:

☐ Warranty ☐ Trust Deed
☐ Quit Claim ☐ Interest
☐ Grant ☐ Notice of Purchase Interest
☐ Contract For Deed ☐ Statement of Acknowledgment
☐ Bargain & Sale Deed ☐ Termination of Joint Tenancy
☐ Decree ☐ Tax Deed

Recording Information:

Document #

Book

Page

Date

DNRC WATER RIGHT OWNERSHIP UPDATE

File in WR #:

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

SEE IMPORTANT INFORMATION
ON THE BACK OF THIS FORM

PART 2 - PARTIES

Please complete this section in full. If additional space is required, please attach a separate page.

SELLER (Grantor)

Name City of Billings

Mailing Address PO Box 1178

(Permanent)

City Billings ST MT Zip 59103

Daytime Phone (406) 667-8210

BUYER (Grantee)

Name Montana Department of Transportation

Mailing Address 2701 Prospect Avenue

(Permanent) PO Box 201001

City Helena ST MT Zip 59620-1001

Daytime Phone (406) 444-6074

Mailing Address

for Tax Notice

(if different)

City ST Zip

PART 3 - PROPERTY DESCRIPTION

Please complete fully. If additional space is required, please attach a separate page.

Legal Description: A tract of land in Dick Logan Park, Block 2 of Rolle Subdivision

Attachment ☐

Add/Sub Rolle Subdivision

Block 2

Lot

County Yellowstone

City/Town Billings

Section 28

Township 1N

Range 26E

Ownership Update Filing Fee: \$50.00 for 1 water right and \$10.00 for each additional right up to a maximum of \$300.00.

A. WATER RIGHT(S) TO UPDATE

List all water rights which need to have ownership updated. Attach a list if additional space is needed. ☐ Attachment☐ Statement of Claim No.☐ Ground Water Certificate No.☐ Provisional Permit No.☐ Exempt Right No.☐ Powder River Declaration No.☐ Other

B. SELLER (person relinquishing the water right): If all seller's signatures are not available, attach a copy of the recorded instrument showing conveyance of the property from the seller to the buyer. If the seller listed is not the person identified as the water right owner in the DNRC records, attach copies of the recorded documents showing chain of title including the legal description.

☐ Yes ☐ No Did the buyer receive 100% of the seller's interest in the water rights shown above? If no, attach a map showing buyer's property.☐ Yes ☐ No ☐ NA If the sale is on a contract for deed, does the seller want to remain listed as an owner of the water right?

Seller Signature:

Date:

Seller Signature:

Date:

C. FOR QUESTIONS or CLARIFICATION, WHO SHOULD THE DNRC CONTACT?

Name

Address

Phone #

FOR DEPARTMENT USE ONLY

Fee Rec'd

Check No.

TLMS Receipt Nbr.

Payor

Refund

Date

Coder

RO#

CUID#

For Complete Information. See File

Date Rec'd

Rec'd By

COMPLETE AND SEND THIS FORM TO YOUR LOCAL WATER RESOURCES REGIONAL OFFICE

See back for regional office addresses

REALTY TRANSFER CERTIFICATE CONFIDENTIAL TAX DOCUMENT

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

The Department of Revenue will change the name on ownership records used for the assessment and taxation of real property when this form is fully and accurately completed and signed. (Please read the attached instructions for assistance in completing and filing this form.)
Montana law requires this form be completed and may impose up to a \$500 penalty for failure to file a Realty Transfer Certificate (15-7-304, 305 and 310, MCA).

PART 2 - PARTIES

Please complete this section in full. If additional space is required, please attach a separate page.

SELLER (Grantor)

Name City of Billings, Montana, a Montana municipal corporation

SSN or FEIN

Mailing Address PO Box 1178

81-6001237

(Permanent)

City Billings

ST MT

Zip 59103

Daytime Phone (406) 657-8210

BUYER (Grantee)

Name Montana Department of Transportation

SSN or FEIN

Mailing Address 2701 Prospect Avenue

81-0302402

(Permanent) PO Box 201001

Daytime Phone (406) 444-8074

City Helena

ST MT

Zip 59620-1001

Mailing Address

for Tax Notice

(if different)

City

ST

Zip

Transfer to Trustee, Custodian, or

other Representative:

Trust FEIN

Minor SSN

PART 3 - PROPERTY DESCRIPTION

Please complete fully; if additional space is required, please attach a separate page.

Legal Description: A tract of land within Tract 1A of Amendment of Lot 1 of Certificate of Survey No 1434 / 12 Attachment ☐

Also a tract of land in Lots 1, 2, 3, 4, 5 and 6 of Block 1 of Rolle Subdivision

Add/Sub Rolle

Block 1

Lot 1,2,3,4,5,6

County Yellowstone

City/Town Billings

Section 28

Township 1N

Range 26E

PART 4 - TYPE OF TRANSFER

Please complete fully; more than one may apply.

Transfer by Recorded Instrument

☒ Sale☐ Gift☐ Barter☐ Part of 1031 or 1033 exchange☐ Transfer is subject to a reserved life estate

Transfer by Operation of Law

☐ Termination of joint tenancy by death☐ Termination of life estate by death☐ Court decree☐ Merger, consolidation, or other business entity reorganization

PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION

Please complete fully; more than one may apply.

☐ Gift☐ Transfer in contemplation of death without consideration☐ Transfer between husband/wife or parent/child for nominal consideration☐ Transfer of property of the estate of a decedent☒ Transfer to governmental agency☐ Correction, modification, or supplement of previously recorded instrument, no additional consideration☐ Termination of joint tenancy by death☐ Termination of life estate by death☐ Transfer pursuant to court decree☐ Tax deed or sheriff's deed☐ Foreclosure (include trustee transfer under trust indenture and deed in lieu of foreclosure)☐ Merger, consolidation or reorganization of business entity☐ Sale of producing timber land☐ Land eligible for Agricultural Classification (15-7-201, MCA)☐ Transfer to a revocable living trust☐ Purchaser and seller are identical parties☐ Other (specify type)

PART 6 - SALE INFORMATION

Please complete fully; more than one may apply.

Actual Sale Price: \$

Was an SID payoff included in the sale price? ☐ Yes ☐ NoFinancing: ☐ Cash ☐ FHA ☐ VA ☐ Contract ☐ OtherDid the buyer assume a SID? ☐ Yes ☐ NoTerms: ☐ New loan OR ☐ Assumption of existing loan

Amount of SID paid or assumed: \$

Value of personal property included in sale \$

Was a mobile home included in the sale? ☐ Yes ☐ No

Value of inventory included in sale \$

Value of license(s) included in sale \$

Value of Good Will included in sale \$

PART 7 - WATER RIGHT DISCLOSURE (See page 2 for important information about this section)

☐ Seller (Grantor) has water rights on record with DNRC and some or all transfer to Buyer☒ Seller (Grantor) does not have water rights on record with DNRC☐ Seller (Grantor) is exempt from this disclosure requirement

Seller (Grantor) signature X

PART 8 - PREPARER INFORMATION

Preparer's signature is required.

Name/Title Don E. Vanica, Right Specialist

(please print)

Company Name Montana Department of Transportation

Mailing Address PO Box 20437

Signature

City Billings

Zip 59104-0437

Daytime Phone (406) 657-0237

Clerk and Recorder Use Only

Type of Instrument:

☐ Warranty☐ Quit Claim☐ Grant☐ Contract For Deed☐ Bargain & Sale Deed☐ Decree☐ Trust Deed☐ Interest☐ Notice of Purchaser's☐ Statement of Acknowledgment☐ Termination of Joint Tenancy☐ Tax Deed

Recording Information:

Document #

Book

Page

Date

**REALTY TRANSFER CERTIFICATE
CONFIDENTIAL TAX DOCUMENT**

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

Form 488 (RTC) Revised 7/05

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)
(MM/DD/YYYY)

The Department of Revenue will change the name on ownership records used for the assessment and taxation of real property when this form is fully and accurately completed and signed. (Please read the attached instructions for assistance in completing and filing this form.) Montana law requires this form be completed and may impose up to a \$600 penalty for failure to file a Realty Transfer Certificate (15-7-304, 305 and 310, MCA).

PART 2 - PARTIES Please complete this section in full. If additional space is required, please attach a separate page.

SELLER (Grantor)

Name City of Billings, Montana, a Montana municipal corporation

Mailing Address PO Box 1178

(Permanent)

City Billings ST MT Zip 59103

BUYER (Grantee)

Name Montana Department of Transportation

Mailing Address 2701 Prospect Avenue

(Permanent) PO Box 201001

City Helena ST MT Zip 59620-1001

Mailing Address

for Tax Notice

(If different)

City ST Zip

PART 3 - PROPERTY DESCRIPTION Please complete fully. If additional space is required, please attach a separate page.

Legal Description: A tract of land within Tract 1A of Amendment of Lot 1 of Certificate of Survey No 1434 Attachment ☐

Also a tract of land in Lots 1, 2, 3, 4, 5 and 6 of Block 1 of Rolfe Subdivision

Add/Sub Rolfe Block 1 Lot 1,2,3,4,5,6

County Yellowstone City/Town Billings Section 28 Township 1N Range 20E

PART 4 - TYPE OF TRANSFER Please complete fully; more than one may apply.

Transfer by Recorded Instrument

☒ Sale ☐ Gift ☐ Barter ☐ Part of 1031 or 1033 exchange ☐ Transfer is subject to a reserved life estate

Transfer by Operation of Law

☐ Termination of joint tenancy by death ☐ Termination of life estate by death ☐ Court decree ☐ Merger, consolidation, or other business entity reorganization

PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION Please complete fully; more than one may apply.

☐ Gift ☐ Transfer pursuant to court decree
☐ Transfer in contemplation of death without consideration ☐ Tax deed or sheriff's deed
☐ Transfer between husband/wife or parent/child for nominal consideration ☐ Foreclosure (include trustee transfer under trust indenture and deed in lieu of foreclosure)
☐ Transfer of property of the estate of a decedent ☐ Merger, consolidation or reorganization of business entity
☒ Transfer to governmental agency ☐ Sale of producing Timber land
☐ Correction, modification, or supplement of previously recorded instrument, no additional consideration ☐ Land eligible for Agricultural Classification (15-7-201, MCA)
☐ Termination of joint tenancy by death ☐ Transfer to a revocable living trust
☐ Termination of life estate by death ☐ Purchaser and seller are identical parties
☐ Other (specify type)

PART 6 - SALE INFORMATION Please complete fully; more than one may apply.

Actual Sale Price: \$

Financing: ☐ Cash ☐ FHA ☐ VA ☐ Contract ☐ Other

Terms: ☐ New loan OR ☐ Assumption of existing loan

Value of personal property included in sale \$

Value of inventory included in sale \$

Was an SID payoff included in the sale price? ☐ Yes ☐ No

Did the buyer assume a SID? ☐ Yes ☐ No

Amount of SID paid or assumed: \$

Was a mobile home included in the sale? ☐ Yes ☐ No

Value of Good Will included in sale \$

PART 7 - WATER RIGHT DISCLOSURE (See page 2 for important information about this section)

☐ Seller (Grantor) has water rights on record ☒ Seller (Grantor) does not have water rights ☐ Seller (Grantor) is exempt from this disclosure requirement
with DNRC and some or all transfer to Buyer on record with DNRC
Seller (Grantor) signature

PART 8 - PREPARER INFORMATION Preparer's signature is required

Name/Title Don E. Vanica, Right-of-Way Specialist (please print) Company Name Montana Department of Transportation

Mailing Address PO Box 20437

City Billings

ST MT Zip 59104-0437

Signature

Daytime Phone (406) 657-0237

Clerk and Recorder Use Only

Type of Instrument:

☐ Warranty

☐ Quit Claim

☐ Grant

☐ Contract For Deed

☐ Bargain & Sale Deed

☐ Decree

☐ Trust Deed

☐ Interest

☐ Notice of Purchaser's Interest

☐ Statement of Acknowledgment

☐ Termination of Joint Tenancy

☐ Tax Deed

Recording Information:

Document #

Book

Page

Date

Buyer/Seller Copy

Page 4

DNRC WATER RIGHT OWNERSHIP UPDATE

File in WR #

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1: DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

SEE IMPORTANT INFORMATION
ON THE BACK OF THIS FORM

PART 2: PARTIES

Please complete this section in full; if additional space is required, please attach a separate page.

SELLER (Grantor)

Name City of Billings, Montana, a Montana municipal corporation

Mailing Address PO Box 1178

(Permanent)

City Billings ST MT Zip 59103

Daytime Phone (406) 657-8210

BUYER (Grantee)

Name Montana Department of Transportation

Mailing Address 2701 Prospect Avenue

(Permanent) PO Box 201001

City Helena ST MT Zip 59620-1001

Daytime Phone (406) 444-6074

Mailing Address

for Tax Notice

(if different)

City ST Zip

PART 3: PROPERTY DESCRIPTION

Please complete fully; if additional space is required, please attach a separate page.

Legal Description: A tract of land within Tract 1A of Amendment of Lot 1 of Certificate of Survey No 1434

Attachment ☐

Also a tract of land in Lots 1, 2, 3, 4, 5 and 6 of Block 1 of Rolle Subdivision

Add/Sub Rolle Block 1 Lot 1,2,3,4,5,6

County Yellowstone City/Town Billings Section 28 Township 1N Range 26E

Ownership Update Filing Fee: \$50.00 for 1 water right and \$10.00 for each additional right up to a maximum of \$300.00.

A. WATER RIGHT(S) TO UPDATE

List all water rights which need to have ownership updated. Attach a list if additional space is needed. ☐ Attachment☐ Statement of Claim No. _____☐ Ground Water Certificate No. _____☐ Provisional Permit No. _____☐ Exempt Right No. _____☐ Powder River Declaration No. _____☐ Other _____

B. SELLER (person relinquishing the water right): If all seller's signatures are not available, attach a copy of the recorded instrument showing conveyance of the property from the seller to the buyer. If the seller listed is not the person identified as the water right owner in the DNRC records, attach copies of the recorded documents showing chain of title including the legal description.

☐ Yes ☐ No Did the buyer receive 100% of the seller's interest in the water rights shown above? If no, attach a map showing buyer's property.☐ Yes ☐ No ☐ NA If the sale is on a contract for deed, does the seller want to remain listed as an owner of the water right?

Seller Signature: _____ Date: _____

Seller Signature: _____ Date: _____

C. FOR QUESTIONS or CLARIFICATION, WHO SHOULD THE DNRC CONTACT?

Name _____ Address _____ Phone # _____

FOR DEPARTMENT USE ONLY

Fee Rec'd	Check No.	TLMS Receipt Nbr.	Date Rec'd
Payor			Rec'd By
Refund	Date		
Coder	RO#	OUID#	

For Complete Information. See File

COMPLETE AND SEND THIS FORM TO YOUR LOCAL WATER RESOURCES REGIONAL OFFICE
See back for regional office addresses

REALTY TRANSFER CERTIFICATE CONFIDENTIAL TAX DOCUMENT

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

The Department of Revenue will change the name on ownership records used for the assessment and taxation of real property when this form is fully and accurately completed and signed. (Please read the attached instructions for assistance in completing and filing this form.) Montana law requires this form be completed and may impose up to a \$500 penalty for failure to file a Realty Transfer Certificate (15-7-304, 305 and 310, MCA).

PART 2 - PARTIES

Please complete this section in full. If additional space is required, please attach a separate page.

SELLER (Grantor)

Name The City of Billings, a municipal Corporation aka
Mailing Address The City of Billings, Montana, a political subdivision
(Permanent) PO Box 1178
City Billings ST MT Zip 59103-1178

SSN or FEIN

81-6001237

Daytime Phone (406) 657-8210

BUYER (Grantee)

Name Montana Department of Transportation
Mailing Address 2701 Prospect Avenue
(Permanent) PO Box 201001
City Helena ST MT Zip 59620-1001

SSN or FEIN

81-0302402

Daytime Phone (406) 444-6074

Mailing Address

for Tax Notice

(if different)

City ST Zip

Transfer to Trustee, Custodian, or

other Representative:

Trust FEIN

Minor SSN

PART 3 - PROPERTY DESCRIPTION

Please complete fully. If additional space is required, please attach a separate page.

Legal Description: A tract of land in the N½SW¼ of Section 27 (1/4)

Attachment ☐

Add/Sub

Block

Lot

County Yellowstone

City/Town Billings

Section 27

Township 1N

Range 28E

PART 4 - TYPE OF TRANSFER

Please complete fully. more than one may apply.

Transfer by Recorded Instrument

☒ Sale ☐ Gift ☐ Barter ☐ Part of 1031 or 1033 exchange ☐ Transfer is subject to a reserved life estate

Transfer by Operation of Law

☐ Termination of joint tenancy by death ☐ Termination of life estate by death ☐ Court decree ☐ Merger, consolidation, or other business entity reorganization**PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION**

Please complete fully. more than one may apply.

- ☐ Gift
☐ Transfer in contemplation of death without consideration
☐ Transfer between husband/wife or parent/child for nominal consideration
☐ Transfer of property of the estate of a decedent
☒ Transfer to governmental agency
☐ Correction, modification, or supplement of previously recorded instrument, no additional consideration
☐ Termination of joint tenancy by death
☐ Termination of life estate by death
- ☐ Transfer pursuant to court decree
☐ Tax deed or sheriff's deed
☐ Foreclosure (include trustee transfer under trust indenture and deed in lieu of foreclosure)
☐ Merger, consolidation or reorganization of business entity
☐ Sale of producing timber land
☐ Land eligible for Agricultural Classification (15-7-201, MCA)
☐ Transfer to a revocable living trust
☐ Purchaser and seller are identical parties
☐ Other (specify type)

PART 6 - SALE INFORMATION

Please complete fully. more than one may apply.

Actual Sale Price: \$

Financing: ☐ Cash ☐ FHA ☐ VA ☐ Contract ☐ OtherTerms: ☐ New loan OR ☐ Assumption of existing loan

Value of personal property included in sale \$

Value of inventory included in sale \$

Value of license(s) included in sale \$

Was an S/D payoff included in the sale price? ☐ Yes ☐ NoDid the buyer assume a S/D? ☐ Yes ☐ No

Amount of S/D paid or assumed: \$

Was a mobile home included in the sale? ☐ Yes ☐ No

Value of Good Will included in sale \$

PART 7 - WATER RIGHT DISCLOSURE (See page 2 for important information about this section)

- ☐ Seller (Grantor) has water rights on record with DNRC and some or all transfer to Buyer ☒ Seller (Grantor) does not have water rights on record with DNRC ☐ Seller (Grantor) is exempt from this disclosure requirement

Seller (Grantor) signature X

PART 8 - PREPARER INFORMATION

Preparer's signature is required

Name/Title Don E. Vanica, R

Specialist

(please print)

Company Name Montana Department of Transportation

Mailing Address PO Box 20437

Signature

City Billings

59104-0437

Daytime Phone (406) 657-0237

Clerk and Recorder Use Only

Type of Instrument:

- ☐ Warranty ☐ Trust Deed
☐ Quit Claim ☐ Interest
☐ Grant ☐ Notice of Purchaser's Interest
☐ Contract For Deed ☐ Statement of Acknowledgment
☐ Bargain & Sale Deed ☐ Termination of Joint Tenancy
☐ Decree ☐ Tax Deed

Recording Information:

Document #

Book

Page

Date

DNRC WATER RIGHT OWNERSHIP UPDATE

File in WR #:

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

SEE IMPORTANT INFORMATION
ON THE BACK OF THIS FORM

PART 2 - PARTIES

Please complete this section in full. If additional space is required, please attach a separate page.

SELLER (Grantor)

Name The City of Billings, a municipal Corporation aka

Mailing Address The City of Billings, Montana, a political subdivision

(Permanent) PO Box 1178

City Billings ST MT Zip 58103-1178

Daytime Phone (406) 657-8210

BUYER (Grantee)

Name Montana Department of Transportation

Mailing Address 2701 Prospect Avenue

(Permanent) PO Box 201001

City Helena ST MT Zip 59620-1001

Daytime Phone (406) 444-6074

Mailing Address

for Tax Notice

(If different)

City ST Zip

PART 3 - PROPERTY DESCRIPTION

Please complete fully. If additional space is required, please attach a separate page.

Legal Description: A tract of land in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27Attachment ☐

Add/Sub

Block

Lot

County Yellowstone

City/Town Billings

Section 27

Township 1N

Range 28E

Ownership Update Filing Fee: \$50.00 for 1 water right and \$10.00 for each additional right up to a maximum of \$300.00.

A. WATER RIGHT(S) TO UPDATE

List all water rights which need to have ownership updated. Attach a list if additional space is needed. ☐ Attachment☐ Statement of Claim No. _____☐ Ground Water Certificate No. _____☐ Provisional Permit No. _____☐ Exempt Right No. _____☐ Powder River Declaration No. _____☐ Other _____

B. SELLER

(person relinquishing the water right): If all seller's signatures are not available, attach a copy of the recorded instrument showing conveyance of the property from the seller to the buyer. If the seller listed is not the person identified as the water right owner in the DNRC records, attach copies of the recorded documents showing chain of title including the legal description.

☐ Yes ☐ No

Did the buyer receive 100% of the seller's interest in the water rights shown above? If no, attach a map showing buyer's property.

☐ Yes ☐ No ☐ NA

If the sale is on a contract for deed, does the seller want to remain listed as an owner of the water right?

Seller Signature: _____

Date: _____

Seller Signature: _____

Date: _____

C. FOR QUESTIONS or CLARIFICATION, WHO SHOULD THE DNRC CONTACT?

Name _____

Address _____

Phone # _____

FOR DEPARTMENT USE ONLY

Fee Rec'd

Check No.

TLMS Receipt Nbr.

Date Rec'd

Payor

Refund

Date

Rec'd By

Coder

RO#

QUID#

For Complete Information, See File

COMPLETE AND SEND THIS FORM TO YOUR LOCAL WATER RESOURCES REGIONAL OFFICE

See back for regional office addresses

**REALTY TRANSFER CERTIFICATE
CONFIDENTIAL TAX DOCUMENT**

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

Form 498 (RTC) Revised 7/06

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

The Department of Revenue will change the name on ownership records used for the assessment and taxation of real property when this form is fully and accurately completed and signed. (Please read the attached instructions for assistance in completing and filing this form.)
Montana law requires this form be completed and may impose up to a \$500 penalty for failure to file a Realty Transfer Certificate (15-7-304, 305 and 310, MCA).

PART 2 - PARTIES

Please complete this section in full; if additional space is required, please attach a separate page.

SELLER (Grantor)

Name City of Billings

Mailing Address PO Box 1178

(Permanent)

City Billings

ST MT

Zip 59103-1178

SSN or FEIN
81-6001237

Daytime Phone (406) 657-8210

BUYER (Grantee)

Name Montana Department of Transportation

Mailing Address 2701 Prospect Avenue

(Permanent) PO Box 201001

City Helena

ST MT

Zip 59620-1001

SSN or FEIN
81-0302402

Daytime Phone (406) 444-6074

Mailing Address

for Tax Notice

(If different)

City

ST

Zip

Transfer to Trustee, Custodian, or

other Representative:

Trust FEIN

Minor SSN

PART 3 - PROPERTY DESCRIPTION

Please complete fully; if additional space is required, please attach a separate page.

Legal Description: A tract of land being a part of Tract 1E of Amended Certificate of Survey No. 331 (33) Attachment ☐

Add/Sub

Block

Lot

County Yellowstone

City/Town Billings

Section 27

Township 1N

Range 28E

PART 4 - TYPE OF TRANSFER

Please complete fully; more than one may apply.

☒ Sale

☐ Gift

☐ Barter

☐ Part of 1031 or 1033 exchange

☐ Transfer is subject to a reserved life estate

☐ Termination of joint tenancy by death

☐ Termination of life estate by death

☐ Court decree

☐ Merger, consolidation, or other business entity reorganization

☐ Transfer by Operation of Law

PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION

Please complete fully; more than one may apply.

☐ Gift

☐ Transfer in contemplation of death without consideration

☐ Transfer between husband/wife or parent/child for nominal consideration

☐ Transfer of property of the estate of a decedent

☒ Transfer to governmental agency

☐ Correction, modification, or supplement of previously recorded instrument, no additional consideration

☐ Termination of joint tenancy by death

☐ Termination of life estate by death

☐ Transfer pursuant to court decree

☐ Tax deed or sheriff's deed

☐ Foreclosure (include trustee transfer under trust indenture and deed in lieu of foreclosure)

☐ Merger, consolidation or reorganization of business entity

☐ Sale of producing timber land

☐ Land eligible for Agricultural Classification (15-7-201, MCA)

☐ Transfer to a revocable living trust

☐ Purchaser and seller are identical parties

☐ Other (specify type)

PART 6 - SALE INFORMATION

Please complete fully; more than one may apply.

Actual Sale Price: \$

Financing: ☐ Cash ☐ FHA ☐ VA ☐ Contract ☐ Other

Terms: ☐ New loan OR ☐ Assumption of existing loan

Value of personal property included in sale \$

Value of inventory included in sale \$

Value of license(s) included in sale \$

Was an S/D payoff included in the sale price? ☐ Yes ☐ No

Did the buyer assume a S/D? ☐ Yes ☐ No

Amount of S/D paid or assumed: \$

Was a mobile home included in the sale? ☐ Yes ☐ No

Value of Good Will included in sale \$

PART 7 - WATER RIGHT DISCLOSURE (See page 2 for important information about this section)

☐ Seller (Grantor) has water rights on record with DNRC and some or all transfer to Buyer

☒ Seller (Grantor) does not have water rights on record with DNRC

☐ Seller (Grantor) is exempt from this disclosure requirement

Seller (Grantor) signature

PART 8 - PREPARER INFORMATION

Preparer's signature is required

Name/Title Don E. Vanica Specialist

(please print)

Mailing Address PO Box 20437

City Billings

Zip 59104-0437

Company Name Montana Department of Transportation

Signature

Daytime Phone (406) 657-0237

Clerk and Recorder Use Only

Type of Instrument:

☐ Warranty

☐ Quit Claim

☐ Grant

☐ Contract For Deed

☐ Bargain & Sale Deed

☐ Decree

☐ Trust Deed

☐ Interest

☐ Notice of Purchaser's Interest

☐ Statement of Acknowledgment

☐ Termination of Joint Tenancy

☐ Tax Deed

Recording Information:

Document #

Book

Page

Date

REALTY TRANSFER CERTIFICATE CONFIDENTIAL TAX DOCUMENT

The information contained in this certificate is confidential by Montana law. Unauthorized disclosure of this information is a criminal offense.

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

The Department of Revenue will change the name on ownership records used for the assessment and taxation of real property when this form is fully and accurately completed and signed. (Please read the attached instructions for assistance in completing and filing this form.)
Montana law requires this form be completed and may impose up to a \$500 penalty for failure to file a Realty Transfer Certificate (15-7-304, 306 and 310, MCA).

PART 2 - PARTIES

Please complete this section in full. If additional space is required, please attach a separate page.

SELLER (Grantor)

Name City of BillingsMailing Address PO Box 1178

(Permanent)

City Billings ST MT Zip 59103-1178

BUYER (Grantee)

Name Montana Department of TransportationMailing Address 2701 Prospect Avenue(Permanent) PO Box 201001City Helena ST MT Zip 59620-1001

Mailing Address

for Tax Notice

(if different)

City _____ ST _____ Zip _____

PART 3 - PROPERTY DESCRIPTION

Please complete fully. If additional space is required, please attach a separate page.

Legal Description: A tract of land being a part of Tract 1E of Amended Certificate of Survey No. 331Attachment ☐

Add/Sub

Block

Lot

County YellowstoneCity/Town BillingsSection 27Township 1NRange 26E

PART 4 - TYPE OF TRANSFER

Please complete fully, more than one may apply.

Transfer by Recorded Instrument

☒ Sale ☐ Gift ☐ Barter ☐ Part of 1031 or 1033 exchange ☐ Transfer is subject to a reserved life estate

Transfer by Operation of Law

☐ Termination of joint tenancy by death ☐ Termination of life estate by death ☐ Court decree ☐ Merger, consolidation, or other business entity reorganization

PART 5 - EXCEPTIONS FROM PROVIDING SALES PRICE INFORMATION

Please complete fully, more than one may apply.

- | | |
|---|---|
| <input type="checkbox"/> Gift | <input type="checkbox"/> Transfer pursuant to court decree |
| <input type="checkbox"/> Transfer in contemplation of death without consideration | <input type="checkbox"/> Tax deed or sheriff's deed |
| <input type="checkbox"/> Transfer between husband/wife or parent/child for nominal consideration | <input type="checkbox"/> Foreclosure (include trustee transfer under trust indenture and deed in lieu of foreclosure) |
| <input type="checkbox"/> Transfer of property of the estate of a decedent | <input type="checkbox"/> Merger, consolidation or reorganization of business entity |
| <input checked="" type="checkbox"/> Transfer to governmental agency | <input type="checkbox"/> Sale of producing timber land |
| <input type="checkbox"/> Correction, modification, or supplement of previously recorded instrument, no additional consideration | <input type="checkbox"/> Land eligible for Agricultural Classification (16-7-201, MCA) |
| <input type="checkbox"/> Termination of joint tenancy by death | <input type="checkbox"/> Transfer to a revocable living trust |
| <input type="checkbox"/> Termination of life estate by death | <input type="checkbox"/> Purchaser and seller are identical parties |
| | <input type="checkbox"/> Other (specify type) _____ |

PART 6 - SALE INFORMATION

Please complete fully, more than one may apply.

Actual Sale Price: \$

Financing: ☐ Cash ☐ FHA ☐ VA ☐ Contract ☐ OtherWas an S/D payoff included in the sale price? ☐ Yes ☐ NoTerms: ☐ New loan OR ☐ Assumption of existing loanDid the buyer assume a S/D? ☐ Yes ☐ No

Value of personal property included in sale \$

Amount of S/D paid or assumed: \$

Value of inventory included in sale \$

Was a mobile home included in the sale? ☐ Yes ☐ No

Value of license(s) included in sale \$

Value of Good Will included in sale \$

PART 7 - WATER RIGHT DISCLOSURE (See page 2 for important information about this section)

☐ Seller (Grantor) has water rights on record with DNRC and some or all transfer to Buyer ☒ Seller (Grantor) does not have water rights on record with DNRC ☐ Seller (Grantor) is exempt from this disclosure requirement

Seller (Grantor) signature _____

PART 8 - PREPARER INFORMATION

Preparer's signature is required

Name/Title Don E. Vanice, Right-of-Way Specialist (please print)Company Name Montana Department of TransportationMailing Address PO Box 20437Signature [Signature]City BillingsST MTZip 59104-0437Daytime Phone (406) 657-0237

Clerk and Recorder Use Only

Type of Instrument:

☐ Warranty☐ Quit Claim☐ Grant☐ Contract For Deed☐ Bargain & Sale Deed☐ Decree☐☐ Trust Deed☐ Interest☐ Notice of Purchaser's Interest☐ Statement of Acknowledgment☐ Termination of Joint Tenancy☐ Tax Deed

Recording Information:

Document # _____

Book _____

Page _____

Date _____

Buyer/Seller Copy

Page 4

**DNRC WATER RIGHT
OWNERSHIP UPDATE**

File in WR #:

GEOCODE(S)

ASSESSMENT CODE(S)

PART 1 - DATE OF TRANSFER (SALE)

(MM/DD/YYYY)

**SEE IMPORTANT INFORMATION
ON THE BACK OF THIS FORM****PART 2 - PARTIES**

Please complete this section in full, if additional space is required, please attach a separate page.

SELLER (Grantor)

Name City of Billings

Mailing Address PO Box 1178

(Permanent)

City Billings

ST MT

Zip 50103-1178

Daytime Phone (406) 667-8210

BUYER (Grantee)

Name Montana Department of Transportation

Mailing Address 2701 Prospect Avenue

(Permanent) PO Box 201001

City Helena

ST MT

Zip 59820-1001

Daytime Phone (406) 444-8074

Mailing Address

for Tax Notice

(if different)

City

ST

Zip

PART 3 - PROPERTY DESCRIPTION

Please complete fully, if additional space is required, please attach a separate page.

Legal Description: A tract of land being a part of Tract 1E of Amended Certificate of Survey No. 331

Attachment ☐

Add/Sub

Block

Lot

County Yellowstone

City/Town Billings

Section 27

Township 1N

Range 26E

Ownership Update Filing Fee: \$50.00 for 1 water right and \$10.00 for each additional right up to a maximum of \$300.00.

A. WATER RIGHT(S) TO UPDATEList all water rights which need to have ownership updated. Attach a list if additional space is needed. ☐ Attachment☐ Statement of Claim No. _____☐ Ground Water Certificate No. _____☐ Provisional Permit No. _____☐ Exempt Right No. _____☐ Powder River Declaration No. _____☐ Other _____**B.****SELLER** (person relinquishing the water right): If all seller's signatures are not available, attach a copy of the recorded instrument showing conveyance of the property from the seller to the buyer. If the seller listed is not the person identified as the water right owner in the DNRC records, attach copies of the recorded documents showing chain of title including the legal description.☐ Yes ☐ No

Did the buyer receive 100% of the seller's interest in the water rights shown above? If no, attach a map showing buyer's property.

☐ Yes ☐ No ☐ NA

If the sale is on a contract for deed, does the seller want to remain listed as an owner of the water right?

Seller Signature: _____

Date: _____

Seller Signature: _____

Date: _____

C.**FOR QUESTIONS or CLARIFICATION, WHO SHOULD THE DNRC CONTACT?**

Name _____

Address _____

Phone # _____

FOR DEPARTMENT USE ONLY

Fee Rec'd

Check No.

TLMS Receipt Nbr.

Payor

Refund

Date

Coder

RO#

OUID#

Date Rec'd

Rec'd By

For Complete Information, See File

COMPLETE AND SEND THIS FORM TO YOUR LOCAL WATER RESOURCES REGIONAL OFFICE

See back for regional office addresses

Page 5

Attachment "D"

Montana Department of Transportation
Right-of-Way Bureau
PO Box 201001
Helena, MT 59620-1001

ROWForms\Pln\529

Revised 11/18/04

**State of Montana
Department of Transportation**
Right-of-Way Bureau
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Project ID: MT-STPU (009) Parcel No.: 11 County: Yellowstone
Designation: Billings Airport Road
Project No.: 4743-009

Quitclaim Deed

This Deed, made this _____ day of _____, 200____, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration now paid, the receipt of which is acknowledged, witnesses that,

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

does hereby **remise, release, and forever quitclaim** unto the **Montana Department of Transportation**, the following-described real property:

Parcel No. 11 on Montana Department of Transportation Project MT-STPU (009), as shown on the Right-of-Way plan for said project recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana. Said parcel is also described as a tract of land in Dick Logan Park, Block 2, of Rolle Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #575483, as shown by the shaded area on the plat, consisting of 1 sheet, attached hereto and made a part hereof, containing an area of 0.023 ha (0.06 acre), more or less.

ROW:4743:P11(QCD-City).rie

Quitclaim Deed
Project ID: MT-STPU (009)
Designation: Billings Airport Road

Parcel No.: 11

Excepting and reserving to Grantor(s), however, all gas, oil and minerals beneath the surface of the above-described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right, the surface thereof shall not be disturbed, interfered with or damaged. This exception and reservation does not include sand, gravel and other building materials, which are conveyed by this Deed.

Further excepting and reserving unto the Grantor(s), its successors and assigns, all water, water rights, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates and any and all other incidents of water, water right and ditch ownership, or any interest therein appurtenant to the land therein, save and except groundwater for the use, benefit and purposes of the Grantee(s).

To have and to hold the above-described and conveyed premises, with all the reversions, inheritances, improvements, hereditaments and appurtenances thereto, unto the Montana Department of Transportation, and to its successors and assigns forever.

This Deed was executed on the date of its last acknowledgment.

(Corporate Seal)

State of _____ }
County of _____ }

This instrument was acknowledged before me on _____ (date)

by _____ (name of person(s))

as _____ (type of authority, e.g., officer, trustee, etc.)

(name of party on behalf of whom instrument was executed)

Notary Signature Line

(Seal)

Notary Printed Name

Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

State of _____ }
County of _____ }

This instrument was acknowledged before me on _____ (date)

by _____ (name of person(s))

as _____ (type of authority, e.g., officer, trustee, etc.)

(name of party on behalf of whom instrument was executed)

Notary Signature Line

(Seal)

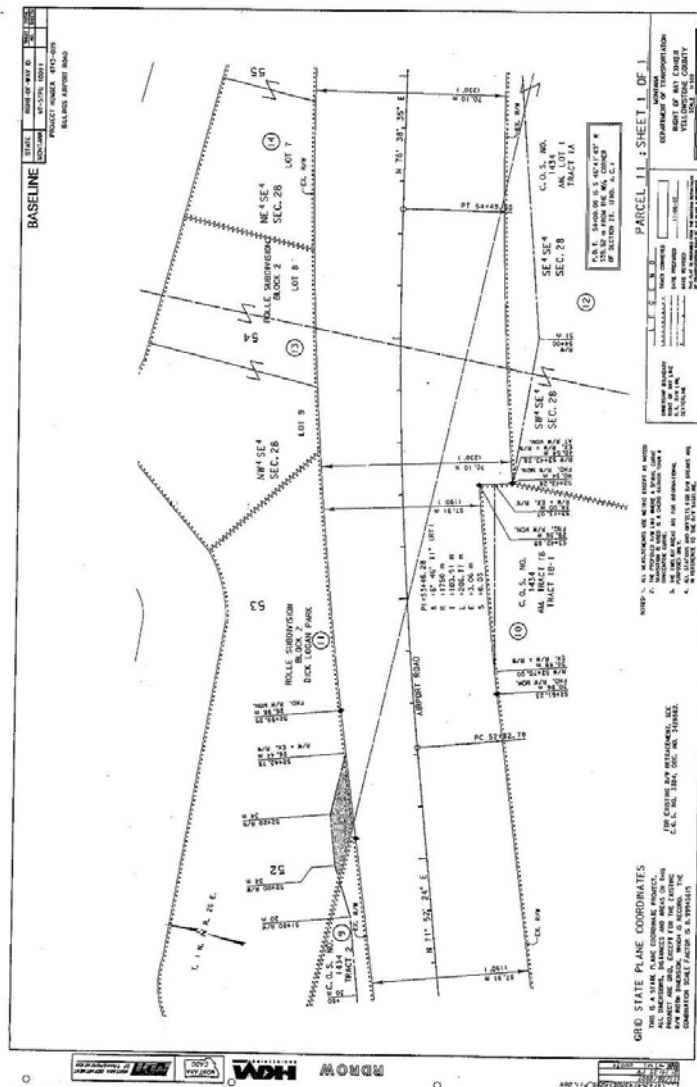
Notary Printed Name

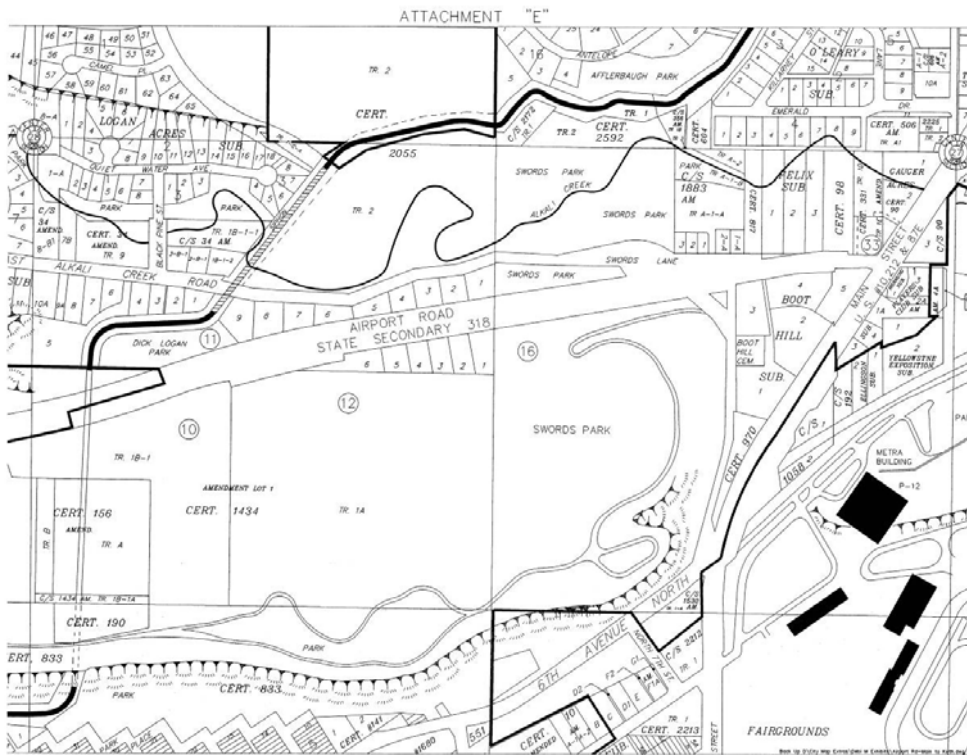
Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

Recording Information





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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Assignment and Transfer of Limited Commercial Aviation Ground Lease
from Corporate Air to Corporate Jet, LLC

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On December 18, 2006, Corporate Air entered into a ten-year Limited Commercial Aviation Ground Lease with the City of Billings, on which it owned a large hangar located on the leased parcel, which is situated on the west end of the Airport. The parcel contains 243,108.48 square feet and is located at 2491 Overlook Drive. Corporate Air utilized the hangar to perform aircraft maintenance and repair operations for a number of years, and has now opted to sell its hangar to Corporate Jet, LLC. Corporate Jet proposes to utilize the hangar for its startup operations as a second Fixed Base Operator (FBO) at Billings Logan International Airport. Currently, Edwards Jet Center is the sole FBO operating at the Airport. On December 10, 2007, Corporate Jet entered into a Commercial Aviation Ground Lease with the City for a fuel farm site. The company is nearing completion of the fueling installation. Corporate Jet proposes to offer charters, fueling, and other operations consistent with an FBO. This Assignment and Transfer will formally transfer the Lease on this parcel from Corporate Air to Corporate Jet, LLC.

FINANCIAL IMPACT: There is no financial impact from this action. The name on the Lease is all that changes with this Assignment and Transfer, all other terms and conditions of the Lease remain unchanged.

RECOMMENDATION

Staff recommends that Council approve the Assignment and Transfer of the Limited Commercial Aviation Ground Lease from Corporate Air to Corporate Jet, LLC.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 14, 2008

TITLE: Assignment of Limited Commercial Aviation Ground Lease with BVDS, Inc. to Western Security Bank for Financing Purposes

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On March 24, 2008, the City Council approved an Assignment of the Rocky Mountain Bancorporation, Inc. Non-Commercial Aviation Ground Lease with the City of Billings to BVDS, Inc. so that Rocky Mountain Bancorporation could sell its hangar located on the leased premises to BVDS, Inc. However, since BVDS, Inc. wishes to conduct limited commercial operations from the hangar it is purchasing from Rocky Mountain Bancorporation, the ground lease was also revised on March 24, 2008 (in a separate, but related action) to reflect the limited commercial operations proposed by BVDS, Inc., and also to extend the term of the Lease to accommodate the investment of BVDS, Inc. in the purchase of the hangar. BVDS, Inc. is working with Western Security Bank on financing for the purchase of this hangar.

The assignment language has been reviewed by staff and the City Attorney, and is similar to language used in the past. The City has approved a number of these financing assignments over the years as a means for the banks to secure the loans they provide to the Airport tenants for either construction or purchase of their hangar facilities. This is the case with the hangar previously owned by Rocky Mountain Bancorporation, as Western Security Bank seeks to secure its loan for the costs of the hangar purchase by BVDS, Inc.

FINANCIAL IMPACT: There would be no financial impact to the City, as BVDS, Inc. will still be required to pay the annual ground lease rentals as established in the assigned and subsequently revised Lease that was approved by the City Council on March 24, 2008.

RECOMMENDATION

Staff recommends that Council approve the Assignment of the Limited Commercial Aviation Ground Lease with BVDS, Inc. to Western Security Bank, for the purpose of securing the loan for the cost of the hangar purchase from Rocky Mountain Bancorporation.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Annexation Petition #08-06: Acknowledge Receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: Owner and petitioner, James Pickens of Best Development Corp., is requesting annexation of a property legally described as Tracts 1A, 1B, and 1C of Certificate of Survey 2055, Amended, located in Section 28, Township 1N, Range 26E into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located north of Alkali Creek Road, where the new extension of Aronson Avenue is under construction in the Heights. The petitioner is requesting annexation in order to obtain city water and sewer services for development of the property for residential uses. The subject property is currently vacant with Residential-9600 zoning. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for April 28, 2008. The Council will take action on the annexation request at that public hearing.

ALTERNATIVES ANALYZED: Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is bordered on all sides by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next five (5) years.

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

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for April 28, 2008, to consider annexing this property.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

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

ATTACHMENT A

Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Best Development Corp., James Pickens, President
Purpose of annexation:	To obtain City Services
Property included:	Tracts 1A, 1B, 1C, Certificate of Survey 2055, Amended
Location:	North of Alkali Creek Road, where Aronson Ave. extension is under construction
Total area:	20.632 acres
Current zoning:	Residential-9,600
Current land use:	vacant
Future zoning:	Same
Future land use:	Single-family residential

ATTACHMENT B
Annexation Petition

**PETITION
FOR ANNEXATION
TO THE CITY OF BILLINGS**

NOTICE TO PETITIONER

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

INSTRUCTIONS

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

The map must show:

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

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
01/16/2008	Best Development Corp. Inc.		1925 Central Avenue
	By: James L. Pickens		Billings, MT 59102

(continued on separate page)

(Should be completed prior to obtaining signatures of resident freeholder electors)

DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
Tract 1, of Certificate of Survey 2055	D05613	North of BBWA Canal, south of Summerhill Sub.	Vacant Residential	East Development Corp., Inc.	1925 Central Avenue Billings, MT 59102	406/656-8280

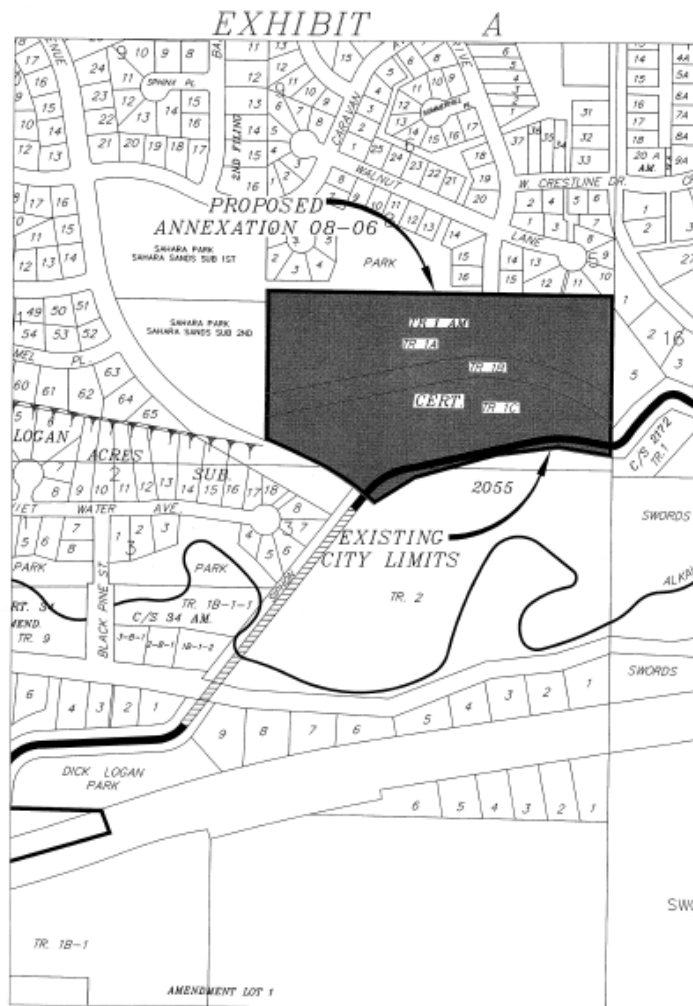
ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: _____ Received By: *Mike Spalding* Petition Number: 08-06
Fee Paid: 80.00

P:05117_Annex_Pet

(08/09/06) dml

ATTACHMENT C
Annexation Map



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

L

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 14, 2008

TITLE: Acknowledge Receipt of Petition to Vacate a portion North 26th Street and 2nd Avenue North and Set a Public Hearing

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Per the Development Agreement for the Federal Courthouse Site, which was approved at the January 14, 2008, City Council Meeting, the city is to vacate a portion of North 26th Street and 2nd Avenue North. The rights of way proposed to be vacated are the south half of North 26th Street between 2nd Avenue North and 3rd Avenue North and the north 25-feet of 2nd Avenue North as shown on the attachment. The right of way will be vacated to Big Sky Economic Development Agency (BSEDA) and Downtown Billings Partnership (DBP), the current owners surrounding the right of way. Public Works will be paid \$126,075 per the development agreement.

ALTERNATIVES ANALYZED:

1. Approve acknowledgement of petition to vacate the above-mentioned right-of-way and set a public hearing for May 12, 2008.
2. Do not approve acknowledgement of petition.

FINANCIAL IMPACT: Per the approved Development Agreement, the city will be paid \$126,075 for the right of way proposed to be vacated.

RECOMMENDATION

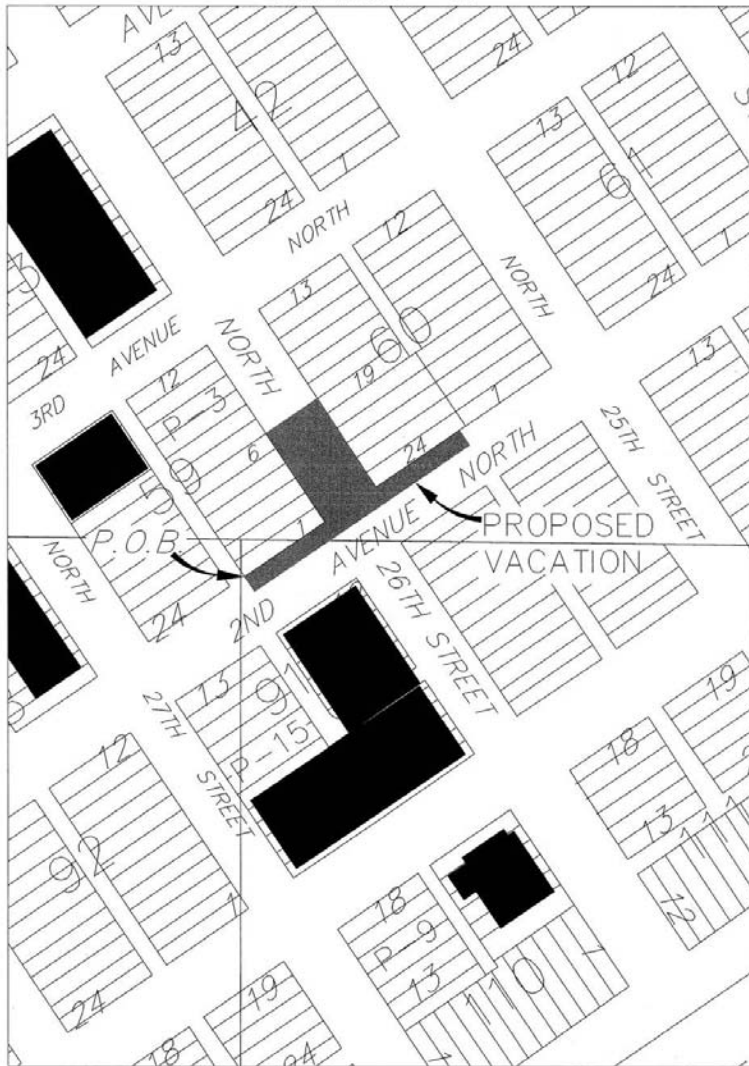
Staff recommends that Council acknowledge the receipt of petition to vacate a portion of the North 26th Street and 2nd Avenue North and set a public hearing for May 12, 2008.

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

ATTACHMENT

- A. Map Depicting Areas to be Vacated

EXHIBIT "A"



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

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

PROBLEM/ISSUE STATEMENT: On April 2, 2007, Officers Karl Rude and Jeremy Dennler were hired by the Billings Police Department as probationary Police Officers. According to MCA 7-32-4113, their probationary period is for one year from date of hire. At this time Officers Karl Rude and Jeremy Dennler have completed their one year probation, and according to state statute, their names are to be submitted to City Council within 30 days for confirmation. All of the supervisor comments concerning Officers Rude and Dennler's performance are positive and indicate that they are doing a good job, and recommend confirmation.

RECOMMENDATION

City staff recommends Officer Karl Rude and Officer Jeremy Dennler be confirmed as Billings Police Officers.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Property Reversion to Western Security Bank
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings issued Industrial Revenue Bonds in 1979 to finance the N. 28th Street First Citizens Bank drive up bank construction and some internal building improvements. The drive-up real property is described as lots 1-6, block 108 of the Original Town of Billings. In order to secure the bonds, the bank deeded the land to the City and the City leased the land to the bank. The City was supposed to deed the property to the bank when the bonds were repaid in 1994, however, that was not done and the City is still the record owner. When Western Security Bank purchased First Citizens Bank, it discovered this error and requested that the City deed the property to the new owner. The Council is being asked to approve this property reversion to clear up the ownership records.

ALTERNATIVES ANALYZED: The City Council could:

- Approve the bank's request
- Disapprove the bank's request because First Citizens Bank failed to request the transfer in 1994 when the bonds were retired and the lease terminated

FINANCIAL IMPACT: There should be no financial impact from this action. The bank has been paying the taxes and assessments and will continue to do so when the property reverts to its ownership. The City has not received any lease revenue since 1994 and prior to that time, the lease payments were equal to the bond payments, so there was zero net income.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign any necessary documents to complete the reversion of property described as lots 1-6, block 108 Original Town of Billings, to Western Security Bank for no cost.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Western Security Bank letter requesting land reversion

ATTACHMENT A

Security you can trust from people you know.

2812 1st Avenue North • Billings, MT 59101
406.247.4100 • www.westernsecuritybank.com



March 19, 2008

City Of Billings
Bruce McClandless
PO Box 1178
Billings, MT 59103

Dear Mr. McClandless:

This letter is to request the transfer of the property listed below to Western Security Bank. Western Security Bank purchased First Citizen Bank in September 2006. This property is currently in the ownership of the City of Billings.

First Citizens Bank deeded this property over to the City of Billings for the sum of Ten Dollars (\$10.00) on March 26, 1979 for the issuing of Industrial Development Revenue Bonds (First Citizens Bank of Billings Project) Series 1979: Lease Agreement. The term of the lease was fifteen (15) years and ended March 1, 1994. At the expiration of the lease, First Citizens Bank was to purchase the property back from the city for the sum of One Dollar (\$1.00).

Western Security Bank has reviewed all of the documents available and has been unable to find any record showing the transfer of property was completed when the obligations of the agreement were met on March 1, 1994.

Tax ID: A00777, A00778

Address: 8 North 28th Street and 24 North 28th Street

Legal Description: Lots 1, 2, 3, 4, 5, and 6 in Block 108 of the Original Town, now City of Billings. According to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County.

Enclosed is a cashier check for \$1.00 to fulfill our agreement. If you need any further information please contact me at 371-8201.

Sincerely,

James D. Walker
President
Western Security Bank



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Cinco de Mayo Street Closure
 DEPARTMENT: Public Works/Engineering
 PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Don Luis Restaurant requests the closure of the 100 Block of 26th Street North from 3:00 pm until 10:00 pm on Saturday, May 3, 2008, for the Cinco de Mayo Celebration.

Recommended conditions of approval include Don Luis Restaurant:

1. Obtain the proper open container from the Police Department if alcohol will be consumed in the public right of way
2. Contact Police Department to determine if noise permit will be required
3. Contact all businesses and make them aware of the event two weeks in advance
4. Clean the area to be used and provide and empty waste cans
5. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
6. Provide and install adequate traffic barricades and signs directing motorists around closure
7. Provide certificate of insurance naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closures named above from 3:00 pm to 10:00 pm on Saturday, May 3, 2008.

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

ATTACHMENTS

- A. Right of Way Special Activity Permit (2 pages)
- B. BID Event Kit of Parts Usage Packet (1 page)
- C. Course Map (1 page)
- D. Certificate of insurance (2 pages)



**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 Carmen Guerrero

ORGANIZATION MAKING APPLICATION Don Luis Restaurant

PHONE 256 3355

ADDRESS 15th & 26th St Billings MT 59101

EMAIL ADDRESS _____

APPROXIMATE TIME EVENT WILL:

Assemble 3:00 P. Start 5:00 P.m. Disband _____

DATE OF EVENT May 3, 2008

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

Cinco De Mayo Celebration for
Community of Billings

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

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

Block of 15th St Between Montana Ave - 1st St

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

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

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

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

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

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

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

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

Applicants also agree to obtain valid "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 Carmel Duenez DATE 3/18/08

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

BID Event Kit of Parts Usage Packet

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

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

-Date(s) of Event: May 3, 2008

-Does this event require any Street Closure? ☒ Yes ☐ No

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

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

-Will you be serving alcoholic beverages? ☒ Yes ☐ No

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

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

List all: 100 Block of N. 24th St.

Briefly Describe Your Event Activity/Participants: Cinco de Mayo Celebration. Bringing the community together

-Specify the exact date and TIME the blocks noted above will be CLOSED: 3:00 p.m.

-Specify the exact date and TIME the blocks noted above will be REOPENED: 10:00 p.m.

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

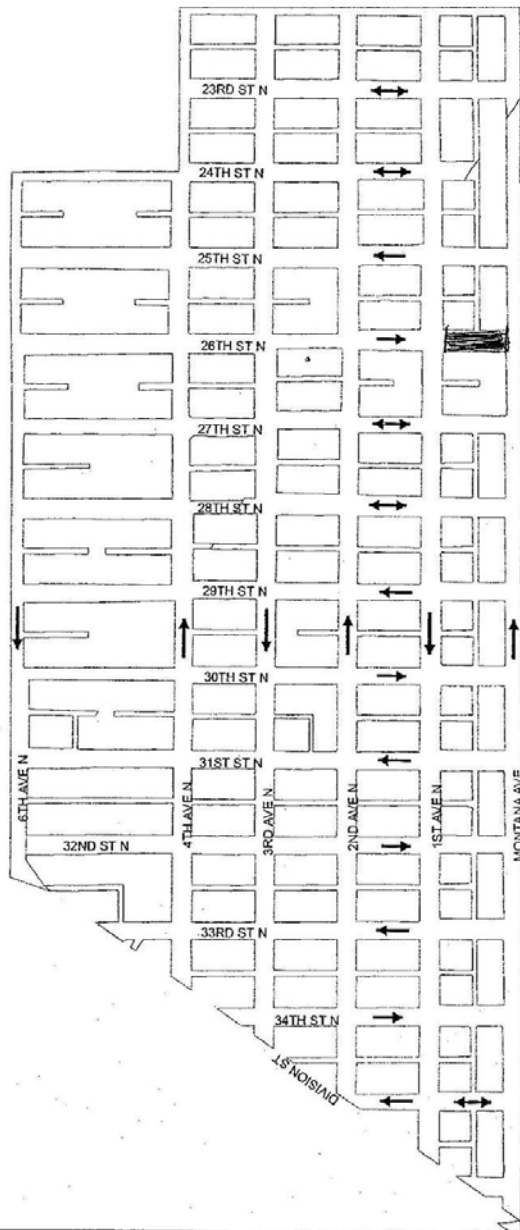
(Example if closing the 200 Block of N. Broadway...Northbound traffic on N. 28th would be diverted west at 1st Ave. North then resume northbound at N. 29th & southbound traffic on N. 28th would be diverted east at 2nd Ave. North then resume southbound at N. 27th)

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

BUSINESS NAME:	ADDRESS:	SIGNATURE:
1. <u>CSA Computers</u>	<u>Edgem 11 N. Scott St</u>	<u>[Signature]</u>
2. <u>Post Office Office</u>	<u>1575 749 2602 1st Ave N</u>	<u>[Signature]</u>
3. <u>Log Cabin Bakery</u>	<u>2519 Montana Ave</u>	<u>[Signature]</u>
4. _____	<u>245-0389</u>	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____
11. _____	_____	_____

Use an additional sheet if needed

Downtown Billings Street Direction Map



Client#: 54779

DONLUIS

ACORD - CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 03/12/08
PRODUCER Holness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: St Paul Travelers		
INSURER B: Mount Vernon Fire Insurance Company		
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES							
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR ADD'LTS INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO <input type="checkbox"/> LOC	16801488L243IND07	05/01/08	05/01/09	EACH OCCURRENCE	\$1,000,000	
					DAMAGE TO RENTED PREMISES (EA ACCIDENT)	\$300,000	
					MED EXP (Per one person)	\$5,000	
					PERSONAL & ADV INJURY	\$1,000,000	
					GENERAL AGGREGATE	\$2,000,000	
					PRODUCTS - COMP/OP AGG	\$2,000,000	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> RENTED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA ACCIDENT)	\$	
					BODILY INJURY (Per person)	\$	
					BODILY INJURY (Per accident)	\$	
					PROPERTY DAMAGE (Per accident)	\$	
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$	
					OTHER THAN AUTO ONLY: EA ACC	\$	
					AUTO ONLY: AGG	\$	
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$	BINDER705376	05/03/08	05/07/08	EACH OCCURRENCE	\$1,000,000	
					AGGREGATE	\$	
						\$	
						\$	
						\$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATL TORSY LIMITS	OTH: EA	
					EL EACH ACCIDENT	\$	
					EL DISEASE - EA EMPLOYEE	\$	
					EL DISEASE - POLICY LIMIT	\$	
B	Other Liquor Liab	BINDER708070	05/03/08	05/07/08	\$1,000,000/\$2,000,000		
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS Miscellaneous Coverage - General Liability - Pol.# 16801488L243IND08							
Additional Insured (See Attached Descriptions)							

CERTIFICATE HOLDER	CANCELLATION
City of Billings 210 N 27th Street Billings, MT 59101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</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>Stanley J. Jankowski</i>

DESCRIPTIONS (Continued from Page 1)

Location: 1 - 15 N 26TH STREET Billings, MT 59101

Building: 1 - Mexican Restaurant

Certificate Holder is shown as an Additional Insured as respects the Cinco De Mayo celebration occurring on 05/03/08-05/03/08.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

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

PROBLEM/ISSUE STATEMENT:

The Yellowstone Rimrunners request temporary street closures on Saturday, May 10, 2008, from 6:30 am to 12:00 noon, for their annual Montana Women's Run. Closures are as follows: 2nd Ave. from 10th St. to Division St.; Full Closure from N. 27th St. to N. 19th St.; Partial Closure from N. 19th St. to N. 10th St.; Full Closure from N. 27th St. to Division; 3rd Ave. N. from N. 10th Street to Division; Full Closure from N. 19th St. to Division; Partial Closure from N. 19th to N. 10th. Map is attached.

Recommended conditions of approval include that the Yellowstone Rimrunners:

1. Have no alcohol consumption in the public right of way
2. Clean area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide a certificate of insurance naming the City of Billings as additional insured

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

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

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

ATTACHMENTS

- A. Letter from Montana Women's Run Coordinator (1 page)
- B. Right of Way Special Activity Permit (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (1 page)



The Montana Women's Run brings women of all ages together to run or walk through the streets of downtown Billings on the day before Mother's Day. The event is really two timed races (5 Miles and 2 Miles), with medals for the first 5 finishers in each age group as well as special awards for the first three overall finishers, the first Masters and first Super Masters finishers in each race. We are also the RRCA State Championship Races for both the 5 Mile and 2 Mile races. However, most of the participants walk, many pushing strollers or wheelchairs. Women come from all over the country to join their friends and family. The 2008 edition is the 27th year for our event and will be held May 10th.

The Montana Women's Run promotes health and fitness among women, and also raises money donated to programs for local women's services. Last year we gave over \$50,000 divided among the Billings YWCA, Billings Clinic Women's Wellness Fund, MSU-B Cross Country scholarship fund, Rocky Mountain College scholarship fund, and the Yellowstone Rim Runners for equipment to stage the races.

On May 10, 2008, we request closure of the streets as shown on the attached map and sheet of explanation basically from 6am- noon: 2nd and 3rd Avenues N. from N. 10th to Division; Clark and Yellowstone Avenues from 8:25-10 am. Roads can open up as the last walkers pass. We request to close 2nd Ave. N. from N. 27th St. to N. 29th St. and Broadway from 1st Ave. N. to 3rd Ave. N. for our Post-race Party and Awards Ceremony from 6 am to noon.

Exel "Ekkie" Wedul
2008 Montana Women's Run Coordinator
656-6973





City of Billings
RIGHT-OF-WAY ACTIVITY PERMIT
APPLICATION

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: Parks, Recreation and Public Lands office, 390 North 23rd Street, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Exel "Ekkie" Wedul

ORGANIZATION MAKING APPLICATION Montana Women's Run

PHONE 656-6973

ADDRESS 3412 Ben Hogan Ln., Bllgs, MT 59106
CITY STATE ZIP

EMAIL ADDRESS wedul@bresnan.net

APPROXIMATE TIME EVENT WILL:

Assemble 6 am Start 8:15 am Disband noon

DATE OF EVENT May 10, 2008

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

27th Annual run & walk; fundraiser for women's programs in the Billings area. Last year we donated over \$50,000. We promote health and fitness, especially among women.

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

See map.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

2nd Ave. N. from No. 29th to N. 27th
Broadway from 1st Ave. N. to 3rd Ave. N.

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

Board members and volunteers will clean up their areas.

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

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

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

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

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

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

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

Applicants also agree to obtain valid "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 Eph. Wedel, Coordinator DATE 2-21-08

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: _____

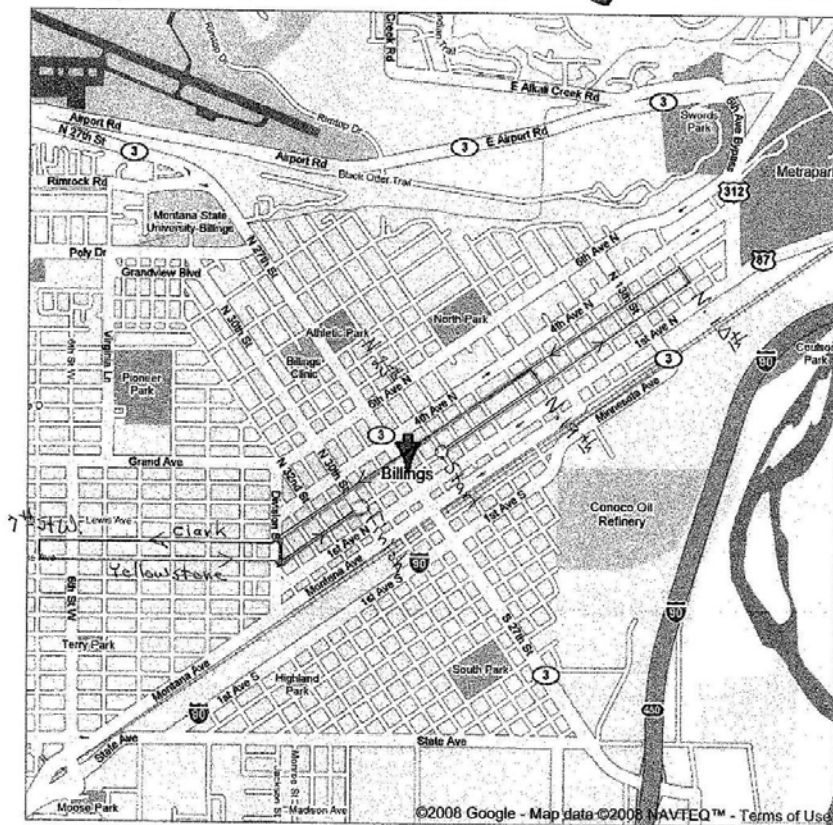
DATE: _____

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

5 Mile.

May 10, 2008

Get Google Maps on your phone
Text the word "GMAPS" to 466453



Both Races: Start on 2nd Ave. N. at N. 25th St.
Finish on 2nd Ave. N. at N. 30th St.

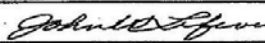
<http://maps.google.com/maps?f=q&hl=en&geocode=&q=billings,+MT&ie=UTF8&ll=45....> 2/19/2008

ACORD CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY) 2/12/2008	
PRODUCER PH (260) 467-5690 FAX: (260) 467-5691 STAR Insurance Agency Fort Wayne Office 2130 Dupont Road Fort Wayne IN 46825			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.		
INSURED ROAD RUNNERS CLUB OF AMERICA AND ITS MEMBER CLUBS 19550 W. PINE WOOD DRIVE NEW BERLIN WI 53146			INSURERS AFFORDING COVERAGE INSURER A: NATIONAL CASUALTY COMPANY INSURER B: NATIONWIDE LIFE INSURANCE INSURER C: INSURER D: INSURER E:		
COVERAGES <small>THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY 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.</small>			NAIC #		
INSR/ADDTL	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> LEGAL LIAB TO PART \$1,000,000 <small>GEN'L AGGREGATE LIMIT APPLIES PER:</small> <input type="checkbox"/> POLICY <input type="checkbox"/> PROD <input type="checkbox"/> LOC	KRO0000000172600	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Per occurrence) \$ 300,000				
	MED EXP (Any one person) \$ 5,000				
	PERSONAL & ADV INJURY \$ 1,000,000				
					GENERAL AGGREGATE \$ NONE
					PRODUCTS - COMPROP AGG \$ 1,000,000
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	KRO0000000172600	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	BODILY INJURY (Per person) \$				
	BODILY INJURY (Per accident) \$				
	PROPERTY DAMAGE (Per accident) \$				
					AUTO ONLY - EA ACCIDENT \$
					OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
	<input type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$
					AGGREGATE \$
					\$
					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <small>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?</small> <small>If yes, describe under SPECIAL PROVISIONS below</small>				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	OTHER EXCESS ACCIDENT & MEDICAL	SPX0000003149700	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	EXCESS MEDICAL: \$10,000
					\$250 DEDUCTIBLES: PER CLAIM
					AD & SPECIFIC LOSS: \$2,500
<small>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS</small> CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS THEIR INTEREST IN THE OPERATIONS OF THE NAMED INSURED. DATE & EVENT: 05/10/08 MONTANA WOMEN'S RUN - 2 MILE & 5MILE ROAD RACE INSURED CLUB: YELLOWSTONE RIM RUNNERS, ATTN: BRAD COUTANT; P.O. BOX 2424; BILLINGS, MT 59103					
CERTIFICATE HOLDER (406) 247-8641 05/10/08 CITY OF BILLINGS ATTN: DANA JEFFERSON 390 N. 23RD ST. BILLINGS, MT 59101			CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE John Lefever/JRM		

ACORD 25 (2001/08)
INSR25E (08/01/08)

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Revised 1 of 2

ACORD CERTIFICATE OF LIABILITY INSURANCE					DATE (MM/DD/YYYY) 2/12/2008	
PRODUCER (260)467-5690 FAX: (260)467-5691 STAR Insurance - Fort Wayne Office 2130 East DuPont Road			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
Fort Wayne IN 46825			INSURERS AFFORDING COVERAGE		NAIC #	
INSURED Yellowstone Rim Runners P O Box 2424			INSURER A: NATIONAL CASUALTY COMPANY			
			INSURER B:			
			INSURER C:			
			INSURER D:			
Billings MT 59103			INSURER E:			
COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR ADPL LTR. RUBER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				EACH OCCURRENCE \$	
	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$	
	CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>				MED EXP (Any one person) \$	
					PERSONAL & ADV INJURY \$	
					GENERAL AGGREGATE \$	
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMPROP AGG \$	
	POLICY <input type="checkbox"/> PRO- DUCT <input type="checkbox"/> LOC <input type="checkbox"/>					
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (EA accident) \$	
	ANY AUTO				BODILY INJURY (Per person) \$	
	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$	
	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$	
	HIRED AUTOS					
	NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$	
	ANY AUTO				OTHER THAN EA ACC \$	
	EXCESS/UMBRELLA LIABILITY				AUTO ONLY: AGG \$	
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				EACH OCCURRENCE \$ 1,000,000	
					AGGREGATE \$ 1,000,000	
A	DEDUCTIBLE	6L-XKO-00000002169-00	12/31/2007	12/31/2008		
	RETENTION \$	STRAIGHT EXCESS	12:01 A.M.	12:01 A.M.		
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				E.L. EACH ACCIDENT \$	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. DISEASE - EA EMPLOYEE \$	
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - POLICY LIMIT \$	
	OTHER					
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS						
CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS THEIR INTEREST IN THE OPERATIONS OF THE NAMED INSURED.						
DATE & EVENT: 05/10/08 MONTANA WOMEN'S RUN - 2 MILE AND 5 MILE ROAD RACE						

CERTIFICATE HOLDER	CANCELLATION
(406)247-8641 CITY OF BILLINGS ATTN: DANA JEFFERSON 390 N. 23RD STREET BILLINGS, MT 59101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE John Lefever/JRM 

ACORD 25 (2001/08)
INS025 (0108)08a

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Page 1 of 2

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Montana Pride Network Parade Closure
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Montana Pride Network requests street closures at 9:00 am using the standard parade route for the Gay Pride Parade on Saturday, June 21, 2008. The parade will assemble at 9:00 am, begin at 10:00 am and disband by 11:30 am.

Recommended conditions of approval include the Montana Pride Network:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event as soon as possible
3. Clean the area to be used and provide and empty waste cans
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
5. Provide a certificate of insurance naming City of Billings as additional insured
6. Provide and install adequate traffic barricades and signs directing motorists around closure

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the city other than administrative time to process the application. Police, traffic control and litter removal for are to be paid for by the Montana Pride Network.

RECOMMENDATION

Staff recommends that Council approve closure of the event route described above on Saturday, June 21, 2008 for the annual Gay Pride Parade.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Right of Way Special Activity Permit (2 pages)
- B. Event route map (2 page)
- D. Certificate of insurance (2 page)



City of Billings
RIGHT-OF-WAY ACTIVITY PERMIT
APPLICATION

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: Parks, Recreation and Public Lands office, 390 North 23rd Street, 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 Robin McClure

ORGANIZATION MAKING APPLICATION Montana Pride Network

PHONE 406-690-0920

ADDRESS 2934 Miles Ave Billings MT 59102
CITY STATE ZIP

EMAIL ADDRESS _____

APPROXIMATE TIME EVENT WILL:

Assemble 9-9:30 Am Start 10:00 Am Disband 11:00 - 11:30 Am

DATE OF EVENT June 21, 2008

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

Montana Statewide Gay Pride Parade

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

Regular Parade Route - See Attached Map

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

N/A

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

Business Improvement District

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 Robin McClure DATE 2/12/08

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

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

ACORD CERTIFICATE OF LIABILITY INSURANCE				CSR NF IALG021	DATE (MM/DD/YYYY) 02/06/08
PRODUCER Casswood Insurance Agency, Ltd. Five Halfmoon Executive Park Clifton Park NY 12065-5694 Phone: 518-373-8700 Fax: 518-373-8799			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.		
INSURED Montana Pride Network Sandy Shull P.O. Box 2034 Helena MT 59601			INSURERS AFFORDING COVERAGE INSURER A: St. Paul Travelers Ins. Company INSURER B: INSURER C: INSURER D: INSURER E:		NAIC # 307
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.					
PROD. CODE LTR INSD	TYPE OF INSURANCE <input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	POLICY NUMBER CK09005289-08	POLICY EFFECTIVE DATE (MM/DD/YYYY) 06/19/08	POLICY EXPIRATION DATE (MM/DD/YYYY) 06/23/08	LIMITS EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$1,000,000
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		COMBINED SINGLE LIMIT (EA OCCURRENCE) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$			
DAMAGE LIABILITY <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$			
A	<input checked="" type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$	UM 09005289-08	06/19/08	06/23/08	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$ \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER		<input type="checkbox"/> W/C STATUTORY LIMITS <input type="checkbox"/> WITH SR E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$			
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS Certificateholder is named as Additional Insured as their interest may appear with regard to the operations of the Named Insured and their use of City property for 2008 Gay Pride Events including load in and load out dates if any					
CERTIFICATE HOLDER City of Billings 390 North 23rd St Billings MT 59103			CANCELLATION 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: <i>Jeffrey W. Wadsworth, C.R., Chairman</i>		

ACORD 25 (2001/08)

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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD 25 (2001/08)



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Financial Donation by Billings Mustangs Baseball Organization.
DEPARTMENT: Park, Recreation, and Public Lands
PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: The Billings Mustangs Baseball Organization has donated \$13,069.00 to purchase and install protective netting behind the dugouts at the new baseball and multi-use stadium.

ALTERNATIVES ANALYZED:

- Accept the financial donation from The Billings Mustangs Baseball Organization or,
- Decline the donation.

FINANCIAL IMPACT: There will be no increase in costs to the City.

RECOMMENDATION: Staff recommends that Council accept the donation from The Billings Mustangs Baseball Organization.

Approved By: City Administrator ____ City Attorney _____

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Acceptance and Recognition of \$8,000 Donation from ConocoPhillips to
Send School Resource Officers to National Conference

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On March 18, 2008, the Police Department received an \$8,000 donation from ConocoPhillips to pay the cost of sending the School Resource Officers (SRO) to the National Conference in Phoenix, Arizona on July 28th through August 1, 2008. The conference has been attended by one SRO in the past and had been recommended as an excellent training conference. This very generous donation from ConocoPhillips will allow the SROs to attend. The cost per officer is approximately \$1,839 which includes registration, lodging, airfare, shuttle and per diem.

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this \$8,000 donation from ConocoPhillips to send the School Resource Officers to the National Conference in Phoenix, Arizona, on July 28th through August 1, 2008.

Approved By: City Administrator ____ City Attorney ____

Attachments

- A - Copy of CR deposit slip
- B - Copy of Letter from ConocoPhillips
- C - Donor Verification Form

CH N° 25715

RECEIPT
When validated this is your receipt. All deposits accepted subject to verification.
Checks, warrants and department receipts must be accompanied with adding
machine tape.

VALIDATION (FINANCE) 7MB BATCH #: 3/18/08

TYPE	NO.	AMOUNT
CHECKS	1	8,000.00
WARRANTS		
CURRENCY		
COINS		
OTHER		

TOTAL DEPOSIT	8000 00
---------------	---------

[illegible]

Billing Times

TOTAL DISTRIBUTION

ATTACHMENT A



Clint G. Young
Manager, Finance and Public Relations
ConocoPhillips
Billings Refinery



March 17, 2008

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

Attention: Sue Loomis

ATTACHMENT B

Dear Ms. Loomis:

I am pleased to enclose a check from ConocoPhillips in the amount of \$8,000.00 to be used to help cover the cost of sending several School Resource Officers from the Billings Police Department to the National Association of School Resource Officers National Conference to be held in Phoenix, Arizona.

In accepting this donation, we ask that you complete the attached self addressed postage paid reply card, and the ConocoPhillips – 2008 Contributions Report form and return them to the address indicated on the form.

We are glad to help out in this way, and hope that it proves to be a valuable experience for the officers involved.

Sincerely,

Clint Young
Manager, Finance and Public Relations

Encl.

Cc: Mike Wirkowski



CITY OF BILLINGS

POLICE DEPARTMENT ATTACHMENT C

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

CITY OF BILLINGS DONOR VERIFICATION

Department POLICE

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

Donor: CONOCOPHILLIPS COMPANY

Address: 401 SOUTH 23RD. STREET
BILLINGS, MT 59101

Phone Number: 255-2511

Donation: \$8,000.00

Value of Donation: \$8,000.00

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

TO BE USED TO HELP COVER COST OF SENDING
OFFICERS TO THE NATIONAL ASSOCIATION OF
SCHOOL RESOURCE OFFICERS NATIONAL CONFERENCE

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

CONOCOPHILLIPS

Donor Signature: Clinton A. Yang

Date: 03 / 17 / 2008

☐ I wish to remain anonymous.*

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

Billings Pride
City-wide

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

Ra

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, April 14, 2008

TITLE: SID 1378 Clevenger Avenue – Resolution Authorizing Construction Bids
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: SID 1378 was created at the June 25, 2007, City Council Meeting. The improvements to be constructed with SID 1378 generally consist of water, storm drain, curb and gutter, and street improvements to the 4200 Block of Clevenger Avenue just west of Hallowell Lane. As required by statute, the City Council must adopt Resolutions authorizing staff to advertise and receive bids for construction and the sale of SID bonds. As bids have already been received for this project, Council must pass this resolution before awarding a contract to the lowest bidder.

FINANCIAL IMPACT: Construction assessments to property owners passed at the June 25th City Council Meeting were \$170,892.24. This original assessment did not include replacement of the water main, which was added as the project was being designed. The costs to replace the water main will be paid for from City funds and is estimated at \$50,000.00. The City is also making a contribution for the storm drain main extension in Hallowell Lane. A breakdown of the funding sources is listed below:

SID 1378 Funding

SID Assessments	\$ 170,892.24
Storm Drain Funds	\$ 35,000.00
Water Funds	\$ 50,000.00
Gas Tax Funds	\$ 10,000.00
Contract Amount (This Memo)	\$(219,444.00)
Remaining Funds	\$ 46,448.24

RECOMMENDATION

Staff requests that Council pass a Resolution Authorizing Construction Bids for SID 1378.

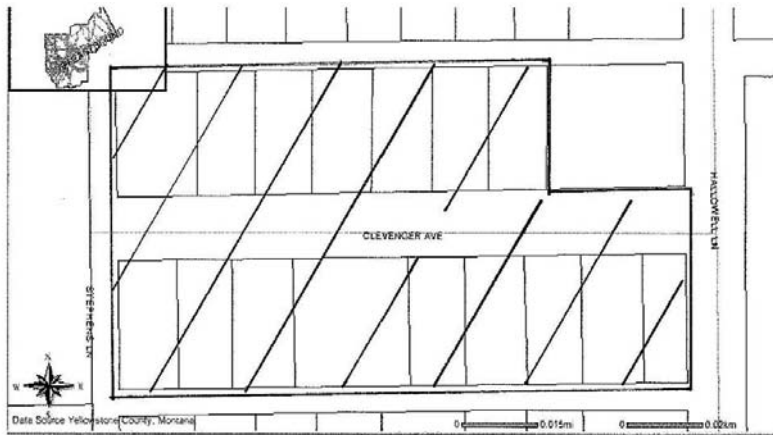
Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Boundary of Proposed Special Improvement District
- B. Resolution Authorizing Construction Bids

SID 1378 – CLEVINGER AVENUE

Exhibit A Boundary Map



RESOLUTION NO. 08-_____

A RESOLUTION PROVIDING FOR THE RECEIVING OF BIDS AND THE LETTING OF A CONTRACT FOR THE CONSTRUCTION OF IMPROVEMENTS IN SPECIAL IMPROVEMENT DISTRICT NO. 1378.

WHEREAS, Special Improvement District No. **1378** has been duly created; and

WHEREAS, it is necessary to provide for the receiving of bids and the letting of a contract for the construction of improvements within said Special Improvement District;

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

1. **IMPROVEMENTS.** The improvements consist of the following: construction of curb and gutter, sidewalks, drive approaches, water main, and the necessary street improvements fronting lots on the 4200 Block of Clevenger Avenue just west of Hallowell Lane within Kisse Subdivision.

2. **BID REJECTION.** The City Council shall and does hereby reserve the right to reject any or all bids.

3. **NOTICE OF CALL FOR BIDS.** The City Clerk is hereby authorized and directed to publish notice inviting bids, stating the time and place said bids must be submitted to the City Clerk, and the time they will be publicly opened. Said notice shall be published in the Billings Times, a newspaper published and circulated in the City of Billings, MT.

4. **OWNERS' RIGHT TO DO WORK.** The owners of over 75% of the frontage of lots and lands within said District, liable to be assessed or their agents, may elect to take such work and enter into a written contract to do the whole work at a price at least 5% less than the price at which the same would be awarded, within (3) three days after the awarding of the contract in compliance with the statutes of the State of Montana.

5. **CONTRACT.** In the event the owners do not elect to do the work, then said successful bidder shall immediately make and execute with the City of Billings, a contract in accordance with the provisions of the notices, resolutions, plans and specifications concerning this Special Improvement District, and all ordinances of the City of Billings. Said contract on the part of the City of Billings shall be approved by the City Council, executed in the name of the City of Billings, by its Mayor and attested by the City Clerk.

6. **PERFORMANCE BOND.** Upon the execution and delivery of said contract, the successful bidder or contracting owners shall give to the City of Billings a good and sufficient bond in an amount not less than 100% of the amount of the contract, conditioned to the effect that such contract or contractors shall well and truly perform all the terms, conditions and provisions of said contract. In addition, said contractor or contractors shall provide insurance to

protect the City and shall be responsible to save the City of Billings harmless from negligent or willful acts of said contractor and contractors.

7. BID SECURITY. Each bid shall be accompanied by lawful money of the United States, a cashier's check, certified check, bank money order, bank draft drawn and issued by a national banking association situated in the State of Montana, or a bid bond or bonds executed by a surety company authorized to do business in the State of Montana. Said money, check or bid bond to be in an amount equal to 10% of the amount of the bid. If said bid is accepted and the bidder complies with the terms of this resolution as to making, executing and delivering to the City of Billings said contract and bonds as herein required, then said bid security shall be returned.

8. PAYMENTS. All payments for the construction of said improvements shall be made in warrants drawn on the fund of Special Improvement District **1378** after the bonds of said district have been sold on the estimate of the City Engineer and approved by the City Council; provided, however, that said contractor has paid for the labor performed and materials used on said improvements. Ten percent (10%) of the estimates shall be reserved until the final completion of said improvements, in a manner reasonably satisfactory to the City.

9. INCIDENTAL COSTS. Subsequent to the bond sale, the City Engineer shall cause to be paid such amounts as he shall estimate are necessary to cover the actual costs of engineering, inspection, legal expense, printing, preparation of assessment rolls and other incidental expenses properly a charge against the district, by an interfund transfer, and shall be drawn on the funds of the district, processed by the Finance Office and transferred to the appropriate fund of the City.

10. WORKMENS' COMPENSATION. Provisions shall be included in the contract to comply with the City's obligation of insuring payment of the premiums of the contractor to the State of Montana Workmens' Compensation Division and the provisions required in MCA, Title 18, Part 4.

PASSED BY THE CITY COUNCIL AND APPROVED this **14th day of April, 2008.**

THE CITY OF BILLINGS

BY: _____
Ron Tussing

MAYOR

ATTEST:

BY: _____
Cari Martin CITY CLERK

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

Rb

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 14, 2008

TITLE: SID 1378 Clevenger Avenue – 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 1378 on March 25, 2008. This project consists of utility and street improvements to the 4200 Block of Clevenger Avenue just west of Hallowell Lane.

ALTERNATIVES ANALYZED:

1. Award SID 1378 to Knife River Company in the amount of \$219,444.00; or
2. Reject all bids and do not award SID 1378

FINANCIAL IMPACT: Construction assessments to property owners passed at the June 25th City Council Meeting were \$170,892.24. This original assessment did not include replacement of the water main, which was added as the project was being designed. The costs to replace the water main will be paid for from City funds and is estimated at \$50,000.00. The City is also making a contribution for the storm drain main extension in Hallowell Lane. Seven bids were received for this project; the three lowest are shown below:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 220,892.24
Knife River Corporation	\$ 219,444.00
H.L. Ostermiller	\$ 234,667.50
CMG Construction	\$ 243,850.00

Any remaining funds for this project shall be used for construction administration, staking, and change orders. A breakdown of the project funds per the CIP and approved SID 1378 is listed below:

SID 1378 Funding

SID Assessments	\$ 170,892.24
Storm Drain Funds	\$ 35,000.00
Water Funds	\$ 50,000.00

Arterial Funds	\$ 10,000.00
Contract Amount (This Memo)	\$(219,444.00)
Remaining Funds	\$ 46,448.24

RECOMMENDATION

Staff recommends that Council award Knife River's bid for SID 1378 in the amount of \$219,444.00

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Resolution Repealing Resolution 07-18687 and the Intent to Create the South Billings Boulevard Urban Renewal District, Declaring Blight, and Setting a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Lora Mattox, AICP, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: At the March 10, 2008, City Council meeting, the Council adopted a resolution that corrected the legal description of the South Billings Boulevard Urban Renewal District. This resolution amended the original resolution first adopted by City Council at its meeting on November 10, 2007. As part of the resolution adopted on March 10, a description of the public hearing date was included and the process for public notification was also described.

While compiling the documentation for creation of the Urban Renewal Plan and District, staff found that state statute requires publication of two public notices in a newspaper of general circulation at least six days apart (7-1-4127, MCA). Only one public notice was published for the original resolution in November 2007. To comply with state law, it is necessary to re-notice the hearing, conduct a new public hearing and adopt this new resolution. The attached resolution corrects any discrepancies and amends the previous resolutions.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the amended resolution setting a public hearing date for April 28, 2008, and correcting the process for public notification for the South Billings Boulevard Urban Renewal District.
- Deny the amended resolution setting a public hearing date for April 28, 2008, and correcting the process for public notification for the South Billings Boulevard Urban Renewal District.

FINANCIAL IMPACT: None.

RECOMMENDATION

Staff recommends that Council adopt the resolution repealing Resolution 07-18687 and the intent to create the South Billings Boulevard Urban Renewal District, declaring blight and sets the public hearing date for April 28, 2008.

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

ATTACHMENTS:

A: Amended Resolution

ATTACHMENT A

RESOLUTION NO: 08-

A RESOLUTION REPEALING RESOLUTION 07-18687 DECLARING THE CITY COUNCIL INTENT TO CREATE A SOUTH BILLINGS BOULEVARD URBAN RENEWAL DISTRICT WITH TAX INCREMENT AUTHORITY; DECLARING THE EXISTENCE OF BLIGHT WITHIN THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL AREA; SETTING A PUBLIC HEARING DATE; AND REQUIRING PUBLICATION AND MAILING OF THE NOTICE OF HEARING

WHEREAS, at the March 10, 2008, City Council meeting, the council adopted Resolution 07-18687 that corrected the legal description included in Resolution 07-18627 that declared blight, stated the intent to create an urban renewal district and set a date of a public hearing;

WHEREAS, Resolution 07-18687 contained a description of the public hearing date and intent and the public notification process for the South Billings Boulevard Urban Renewal Plan. The public notification was published one time in a newspaper of general circulation and notices were mailed to each property owner within the district. State statute requires publication of two public notices in a newspaper of general circulation at least six days apart (7-1-4127, MCA);

WHEREAS, the City wishes to provide the proper public notification of its intent to create the South Billings Boulevard Urban Renewal District and follow the process as outlined in State Law, and is adopting this amended resolution as part of the required process;

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), the City of Billings, Montana (the "City") is authorized, among other things, to identify and declare an area as containing blight with the intention of eliminating it through urban renewal; and

WHEREAS, the City is authorized by the Act to create urban renewal areas with tax increment provisions by adopting an urban renewal plan by ordinance; and

WHEREAS, an urban renewal plan has been prepared for the proposed South Billings Boulevard Urban Renewal District; and

WHEREAS, the City Council desires to conduct a public hearing on the draft urban renewal plan for the proposed South Billings Boulevard Urban Renewal District to determine if it is desirable to create the district.

NOW, THEREFORE, the City Council of the City of Billings, Montana, declares and resolves as follows:

1. Description of Proposed District The area being considered for inclusion in the proposed urban renewal area is described as:

Starting at the intersection of State Avenue and Van Buren Street, extending south down the centerline of Van Buren Street to the intersection of Van Buren Street and Roosevelt Avenue, extending east down the centerline of Roosevelt Avenue to the intersection of Roosevelt Avenue and Jackson Street, extending south down the centerline of Jackson Street to the intersection of Jackson Street and Madison Avenue, extending east down the centerline of Madison Avenue to the intersection of Madison Avenue and Washington Street, extending south down the centerline of Washington Street to the intersection of the centerline of Washington Street and the existing City of Billings city limit boundary, extending south along the existing city limit boundary to the intersection of Jackson Street and King Avenue East, extending east along the centerline of King Avenue East to the intersection of King Avenue East and Washington Street, extending south along the centerline of Washington Street and its projection across the Interstate 90 right-of-way, to a point intersecting the said existing city limits, thence in a westerly and southerly direction following along the said existing city limit boundary to a point which intersects with the extension of the southern boundary of Tract 1, C/S 2834, then west along said southern boundary of Tract 1, C/S 2834 and southern boundary of, Block 4 of Weil Subdivision to the intersection with the centerline of Mallowney Lane, extending north along the centerline of Mallowney Lane and its projection to the centerline of Laurel Road, extending northeast along the centerline of Laurel Road to the intersection with the centerline of Underpass Avenue, extending northeast along said centerline to its intersection with State Avenue, extending east along the centerline of State Avenue to the ending point at the intersection of State Avenue and Van Buren Street. Excluding all nonincorporated land within the boundary and Tract 2A of C/S 741.

2. Determination of blight. A requirement of Montana Annotated Code 2005 is to justify an urban renewal plan through the determination of *blight*. Blight is defined as an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the

provision of housing accommodation; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

- the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;
- inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;
- inappropriate or mixed uses of land or buildings;
- defective or inadequate street layout;
- faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- unsanitary or unsafe conditions;
- deterioration of site;
- improper subdivision or obsolete platting;
- the existence of conditions that endanger life or property by fire or other causes;

The area in the proposed district contains a great deal of blight. Within the district there is substantial structural deterioration, long-term land vacancy, and significant infrastructure needs. Several of the commercial buildings in the district are vacant or deteriorated and need demolition. Many of the sidewalks are cracked or nonexistent, alleys are deteriorated, and, in general, much of the area is below city standards. In contrast to the above, there are certain properties within the district in good repair but included in the district to allow for a contiguous block of land within the district; and because pockets of revitalization cannot be sustained if areas of neglect and blight surround them. Over time, without continued managed urban renewal, even these success stories will once again decline in taxable value. Portions of the district fall into the blighted, neglected and under-utilized categories. Maps 4 and 5 in the urban renewal plan show the current infrastructure conditions within the district.

3. Intent to Create an Urban Renewal Area with Tax Increment Authority. Pursuant to the Act and considering the blighted conditions cited above, the City Council declares its intention to create a South Billings Boulevard Urban Renewal Area and that public improvements that will stimulate private investment in the area may be financed in part through tax increment generated from the District, subject to a public hearing and adoption of the draft urban renewal plan by ordinance.

4. Public Hearing. A public hearing is hereby called and shall be held on April 28, 2008 at 6:30 p.m. in the Council Chambers at 220 N. 27th Street, on whether to adopt the draft urban renewal plan for the proposed South Billings Boulevard Urban Renewal Area.

5. Publication and Mailing of Notice. The City Clerk is hereby authorized and directed to cause notice of the public hearing to be published in the *Billings Times* at least twice with at least 6 days separating each publication prior to the date set for the hearing and to mail notice of such hearing not less than 10 days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owners, reputed owners, or purchasers under contract for the deed of the Property, at the addresses shown on the tax roll.

APPROVED AND PASSED by the City Council of the City of Billings this 14th day of April, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

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

T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Resolution of Intention to Create Expanded PMD No. 4026, Twin Oaks Sub. and Uinta Park Sub.
DEPARTMENT: Department Of Parks, Recreation, & Public Lands
PRESENTED BY: Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: Twin Oaks Subdivision contains 4.447 acres of dedicated park and public open space, of which 3.16 acres are in the Phase I area being developed at this time. The development and improvement of the park will be by the developer through private contract. The Expanded Park Maintenance District No. 4026 needs to be created at this time to provide for the maintenance of the park improvements that are to be completed by late summer 2008. All property in the proposed district has on file valid Waivers of Protest to the creation of this district.

ALTERNATIVES ANALYZED:

- Create the Park Maintenance District now to assure assessments can be collected in November, 2008, to pay costs of maintenance as the park is developed. This is the requirement approved in the Subdivision Improvement Agreement and the staff recommendation.
- Do not create the Park Maintenance District at this time.

FINANCIAL IMPACT: The maintenance costs for the park improvements in Twin Oaks Subdivision are estimated to be \$11,455 for the first year. The subdivision is all single family residences and will allow the assessments to be equalized since there is equal benefit to each residence regardless of actual lot size. The assessment for each of the 55 lots in Twin Oaks Subdivision Phase I will be \$208.09 per lot for the first year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Expanded Park Maintenance District No. 4026 as provided for in the Twin Oaks and Uinta Park Subdivision Improvements Agreements and set a Public Hearing for the date of May 12, 2008.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS:

- A: Resolution to Create expanded Park Maintenance District No. 4026;
- B: Exhibit A – Map of Proposed District;
- C: Exhibit B – Metes and Bounds Description of Proposed District;
- D: Exhibit C – Property Owners List; thereto attached;
- E: Exhibit D – Estimate of the First Year Costs for the Proposed District.

INTRODUCTION

Approval of the Resolution to Create Park Maintenance District No. 4026 for the maintenance of Uinta Park in the Subdivision of that name located at the intersection of Uinta Park Drive and Broadview Drive west of Lake Elmo Road in the Billings Heights neighborhood is the final step in the process required to create the park maintenance district to pay for the costs of maintaining Uinta Park.

PROCEDURAL HISTORY

- Twin Oaks Subdivision was annexed into the City and the plat approved in December, 2007. The subdivision contains 4.5 acres of park open space with 3.8 acres in the main park that will be constructed during Phase I of the subdivision development. The park trail strip along the BBWA is part of the Heritage Trail Plan to be constructed later.
- The Master Plan for the construction of the park was developed with the PRPL Department and is part of the Subdivision Master Plan. The preliminary plat was approved by City Council on July 24, 2006, and the final plat approval will be considered by City Council on April 28, 2008.
- The Resolution of Intent for creating the Twin Oaks / Uinta Park Maintenance District 4026 will be considered by the Billings City Council at the April 14, 2008, council meeting.
- If approved, a Public Notice of Intent will be advertised for 2 consecutive weeks, April 17th, 2008 and April 24th, 2008, and a copy of the Public Notice of Intention to Create Expanded District 4026 was sent to the property owners in the Twin Oaks Subdivision. The Notice will state the procedure for filing protests or comments, and set the dates of the protest and comment period to be from April 17th, 2008 through May 2nd, 2008.
- The Public Hearing and the Resolution to Create the Expanded Park Maintenance District 4026, will be on the May 12, 2008, Council Agenda, and, if approved, will be the final step to expand the park maintenance district for the maintenance of Uinta and Twin Oaks Parks.

BACKGROUND

The Twin Oaks Subdivision Improvements Agreement calls for park improvements to be made and the Expanded Park Maintenance District to be created during the Phase I development of the subdivision, as agreed to in the Subdivision Improvements Agreement for Twin Oaks Subdivision. The proposed maintenance district for the park includes the 55 single family residential lots in Phase I. Phase II development in Twin Oaks Subdivision will add 76 more

lots, for a total of 131 lots in Twin Oaks Subdivision that will be included in the expanded maintenance district. There are Waivers of Protest for the formation of the park maintenance district for all lots within the Twin Oaks and Uinta Park Subdivisions on file.

ALTERNATIVES ANALYSIS

- Create the expanded Park Maintenance District now to assure assessments can be collected in November 2008, to pay costs of maintenance for the spring and summer of 2009 as the park development is completed later in the summer of 2008. The approved Subdivision Improvements Agreement calls for development at this time and requires a Park Maintenance District to be created for maintaining it. This is the staff recommendation.
- Do not expand Park Maintenance District 4026 at this time.

STAKEHOLDERS

- The developers have agreed to develop planned improvements in the Twin Oaks Subdivision parks and to create a park maintenance district to maintain them.
- The 131 lots in Twin Oaks Subdivision consist of single family residences and the residents and property owners have agreed to the development and maintenance of the parks.
- Billings residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide developed parks for their residents to mitigate that problem.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The extension of quality landscape maintenance services to new subdivision parks through the use of Special Improvement Districts and maintaining them through Park Maintenance Districts continues the Parks 20/20 plan recommendations, and conforms to city policy adopted in 1982 regarding new subdivision parks. The use of Park Maintenance Districts has allowed the use of the PRPL Parks grounds keeping staff to provide professional level maintenance to areas of public grounds and landscaping in new subdivisions as they develop and are brought into the city. The revenue provided helps support the overall park operations in general fund supported parks by allowing better trained, more competent staffing and providing added support for state of the art operations and equipment that would be otherwise be limited by General Fund revenue constraints.

Maintaining this park with a maintenance district continues the process of extending developed parks and maintenance services to the developing areas of the city of Billings. Park Maintenance District revenue is estimated to be \$588,158 to offset maintenance expenses in the upcoming 2009 FY PRPL Parks Operation and Maintenance budget and is equal to 32% of the total Parks Division Operations & Maintenance budget this year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Expanded Park Maintenance District No. 4026 as provided for in the Twin Oaks and Uinta Park Subdivision Improvements Agreements and set a Public Hearing for the date of May 12, 2008.

ATTACHMENTS:

- A: Resolution to Create expanded Park Maintenance District No. 4026;
- B: Exhibit A – Map of Proposed District;
- C: Exhibit B – Metes and Bounds Description of Proposed District;
- D: Exhibit C – Property Owners List; thereto attached;
- E: Exhibit D – Estimate of the First Year Costs for the Proposed District.

RESOLUTION NUMBER 08-
**A RESOLUTION DECLARING IT TO BE THE INTENTION
OF THE CITY COUNCIL TO EXPAND THE BOUNDARIES
OF THE EXISTING SPECIAL IMPROVEMENT
MAINTENANCE DISTRICT NO. 4026 FOR THE PURPOSE
OF MAINTAINING THE EXISTING AND FUTURE PARK
IMPROVEMENTS IN UINTA PARK SUBDIVISION TO
INCLUDE TWIN OAKS SUBDIVISION.**

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

Section 1. Proposed Expansion Of Extended Special Improvement Maintenance District No. 4026: Intention to Expand the Boundaries of Existing Special Improvement Maintenance District. The City proposes to maintain certain improvements to benefit certain property located in the City of Billings, Montana. The improvements consist of **the existing and future public area improvements located in Uinta Park Subdivision plus any public area improvements located in Twin Oaks Subdivision, installed by the developer, Parks Department and/or as part of a future Special Improvement District**, as more particularly described in Section 5. It is the intention of the Billings City Council to expand the boundaries of the existing Special Improvement Maintenance District No. 4026, created and established in the City under Montana Code annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the maintenance costs for the landscaping and other public area improvements. The estimated annual costs for the maintenance of the improvements to be set by the Resolution of the Council each year.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as the Extended Special Improvement Maintenance District No. 4026 of the City of Billings, Montana.

Section 3. Boundaries of District. The boundaries of the District are to be extended to include the property depicted on a map attached as "Exhibit A" hereto (which is hereby incorporated herein and made a part hereof). The boundary of the extended District is more particularly described on "Exhibit B" hereto (which is hereby incorporated herein and made a part hereof), which boundary is designated and confirmed as the boundary of the District. A listing of each property to be added to the District is shown on "Exhibit C" hereto.

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits "A", "B" and "C" are hereby declared to be the Extended Special Improvement Maintenance District and the territory which will benefit and be benefited by the maintenance of the existing and future public area improvements in Uinta Park Subdivision to include Twin Oaks Subdivision, and will be assessed for a portion of the costs of the maintenance as described in Section 1.

Section 5. General Character of the Improvements to be Maintained. The general character of the Improvements to be maintained is as follows: native grasses, trees, shrubs, trails, irrigation system, irrigation system water services, drainageways, groundwater drains, storm detention facilities, weed control, pest control, and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Special Improvement District.

Section 6. Assessment Methods: Property To Be Assessed. All eligible properties within the District are to be assessed for a portion of the costs of maintaining the existing and future public area improvements in Uinta Park Subdivision to include Twin Oaks Subdivision, as specified herein. The costs of maintaining the Improvements shall be assessed against the benefiting property, based on the assessable area method of assessment described in Section 7-12-4162 through 7-12-4165, M.C.A., as particularly applied and set forth herein.

Section 7. Assessable Area. All eligible properties within the District are to be assessed for a portion of the costs of maintaining Uinta Park Subdivision to include Twin Oaks Subdivision, public area improvements as specified herein. Said properties shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted. The total number of assessable lots to be added to the District for the first year is **55** lots bringing the total number of lots within the District for the first year to **224 lots**. The costs of maintaining the Improvements per lot for the current year shall be **\$208.09** per lot as shown in Exhibit "D" (which is hereby incorporated herein and made a part hereof).

Section 8. Payment of Assessments. The assessments for the costs of maintaining the existing and future public area improvements in Uinta Park Subdivision to include Twin Oaks Subdivision, shall be payable, as prescribed in Section 7-12-4162 through 7-12-4165, M.C.A.

Section 9. Public Hearing: Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property being added to Extended Special Improvement Maintenance District No. 4026 subject to assessment and taxation for the cost and expense of maintaining the existing and future public area improvements in Uinta Park Subdivision to include Twin Oaks Subdivision may make and file with the City Clerk until **5:00 p.m. M.D.T.**, on the expiration date of said 15-day period, May 2nd, 2008, written protest against being included in Extended Special Improvement Maintenance District No. 4026, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on Monday, May 12th, 2008, at 6:30 p.m. M.D.T., in the Council Chambers, located on the Second Floor of the Police Facility at 220 North 27th Street, in Billings, Montana.

Section 10. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of the Resolution in the Billings Times, a newspaper of general circulation in the county on April 17th and April 24th, 2008, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said Notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property that is being added to Extended Special Improvement Maintenance District No. 4026 listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this _____
_____ day of _____, 2008.

THE CITY OF BILLINGS

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

EXHIBIT "B"

**BOUNDARY DESCRIPTION
EXTENDED SPECIAL IMPROVEMENT
MAINTENANCE DISTRICT No. 4026
UINTA PARK SUBDIVISION TO INCLUDE
TWIN OAKS SUBDIVISION**

Meets and Bounds Description:

A tract of land situated in the NW1/4 of Section 22, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana; said tract being more particularly described as follows, to-wit:

Beginning at a point which is the southeast corner of Tract 1 of Certificate of Survey No. 3190, according to the official certificate on file in the Office of the Clerk and Recorder of said County, under Document No. 3287254; said point also being the NW1/16 Corner of said Section 22; thence from said Point of Beginning, along the southerly line of said Tract 1, N 89°32'51" W a distance of 1247.45 feet to intersection with the easterly right-of-way line of the Billings Bench Water Association Canal; whence said intersection point bears S 89°32'51" E a distance of 72.08 feet from the N1/16 Corner common to Sections 21 & 22; thence from said intersection point, along said easterly right-of-way line, the following courses and distances:
N 00°51'02" W a distance of 79.02 feet;
N 09°24'47" W a distance of 63.68 feet;
N 32°40'52" W a distance of 108.01 feet to a point on the westerly line of said Tract 1; said point also being the southerly corner of Lot 12, Block 1 of Golden View Subdivision; thence along said westerly line, N 00°22'04" W a distance of 431.68 feet to a point on the southerly right-of-way line of said B.B.W.A. Canal; thence along said southerly right-of-way line, the following courses and distances:
S 79°37'18" E a distance of 118.42 feet;
N 78°15'12" E a distance of 92.73 feet;
N 55°09'33" E a distance of 383.93 feet;
N 38°35'47" E a distance of 74.48 feet;
N 24°37'58" E a distance of 108.14 feet;
N 30°49'13" E a distance of 75.82 feet;
N 41°32'33" E a distance of 171.84 feet;
N 09°49'13" E a distance of 44.91 feet to a point on the southerly right-of-way line of Wicks Lane; thence along said southerly right-of-way line, S 89°33'10" E a distance of 544.45 feet to intersection with the easterly line of said Tract 1; whence said intersection point bears N 00°03'09" W a distance of 40.00 feet from the W1/16 Corner common to Sections 15 & 22; thence along said easterly line, S 00°03'09" E a distance of 1221.82 feet to the northwest corner of Lot 16, Block 1, Uinta Park Subdivision; thence S 00°09'09" E a distance of 59.58 feet the point of beginning;

Said described tract having an area of 30.683 acres.

STATE OF MONTANA
COUNTY OF YELLOWSTONE

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I HAVE CHECKED THE
RECORDS (1 PAGES) IN MY OFFICE FROM OCTOBER 1, 2007 TO JANUARY
9TH, 2008 AND THE LISTED PEOPLE ARE THE OWNERS OF RECORD FOR THE
ENCLOSED LISTED PROPERTY.

SIGNED AND SEALED THIS 11TH DAY OF JANUARY 2008.

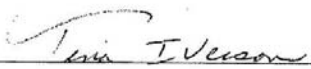
1 NAMES \$.50

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TOTAL \$2.50

TONY NAVE
CLERK & RECORDER

BY



Parcel					
Highlight on Map	GECCODE	Tax Id	Address	Property Tax Data	CAMA Data
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<u>2</u>	03103322211300000	D05291M	00120 WICKS LN W	Click Here	Click Here

[Zoom to these records](#)

STATE OF MONTANA
COUNTY OF YELLOWSTONE

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I HAVE CHECKED THE RECORDS IN MY
OFFICE FROM Oct 1, 2008 TO Feb 15, 2008
AND THE LISTED PERSONS ARE THE OWNERS OF RECORD FOR THE LISTED PROPERTY.
SIGNED AND SEALED THIS 21ST DAY OF February 2008.

171 NAMES \$ 85⁵⁰
CERT \$ 2.00
TOTAL \$ 87⁵⁰
36 PAGES

TONY NAVE

CLERK & RECORDER

BY Inis J. Renoir
DEPUTY

Parcel					
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Parcel					
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Previous 25 Records More Records Zoom to these records					

Parcel					
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Previous 25 Records More Records Zoom to these records					

Parcel					
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133	03103322226270000	A30946	01236 WATSON PEAK RD	Click Here	Click Here
134	03103322223290000	A30871	01229 CRYSTAL LAKE LN	Click Here	Click Here
135	03103322221590000	A30843	01227 MIRROR LAKE LN	Click Here	Click Here
136	03103322225350000	A30921	01227 WATSON PEAK RD	Click Here	Click Here
137	03103322225250000	A30916	01232 TWIN LAKES LN	Click Here	Click Here
138	03103322224290000	A30895	01233 TWIN LAKE LN	Click Here	Click Here
139	03103322224190000	A30890	01226 CRYSTAL LAKE LN	Click Here	Click Here
140	03103322223210000	A30867	01222 MIRROR LAKE LN	Click Here	Click Here
141	03103322226290000	A30947	01224 WATSON PEAK RD	Click Here	Click Here
142	03103322221610000	A30844	01213 MIRROR LAKE LN	Click Here	Click Here
143	03103322223270000	A30870	01217 CRYSTAL LAKE LN	Click Here	Click Here
144	03103322225270000	A30917	01220 TWIN LAKES LN	Click Here	Click Here
145	03103322225330000	A30920	01215 WATSON PEAK RD	Click Here	Click Here
146	03103322224270000	A30894	01219 TWIN LAKE LN	Click Here	Click Here
147	03103322224210000	A30891	01218 CRYSTAL LAKE LN	Click Here	Click Here
148	03103322226390000	A30952	01234 CALENDULA CIR	Click Here	Click Here
149	03103322223230000	A30868	01210 MIRROR LAKE LN	Click Here	Click Here
150	03103322226310000	A30948		Click Here	Click Here
Previous 25 Records More Records Zoom to these records					

Parcel					
Highlight on Map	GEOCODE	Tax Id	Address	Property Tax Data	GAMA Data
151	03103322221630000	A30845	01205 MIRROR LAKE LN	Click Here	Click Here
152	03103322223250000	A30869	01203 CRYSTAL LAKE LN	Click Here	Click Here
153	03103322225290000	A30918		Click Here	Click Here
154	03103322224230000	A30892		Click Here	Click Here
155	03103322225310000	A30919		Click Here	Click Here
156	03103322224250000	A30893	01209 TWIN LAKES LN	Click Here	Click Here
157	03103322226410000	A30953	01222 CALENDULA CIR	Click Here	Click Here
158	03103322227010000	A30956	00182 BUTTERFLY LAKE LN	Click Here	Click Here
159	03103322227030000	A30957	00166 BUTTERFLY LAKE LN	Click Here	Click Here
160	03103322227050000	A30958	00150 BUTTERFLY LAKE LN	Click Here	Click Here
161	03103322227070000	A30959	00134 BUTTERFLY LAKE LN	Click Here	Click Here
162	03103322227090000	A30960	00118 BUTTERFLY LAKE LN	Click Here	Click Here
163	03103322227110000	A30961	00102 BUTTERFLY LAKE LN	Click Here	Click Here
164	03103322227130000	A31239	00096 BUTTERFLY LAKE LN	Click Here	Click Here
165	03103322227150000	A31240	00084 BUTTERFLY LAKE LN	Click Here	Click Here
166	03103322227170000	A31241	00072 BUTTERFLY LAKE LN	Click Here	Click Here
167	03103322226450000	A31246		Click Here	Click Here
168	03103322227190000	A31242		Click Here	Click Here
169	03103322226460000	A30954	01190 CALENDULA CIR	Click Here	Click Here
170	03103322227210000	A31243		Click Here	Click Here
171	03103322226490000	A30955	01178 CALENDULA CIR	Click Here	Click Here
172	03103322227230000	A31244	01159 CALENDULA CIR	Click Here	Click Here

Previous 25 Records

[Zoom to these records](#)

EXHIBIT "D"

ESTIMATE OF PROBABLE COST PARK MAINTENANCE DISTRICT NO. 4026 Uinta Park Subdivision to include Twin Oaks Subdivision PARK MAINTENANCE DISTRICT

1. The costs to create the maintenance district are estimated to be \$500.00.
2. The City Parks and Recreation Department estimates the maintenance of the improvements for the first year at \$10,945.00.

The first year's assessment is estimated as follows:

CITY OF BILLINGS - EXPANDED PARK MAINTENANCE DISTRICT NO. 4026 ESTIMATE OF ANNUAL MAINTENANCE COSTS				
Expanded PMD Description: Uinta Park and Twin Oaks Subdivisions				
PMD Number: 4026				
Date: 2/7/2008				
BA SUB	SUB ELE	OBJ	ACCOUNT DESCRIPTION	ESTIMATED MAINTENANCE COSTS
	34	10	Operations and Supplies	
			Electricity	\$ 180.00
		20	City Water	\$ 3,500.00
		50	Ground Maintenance	\$ 950.00
	39	65	Other Service/Finance Charges	\$ 715.00
		90	Parks Charge for Services	\$ 4,400.00
	54	10	Special Assessments	\$ 1,200.00
			Total Operations and Supplies, Etc.	\$ 10,945.00
			Expanded PMD 4026 Creation Cost	\$ 500.00
			Total Twin Oaks Subdivision Park O & M Annual Cost Estimate	\$ 11,445.00
			Equal Assessment Per Lot	\$ 208.09

3/24/2008

Exhibit D Mtce Costs

EXH "D"

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U

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008**

TITLE: Preliminary Subsequent Minor Plat of Amended Lot 4, Block 1, Shiloh Crossing Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On March 3, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 4, Block 1, Shiloh Crossing Subdivision, which contains five lots on approximately 12.44 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent. The subject property is currently under construction and was recently rezoned Controlled Industrial (CI).

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on April 18, 2008. State and City subdivision regulations also 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. Within the 35 day review period, the City Council is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plat

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

RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of Amended Lot 4, Block 1, Shiloh Crossing Subdivision and adopt the Findings of Fact as presented in the staff report.

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

ATTACHMENTS

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

INTRODUCTION

On March 3, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 4, Block 1, Shiloh Crossing Subdivision, which contains five lots on approximately 12.44 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent. The subject property is currently under construction and was recently rezoned CI.

PROCEDURAL HISTORY

- On January 31, 2008, a pre-application meeting was conducted regarding the proposed 5-lot subsequent minor subdivision.
- On March 3, 2008, an application for a preliminary subsequent minor subdivision was submitted to the Planning Division.
- On April 14, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed subsequent minor subdivision.

BACKGROUND

General location:	Southeast corner of the intersection of Shiloh Road and King Avenue West
Legal Description:	Lot 4, Block 1, Shiloh Crossing Subdivision
Subdivider/Owner:	Shiloh Crossing, LLC
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	CI
Existing land use:	Vacant
Proposed land use:	Commercial Shopping Center
Gross area:	12.44 acres
Net area:	12.44 acres
Proposed number of lots:	5
Lot size:	Max: 6.04 acres Min.: 1.03 acres
Parkland requirements:	A parkland dedication is not required, as this is a commercial minor subdivision.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, Section VI.B of the SIA shall be amended to state that the lift station is on lot 5E, instead of Lot 5B. *(Recommended by City-County Planning)*
3. 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.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

There are no variances requested, however, a variance to permit a multi-use trail in lieu of sidewalks, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets was approved by the Council with Shiloh Crossing Subdivision on September 10, 2007.

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. The Planning Division has received no public comments or questions regarding the proposed subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of Amended Lot 4, Block 1, Shiloh Crossing Subdivision and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

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

ATTACHMENT B

Findings of Fact

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 4, Block 1, Shiloh Crossing Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property. The BBWA canal is located along the southern boundary of the subdivision and is located within its own deeded parcel.

2. Effect on local services

- a. **Utilities** –Water to the subject property will be extended from the 12-inch main line in Shiloh Road and the 16-inch main line in King Avenue West. The SIA does specify that the 12-inch main will be extended along Shiloh Road to the south property line of Shiloh Crossing at the time of the Shiloh Road reconstruction. An internal water main will be installed during Phase I of construction through a private contract, as specified within the SIA.

A 27-inch sanitary sewer main exists in King Avenue at the northwest corner of the subdivision. The SIA specifies that the subdivision will be served by the 2008 extension of the 27-inch main east along King Avenue to a lift station located on Lot 5B. The lift station is actually located on Lot 5E of Shiloh Crossing, Amended. Condition #2 requires this location be amended within the SIA.

- b. **Stormwater** – There is no storm drain system available to this area at this time, therefore, stormwater will be handled through a combination of onsite surface flow on streets and parking lots with collection through a network of basins, inlets, and piping. Discharge of the stormwater will be in the existing gravel pit pond on the site. Storm drainage for King Avenue West adjacent to the proposed subdivision will be accomplished in the future once the drain is extended from 31st Street West as part of a 2008 reconstruction process. Storm drainage for Shiloh Road adjacent to the proposed subdivision is currently handled by borrow ditches to Hogan's Slough and the Shiloh Drain. An upgrade of this drainage system will occur in 2009, as part of a Montana Department of Transportation reconstruction. As specified in the submitted SIA, onsite storm drainage shall comply with 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 will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the proposed lots will be via internal private subdivision streets from King Avenue West and Shiloh Road. As specified in the SIA, the subdivider is proposing a 65-foot wide shared access on King Avenue West. There are two additional 40-foot wide right-in/right-out approaches along King Avenue West and two accesses from Shiloh Road.

There are two main accesses proposed on Shiloh Road, as specified within the SIA. The Shiloh Road accesses have been included in the Shiloh Road reconstruction project. Shiloh Crossing Boulevard is the major internal street and will be constructed to city standards. A reciprocal access easement document was submitted for the shared driveways and parking lots for the commercial development.

A variance to permit a multi-use trail in lieu of sidewalks, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets was approved with the Shiloh Crossing Subdivision by the City Council on September 10, 2007. The subdivider is proposing to provide a multi-use trail within the subdivision instead of standard sidewalks. This will provide for easy access through the site, as it will be constructed to interconnect all commercial buildings and parking lots on the site

A Traffic Accessibility Study was submitted with Shiloh Crossing Subdivision and all necessary traffic control devices will be as outlined within the study and approved by the City of Billings during construction. All improvements have been specified within the SIA.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5).
- f. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The location of this mail box is proposed to be located on Lot 4C, as specified within the SIA.

3. Effect on the natural environment

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official. Once the building locations and sizes are finalized, further geotechnical studies will be required to determine specific design level geotechnical recommendations.

4. Effect on wildlife and wildlife habitat

The proposed subdivision should not affect wildlife or habitat. There are no known endangered or threatened species on the property. However, a statement has been added to the SIA, that lot owners should be aware that interactions with wildlife could occur and that any damage to property is the lot owner's responsibility.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

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

An Environmental Assessment is not required, as this is a commercial minor plat.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)

The proposed subdivision is consistent with the surrounding commercial and multi-family uses.

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

The subject property is compatible with the commercial development within Montana Sapphire Subdivision to the west and the proposed commercial development to the northwest.

The subdivision is inconsistent with the following goal of the 2003 Growth Policy:

- Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)

While the subject property is surrounded by annexed portions of the City and developing parcels, the property is not located within an area surrounded by an existing population center and could be considered sprawl.

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

A Heritage Trail corridor is identified on the west side of Shiloh Road, Hogan's Slough, and along the BBWA canal. An easement for a segment of trail has been depicted on the north side of the BBWA canal. No improvements are proposed at this time. The subdivider is proposing an internal multi-purpose trail within the entire Shiloh Crossing Subdivision for connectivity to the proposed parking lots and commercial buildings.

4. West Billings Plan

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

- 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.
- The West Billings Plan identifies the intersection of King Avenue West and Shiloh Road as a community commercial center.

The proposed subdivision is in conflict with the following goals of the West Billings Plan:

- Medium and high-density residential development should be located nearby and within walking distance to commercial centers, medical facilities, and parks. This subdivision will be close to these amenities once Shiloh further develops.

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 proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

The property will be served by public water and sewer services from King Avenue West and Shiloh Road.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the CI zoning district. The subject property will also be required to comply with the South Shiloh Road Overlay District.

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

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

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

Access to the lots will be via private internal streets from King Avenue West and Shiloh Road.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lot 4, Block 1, Shiloh Crossing Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision 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, April 14, 2008

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

April 14, 2008

Shiloh Crossing, LLC
Attn: Steve Corning, Managing Member
Corning Companies
2280 Grant Road
Billings, MT 59102

Dear Mr. Corning:

On April 14, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 4, Block 1, Shiloh Crossing Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, Section VI.B of the SIA shall be amended to state that the lift station is on lot 5E, instead of Lot 5B. *(Recommended by City-County Planning)*
3. 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.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Aura Lindstrand with the Planning Division at 247-8663 or by email at lindstranda@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

pc: Robert Sanderson, Engineering, Inc.

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V

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Preliminary Major Plat of Miller Crossing Subdivision, 2nd Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On February 1, 2008, Engineering Incorporated representing South Billings Center LLC, applied for preliminary major plat approval for Miller Crossing Subdivision, 2nd Filing, which contains 10 lots on approximately 18.15 acres of land. The subject property is located on the south side of King Avenue East between Newman Lane and just east of Calhoun Lane. The property is zoned Entryway General Commercial (EGC) and is currently the site of a proposed new commercial development.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 60 working days to act upon this preliminary major plat. The 60-working day review period for this subdivision will end on April 25, 2008. State and City subdivision regulations also 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. Within the 60 day review period, the City Council is required to:

4. Approve;
5. Conditionally Approve; or
6. Deny the Preliminary Plat

FINANCIAL IMPACT: Upon development of the property, additional tax revenue for the City may be provided.

RECOMMENDATION

The Planning Board recommends that the City Council grant conditional approval of the preliminary plat of Miller Crossing Subdivision, 2nd 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. Findings of Fact
- C. Mayor's Approval Letter

INTRODUCTION

On February 1, 2008, Engineering Incorporated representing South Billings Center LLC, applied for preliminary major plat approval for Miller Crossing Subdivision, 2nd Filing, which contains 10 lots on approximately 18.1582 acres of land. The subject property is located on the south side of King Avenue East between Newman Lane and Orchard Lane. The property is zoned Entryway General Commercial (EGC) and is currently the site of a proposed new commercial development. The subject property is east of the South Billings Boulevard freeway interchange and also part of the commercial development where the proposed Cabela's store will be located. The subject property is also part of the newly created South Billings Boulevard Tax Increment Finance District (TIFD).

PROCEDURAL HISTORY

- On December 13, 2007, a pre-application meeting was conducted for a proposed major plat.
- On February 1, 2008, the preliminary major plat application was submitted to the planning department.
- On February 14, 2008, the departmental review meeting for the preliminary plat was conducted.
- On March 11, 2008, the Planning Board conducted a plat review on the proposed major subdivision.
- On March 25, 2008, the Planning Board conducted a public hearing on the proposed major subdivision.
- On April 14, 2008, the preliminary plat will be approved, conditionally approved, or denied by the City Council.

BACKGROUND

General location:	South side of King Avenue East from Newman Lane to just east of Calhoun Lane
Legal Description:	Lot 2A-2A, Block 1, of Amended Plat of 2A-2 and 2A-3, Block 1, of Amended Plat of 2A, of Amended Lots 2-5, Block 1, of Miller Crossing Subdivision
Subdivider/ Owner:	South Billings Center, LLC
Engineer and Surveyor:	Engineering Inc.
Existing Zoning:	EGC
Existing land use:	Vacant Agricultural Land
Proposed land use:	Commercial
Gross area:	18.1582 acres

Net area:	18.1582 acres
Proposed number of lots:	10
Lot size:	Max: 6.37 acres Min.: .97 acres
Parkland requirements:	There is no parkland dedication required for commercial subdivisions

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

5. 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 depicted on the final plat. *(Recommended by the Engineering Division)*
6. To ensure the continuity of site development along the City/County Drain, (north portion of site) the following language shall be added to the Subdivision Improvement Agreement (SIA) under Conditions That Run with the Land:

The developer shall provide landscaping on the north side of the property along King Avenue East and the proposed Heritage Trail. The Planning Division is permitting the developer to provide landscaping, as defined in Section 27-1006(B)(1), BMCC, with the exception of berming the bufferyard to allow access by the city to maintain the City/County Drain. The majority of the trees and shrubs shall be planted on the south side of the trail to minimize the number of trees planted north of the trail allowing access to the drain by City Engineering to maintain the City/County Drain. (Recommended by the City-County Planning Department)

7. To minimize effects on local services, the SIA shall be revised to be consistent with the Development Agreement adopted September 10, 2007, and any revisions to this Development Agreement adopted prior to the filing of the final plat.
(Recommended by City Engineering and the City-County Planning Department)
8. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
9. To minimize the effects of public health and safety, the subdivider will provide a 10 foot easement along the northern boundary of this subdivision for the installation of the Heritage Trail. The easement shall be created either by showing it on the final plat or with easement documents filed with the final plat. *(Recommended by City Engineering and the City-County Planning Department)*
10. 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.
11. 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

On March 25, 2008, the Planning Board conducted a public hearing regarding this subdivision. Staff gave a presentation about the subdivision to the Planning Board and then answered a question about traffic circulation out of the existing Burger King.

Tim Pirtz from Engineering Inc. representing the applicant stated that this development will be good for the neighborhood since the creation of the TIFD is expected to make money available for improvements in the area.

Warren Gramley stood and spoke in opposition. His father-in-law lives across from this development on King Avenue East and he said there have been people on his property surveying to widen the road. He wanted to know why they are not covering up the ditch and having the entire road move to the south with the ditch under the road.

Michelle Johnson stood and spoke in opposition to the development. She stated that developers and the city have no respect or concern for property owners and take property from them for roads. She also did not feel that the trail easement of 10 feet was fair because everywhere else trail easements are 20 feet wide.

Rick Leuthold from Engineering Incorporated stood to answer questions and concerns raised by the public. In response to the surveying on the north side of King Avenue East he stated that the City Engineering Division is having the surveying done to widen the road and that he believed there needed to be an additional 19 feet for the right-of-way to achieve the needed lanes and then curb, gutter and sidewalk on the north side of King Avenue East. Mr. Leuthold stated that City Engineering should have contacted them about the surveying and will be in direct contact with the property owners concerning the additional right-of-way.

Mr. Leuthold next addressed the comment about putting the City/County drain in a culvert and covering it with the road. When a ditch is put into a pipe the water flow increases in speed, the amount of water increases and there is no percolation into the ground. This results in the need for bigger pipes. With the increased speed and lack of vegetation interface, the impurities in the water are not removed but move along with the water in the pipe. This creates the need to send the water through a purification system before returning it to the natural water system. Leaving the drain open slows the water down and allows the water to interface with plant material that take out impurities and clean the water as it moves. Also some water percolates into the ground as it moves through the open drain limiting the amount that actually goes back into the natural water ways.

Mr. Leuthold also explained that the reason for the 10 foot trail easement for the trail is that is all that will be needed for the actual width of the trail. There is a very wide right-of-way north of the trail easement that is being requested that runs along the south side of King Avenue East that takes in the City/County Drain. With the additional 10 foot trail easement the trail will be able to meander on public land and on the 10 foot easement from the development.

There was a question from a Board Member asking Candi Beaudry to clarify required notification of property owners. Ms. Beaudry stated that with major subdivisions property owners directly adjacent to the proposed subdivision are notified about the application and public hearing with the Planning Board.

Planning Board Member Doug Clark asked that a few house keeping corrections be made in the Findings of Fact being forwarded to the City Council.

It was stated by Planning Board members that the road widening was not part of this subdivision review. Candi Beaudry clarified that the City of Billings had a development agreement with the developer to build the needed road improvement. Costs of the improvements would be covered by TIFD money or with the creation of a Special Improvement District (SID). She also stated that the city was currently talking with the developer to have a guarantee that the commercial development will take place.

There was no further discussion from the Planning Board members. A motion was made and seconded to forward a recommendation of conditional approval to the City Council. The motion was passed unanimously by the Planning Board.

This preliminary plat is scheduled to go before the City Council at its' meeting held on April 14, 2008.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

RECOMMENDATION

The Planning Board recommends that the City Council grant conditional approval of the preliminary plat of Miller Crossing Subdivision, 2nd Filing, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

MILLER CROSSING SUBDIVISION, SECOND FILING

PRELIMINARY PLAT OF
BEING LOT 2A-2A OF AMENDED PLAT OF LOTS 2A-2 & 2A-3, BLOCK 1 OF AMENDED
PLAT OF LOT 2A OF
AMENDED PLAT OF LOTS 2-3, BLOCK 1, MILLER CROSSING SUBDIVISION
SITUATED IN THE NW 1/4 OF SECTION 16, T. 1 S., R. 26 E., P.M.M.,
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: SOUTH BILLINGS CENTER, LLC
PREPARED BY: BOKNER & ASSOCIATES, INC.

JANUARY, 2008
BILLINGS, MONTANA

PLAT DATA

SECTION	AREA	ACRES
16-26-2	1.0000	1.0000
16-26-3	1.0000	1.0000
16-26-4	1.0000	1.0000
16-26-5	1.0000	1.0000
16-26-6	1.0000	1.0000
16-26-7	1.0000	1.0000
16-26-8	1.0000	1.0000
16-26-9	1.0000	1.0000
16-26-10	1.0000	1.0000
16-26-11	1.0000	1.0000
16-26-12	1.0000	1.0000
16-26-13	1.0000	1.0000
16-26-14	1.0000	1.0000
16-26-15	1.0000	1.0000
16-26-16	1.0000	1.0000
16-26-17	1.0000	1.0000
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16-26-22	1.0000	1.0000
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16-26-64	1.0000	1.0000
16-26-65	1.0000	1.0000
16-26-66	1.0000	1.0000
16-26-67	1.0000	1.0000
16-26-68	1.0000	1.0000
16-26-69	1.0000	1.0000
16-26-70	1.0000	1.0000
16-26-71	1.0000	1.0000
16-26-72	1.0000	1.0000
16-26-73	1.0000	1.0000
16-26-74	1.0000	1.0000
16-26-75	1.0000	1.0000
16-26-76	1.0000	1.0000
16-26-77	1.0000	1.0000
16-26-78	1.0000	1.0000
16-26-79	1.0000	1.0000
16-26-80	1.0000	1.0000
16-26-81	1.0000	1.0000
16-26-82	1.0000	1.0000
16-26-83	1.0000	1.0000
16-26-84	1.0000	1.0000
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16-26-86	1.0000	1.0000
16-26-87	1.0000	1.0000
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16-26-90	1.0000	1.0000
16-26-91	1.0000	1.0000
16-26-92	1.0000	1.0000
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16-26-94	1.0000	1.0000
16-26-95	1.0000	1.0000
16-26-96	1.0000	1.0000
16-26-97	1.0000	1.0000
16-26-98	1.0000	1.0000
16-26-99	1.0000	1.0000
16-26-100	1.00	

ATTACHMENT B

Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for Miller Crossing Subdivision, 2nd Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Article 23-100, BMCC).

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 has historically been utilized for crop production. The proposed subdivision will take approximately 18 acres out of agricultural production, which could have a cumulative effect as more subdivisions and development of land occurs.

The City/County drain is located along the northern border of the site and provides drainage for properties in the area. The subdivider is not proposing any alterations to the drain with the exception of trail construction and landscaping along the southern border of the drain. Because of the need to maintain the drain, the Planning Division has determined it would be best to have the landscape requirements of Section 27-1006(b)(1) followed. This allows 5 trees and 10 shrubs every 100 lineal feet of frontage. Entryway General Commercial zoning also requires contouring of the bufferyard by using berms. The City Engineering Division has stated they do not want the berming along the edge of the City/County drain because it would increase the difficulty of maintenance of the drain. To address this maintenance concern the Planning Division will not require the contouring of the bufferyard by using berms along the King Avenue East frontage. (See Condition #2)

2. Effect on local services

- a. **Utilities** – Water to the subject property will be from a 12-inch public water main constructed by the subdivider under private contract within an existing public utility easement that runs through the site under the main access drive in the parking lot. Service will be stubbed to each lot from the water main that is in the public easement. The owner of each lot is responsible for extension of water service within the lot from the easement boundary to the building.

Sanitary sewer to each of the subdivision lots will be through an 8-inch public sewer main constructed by the subdivider under private contract within an existing public utility easement that runs through the site under the main access drive in the parking lot. Service will be stubbed to each lot from the water main that is in the public easement. The owner of each lot is responsible for extension of sewer service within the lot from the easement boundary to the building.

- b. **Stormwater** – As specified in the SIA, the subdivision shall have a combination of surface and subsurface detention sized in accordance with the City of Billings Storm Water Management Manual. Discharges shall be permitted to the City/County drain which lies along the north property line of the subdivision.
- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

Streets - Access to the proposed subdivision shall be from King Avenue East via crossing of the City/County Drain at Newman Lane, Calhoun Lane, and a proposed new crossing located midway between Calhoun Lane and Orchard Lane. The internal streets shall be through private easements maintained through a reciprocal access easement document submitted for the shared driveways and parking lots for the commercial development. Internal circulation, access widths and construction details shall be in accordance with City of Billings site development ordinances. There is one proposed access point that connects from the internal circulation street to Orchard Lane across from Brockton Avenue.

Street improvements on King Avenue East are currently being designed to address the increase in traffic that is anticipated with the commercial development on this land. The City of Billings will be constructing these improvements.

A Traffic Accessibility Study (TAS) was submitted to the Engineering Division for review and approval. The TAS determined the traffic generation for Miller Crossing Subdivision 2nd Filing will be approximately 15,485 trips per day. Recommended street improvements from the TAS are:

- South Billings Boulevard and King Avenue East will require improvements to geometry, signal phasing, and signal actuation.
- King Avenue East and Calhoun Lane will require a traffic signal.
- The northbound approach of King Avenue East and Newman Lane intersection should be retrofitted to allow right-in/right-out movements only.
- The access point between Calhoun Lane and Orchard Lane would likely need to be restricted to right-in/right-out only.
- All other intersections with King Avenue East and the Miller Crossing Subdivision will be two way stop signs.

In December of 2007, a TIFD was created for this area of South Billings. It is anticipated that money from this TIFD will be available to help finance the public improvements along King Avenue East. Pursuant to the Development Agreement adopted on September 10, 2007, the City and subdivider agreed that the TIFD funds would be used to offset all eligible offsite improvements. If funding from the TIFD is not available the City and subdivider agreed that an SID would be created to fund the cost of offsite improvements. Condition #3 requires the SIA to be modified to reflect the language in the Development Agreement adopted September 10, 2007.

- d. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 501 South 28th Street (Station #2). The fire department finds the proposed accesses adequate for emergency vehicles. The subdivision is located within the ambulance service area of American Medical Response (AMR); no comments were received.
- e. **Schools** – The subdivision is located within School District #2. Because it is a commercial subdivision there will be no impact on school populations.
- f. **Parks and Recreation** – Because this is a commercial development, the subdivider is not required to provide parkland dedication.
- g. **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, as required by Condition #4. The location of the mail boxes shall be reviewed and approved by the post office.

3. Effect on the natural environment

A geotechnical report was submitted with this application and indicates that there are variable soil conditions throughout the subdivision. Due to the low bearing strength of compressible clay soils the buildings should be designed with spread footings. The Building Official will require verification from a qualified engineer regarding structural designs and preparation prior to installing footings. These requirements will be satisfied with the submission of building permits on the property.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. 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

There are two conditions that exist on the subject property that may potentially create problems for future landowners: low compression soils and an oil pipeline that exists within a 15-foot-wide oil pipeline easement along the north boundary of Lots 1 through 6. These issues have been addressed within the Conditions that Run with the Land portion of the SIA to warn future lot owners.

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 2003 Growth Policy, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- a. **Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).**

The proposed subdivision would provide for more business choices within this portion of the City.

- b. **Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6).**

The subject property is surrounded by a mix of residential and commercial developments and is considered infill.

- c. **Goal: New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)**

The new development is in an area of Billings that is well suited to commercial development. It is located adjacent to I-90 and King Avenue East, as well as a freeway interchange.

The subdivision is inconsistent with the following goal of the Growth Policy:

- a. **Goal: Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land (Natural Resources Goal, Page 8).**

The subject property has historically been utilized for crop production. The proposed subdivision will take approximately 18 acres out of agricultural production, which could have a cumulative effect as more subdivisions occur.

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan. This portion of King Avenue is classified as a Minor Arterial street and is currently a two lane road without curb gutter or sidewalk. The City of Billings is currently in the process of having design

work done for road improvements to meet the additional demand that will be placed on King Avenue East with a major commercial development on this site.

3. Heritage Trail Plan

The City/County Drain located along the northern boundary of the property, is depicted as a trail corridor within the Heritage Trail Plan. As such, the subdivider is proposing a 10-foot wide trail along the southern boundary of the drain that will be built by the city but landscaped and maintained by the property owners. (A 10-foot wide pedestrian trail will be constructed to City Trails and Bikeways within an easement Design Standards, as specified within the SIA. At various times during the year City Engineering crews need to be able to access the drain for maintenance purposes. The trail will be built partially on public right-of-way and in an easement on the northern property lines along King Avenue East.

Because of the need to maintain the drain, the Planning Division has determined it would be best to have the landscape requirements of Section 27-1006(b)(1) followed. This allows 5 trees and 10 shrubs every 100 lineal feet of frontage. Entryway General Commercial zoning also requires contouring of the bufferyard by using berms. The City Engineering Division has stated they do not want the berming along the edge of the City/County drain because it would increase the difficulty of maintenance of the drain. To address this maintenance concern the Planning Division will not require the contouring of the bufferyard by using berms along the King Avenue East frontage. (See Condition #2)

The subdivider will provide a 10 foot wide easement along the northern boundary of the subdivision for the installation of the Heritage Trail. This easement will provide a trail corridor that is as far from the edge of the City/County drain as possible. By keeping the trail farther away from the drain it will make it a safer trail to be on. Condition #5 requires the easement along the northern boundary of the subdivision.

4. South Billings Boulevard Master Plan

The South Billings Boulevard Master Plan, adopted in 1990 and revised on September 27, 2002, defines one objective of this area as a place “To encourage the development of large, well planned projects designed to serve the area over a long period of time, as opposed to small, hastily conceived projects that do little to add to the overall appearance or economic vitality of the area”. Another objective is “To present a favorable and attractive image for Billings from Interstate 90, King Avenue and South Billings Boulevard”.

The proposed development is for commercial uses with shopping opportunities for travelers as well as the local population. The EGC zoning on this parcel of land requires aesthetically pleasing buildings and also requires more landscaping than what is required in other commercial zonings in Billings. The entire site is master planned so the circulation, parking and buildings are laid out to work together to provide good circulation through the site and for an aesthetically pleasing shopping center. It will be an attractive addition to the area for Billings and travelers along the freeway, and not an industrial use area similar to others along the I-90 corridor through Billings.

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 proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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 shall conform to the requirements set forth by Article 27-1000 of the Unified Zoning Regulations for the EGC zoning districts.

Because of the need to maintain the drain, the Planning Division has determined it would be best to have the landscape requirements of Section 27-1006(b)(1) followed. This allows 5 trees and 10 shrubs every 100 lineal feet of frontage. Entryway General Commercial zoning also requires contouring of the bufferyard by using berms. The City Engineering Division has stated they do not want the berming along the edge of the City/County drain because it would increase the difficulty of maintenance of the drain. To address this maintenance concern the Planning Division will not require the contouring of the bufferyard by using berms along the King Avenue East frontage. (See Condition #2)

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

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

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

Legal and physical access to the proposed subdivision will be via King Avenue East. Each lot will have access from internal private subdivision streets.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Miller Crossing Subdivision, 2nd Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision 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, April 14, 2008.

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

April 14, 2008

South Billings Center, LLC
Attn: Jeffrey M. Vitek
5850 Avenidas Encinas, Suite A
Carlsbad, CA 92008

Dear Mr. Vitek:

On April 14, 2008, the Billings City Council conditionally approved the preliminary plat of Miller Crossing Subdivision, 2nd Filing subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. *(Recommended by the Engineering Division)*
2. To ensure the continuity of site development along the City/County Drain, (north portion of site) the following language shall be added to the Subdivision Improvement Agreement (SIA) under Conditions That Run with the Land:

The developer shall provide landscaping on the north side of the property along King Avenue East and the proposed Heritage Trail. The Planning Division is permitting the developer to provide landscaping, as defined in Section 27-1006(B)(1), BMCC, with the exception of berming the bufferyard to allow access by the city to maintain the City/County Drain. The majority of the trees and shrubs shall be planted on the south side of the trail to minimize the number of trees planted north of the trail allowing access to the drain by City Engineering to maintain the City/County Drain. (Recommended by the City-County Planning Department)

3. To minimize effects on local services, the SIA shall be revised to be consistent with the Development Agreement adopted September 10, 2007, and any revisions to this Development Agreement adopted prior to the filing of the final plat.
(Recommended by City Engineering and the City-County Planning Department)
4. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
5. To minimize the effects of public health and safety, the subdivider will provide a 10 foot easement along the northern boundary of this subdivision for the installation of the Heritage Trail. The easement shall be created either by showing it on the final plat or with

easement documents filed with the final plat. (*Recommended by City Engineering and the City-County Planning Department*)

6. 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.
7. 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 David Green with the Planning Division at 247-8654 or by email at greend@ci.billings.mt.us

Sincerely,

Ron Tussing, Mayor

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

W

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Final Plat of Eagle View Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The final plat of Eagle View Subdivision is being presented to the City Council for approval. The subject property is zoned Residential-7000 (R-70) and is located in the Billings Heights on the north side of Saturn Drive. On January 28, 2008, the City Council conditionally approved the 5-lot preliminary minor plat on 44,666 square feet of land for residential development. Dorn Property, LLC, owner, and the representing agent is Engineering Incorporated.

The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Eagle View Subdivision.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

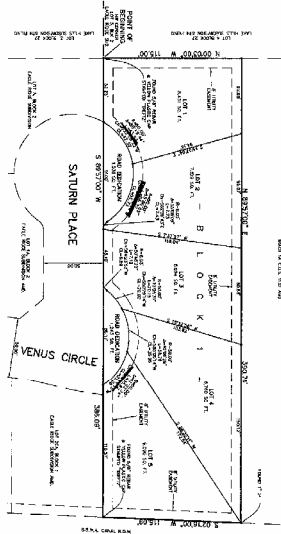
A: Final Plat

ATTACHMENT A

PREPARED FOR CORN PROPERTY, LLC
 PREPARED BY: ENGINEERING, INC.
 SCALE: 1" = 30'

PLAT OF
EAGLE VIEW SUBDIVISION
 BEING TRACT 1-B-1 of AMENDED TRACT 1 C.O.S. 1132 AMENDED
 SITUATED IN THE SW 1/4 OF SECTION 15, T. 1 N., R. 26 E., P.M.M.
 CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

FEBRUARY, 2008
 BILLINGS, MONTANA
 ENGINEERING, INC.



CERTIFICATE OF SURVEY
 I, the undersigned, being a duly qualified and licensed Professional Engineer, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to me by the owner or his authorized agent, and that the same has been compared with the original survey and found to be correct.

By _____
 State of Montana

CERTIFICATE OF CITY ATTORNEY
 This is to certify that the foregoing is a true and correct copy of the original survey as shown to me by the owner or his authorized agent, and that the same has been compared with the original survey and found to be correct.

By _____
 State of Montana

CERTIFICATE OF CITY ATTORNEY
 I, the undersigned, being a duly qualified and licensed Professional Engineer, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to me by the owner or his authorized agent, and that the same has been compared with the original survey and found to be correct.

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By _____
 State of Montana

CERTIFICATE OF CITY ATTORNEY
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By _____
 State of Montana

CERTIFICATE OF CITY ATTORNEY
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By _____
 State of Montana

CERTIFICATE OF CITY ATTORNEY
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By _____
 State of Montana

CERTIFICATE OF CITY ATTORNEY
 This is to certify that the foregoing is a true and correct copy of the original survey as shown to me by the owner or his authorized agent, and that the same has been compared with the original survey and found to be correct.

By _____
 State of Montana

Final Plat

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

X

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Final Plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Amended Lot 5, Block 1, Shiloh Crossing Subdivision is being presented to Council for approval. On February 11, 2008, the City Council conditionally approved five lots on approximately 12.48 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent. The subject property is vacant and is zoned Controlled Industrial. 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

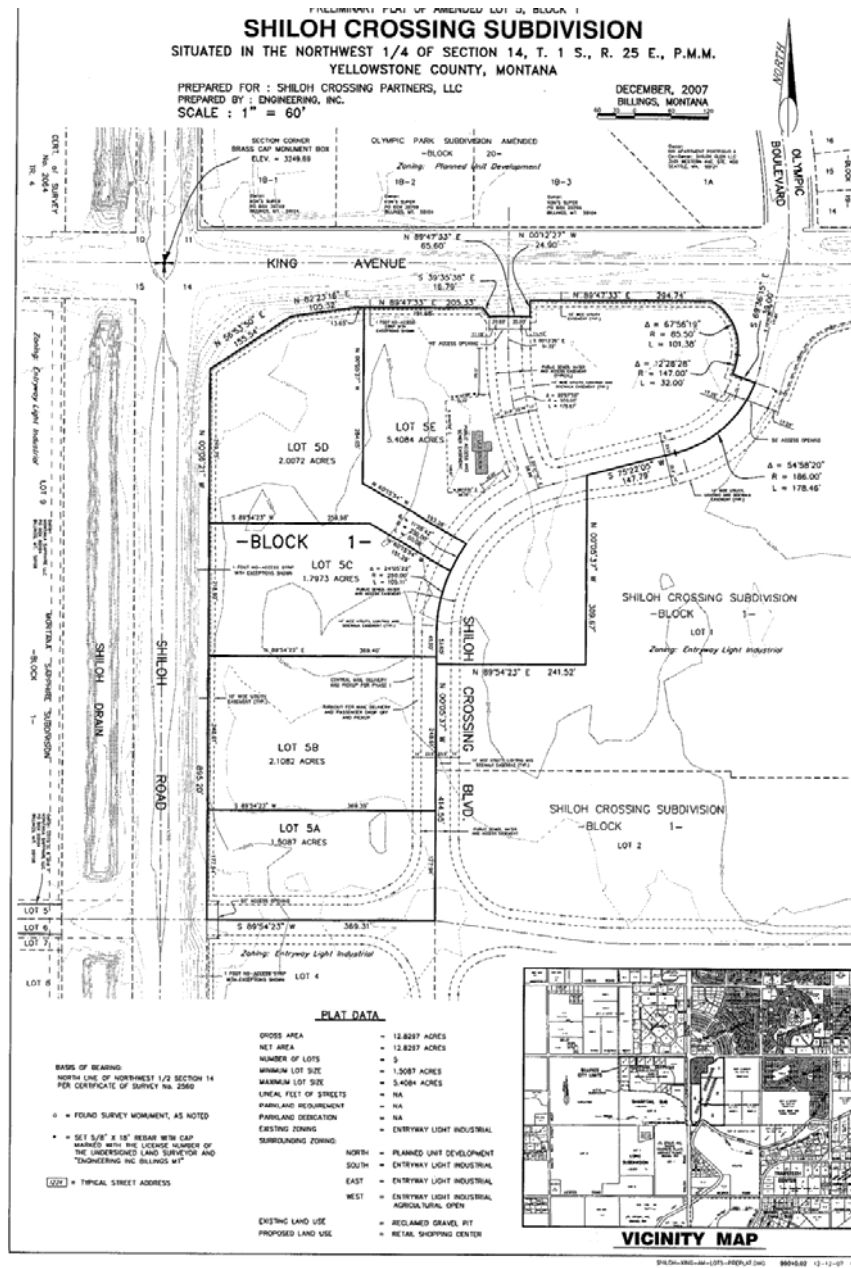
Staff recommends that the City Council approve the final plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Plat

ATTACHMENT A



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

Y1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,479,140.80 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 7, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

Y2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,349,192.60 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 14, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

Y3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,073,349.42 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 21, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Zone Change #826, Public Hearing and continued 1st Reading of Ordinance – Neighborhood Convenience Stores Amending Section 27-201, 27-305 and 27-612

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: Section 27-305 of the Unified Zoning Regulations defines and regulates the types of uses allowed within residential zoning districts in the City of Billings and the jurisdictional zoning area in Yellowstone County. The 2003 Growth Policy recommended several goals to direct changes to city land use regulations including more business choices within each neighborhood, contiguous development focused in and around existing neighborhoods, reducing traffic congestion and adaptive reuse of vacant property. The proposed amendment would allow small retail services to be developed by special review approval within existing residential zoning districts. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on November 6, 2007, and voted 4-0 to recommend approval to the City Council. The City Council held a public hearing and 1st reading of the ordinance on November 26, 2007, and requested the Planning Staff make several changes to the ordinance. The City Council voted on March 10, 2008, to continue the 1st reading public hearing on April 14, 2008.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on November 6, 2007. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

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

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #826.

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

ATTACHMENTS:

A: Ordinance

INTRODUCTION

On November 20, 2006, the City Council reviewed the proposed text amendment to Sections 27-201, 27-305 and 27-612, and agreed to initiate this zone change. On January 17, 2007, the Board of County Commissioners also agreed to initiate this zone change. The Planning Division developed the proposed amendment based on similar provisions in other cities in Montana and local preferences for retail services in neighborhoods. The draft amendments were reviewed with the Board of County Commissioners in August, 2007 and with the City Council at a work session on September 17, 2007. In addition, the City and County Attorneys have reviewed the draft amendment.

PROCEDURAL HISTORY

- On November 20, 2006, the City Council initiated the process to amend the zoning regulations to allow neighborhood convenience stores by special review approval in residential zones.
- On January 17, 2007, the Board of County Commissioners also initiated the process to amend the zoning regulations to allow neighborhood convenience stores by special review approval in residential zones.
- On August 13, 2007, the Board of County Commissioners reviewed the draft changes to Sections 27-201, 27-305, and 27-612.
- On September 17, 2007, the City Council met in a Work Session and reviewed the draft changes to Sections 27-201, 27-305, and 27-612.
- On November 6, 2007, the City Zoning Commission and County Zoning Commission conducted a special joint public hearing.
- The City Council held a public hearing and 1st reading of the ordinance on November 26, 2007, and recommended the Planning Staff make several changes to the proposed ordinance.
- On November 27, 2007, the Board of County Commissioners approved adoption of the proposed amendment.
- On March 10, 2008, the City Council voted to continue the 1st reading on the ordinance on April 14, 2008.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on April 28, 2008.

BACKGROUND

The 2003 Growth Policy goals indicate the need for more services in existing neighborhoods. Standard re-zoning to allow commercial uses in existing neighborhoods would allow these types of uses but also allow uses that may be detrimental to the residential character of the area. The city could allow these types of retail developments on a small scale in residential zoning districts through the special review process. The amendments may also benefit existing “corner stores” within established neighborhoods that have been abandoned or not maintained because the underlying zoning is designated for residential use. Past efforts to re-zone or create special zoning districts for these properties have been unsuccessful, leading to further disinvestment at these locations. Instead of a benefit to the neighborhood, the property becomes a burden. These abandoned corner stores tend to attract transients, graffiti and criminal activity.

The proposed regulation excludes uses such as gasoline or fueling stations but would include small bakeries, restaurants, coffee shops and laundromats. The revised ordinance prohibits such uses as second hand stores, tattoo or body art parlors as well as service of alcohol for on-premise consumption. Off-premise alcohol sales are limited to a total of 100 square feet and tobacco sales to 25 square feet. The maximum proposed size of these convenience stores will be 3,000 square feet. There are other standards including limitations on deliveries, signage and site lighting. Off-street parking is also addressed in the proposed standards. The amendment would allow neighborhood convenience services only by special review approval in all residential zoning districts. The proposed standards would apply to all new locations as well as existing locations. Existing locations could remain as developed until a remodeling or expansion project changed the existing conditions of the property. At the time of expansion, the new code would apply.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of the changes to allow neighborhood convenience stores by special review approval in residential zoning districts.

STAKEHOLDERS

The Zoning Commission held a public hearing on November 6, 2007, on the proposed changes. Planning Staff explained the proposed changes to the Zoning Commission. Connie Wardell of 1302 24th St West spoke in favor of the proposed regulations. She stated she thought this would create walk-able neighborhoods and added convenience for our aging population.

Marion Dozier of 3923 3rd Ave South testified in opposition to the proposed regulations. She stated that many older neighborhoods could not support these types of businesses. In the past 10 to 15 years, the South Side neighborhood has seen many of these corner stores close because people could not afford the prices. Ms. Dozier expressed concern that if a new business were to be allowed by special review but then failed in a year, the neighborhood would still end up with a vacant building. She expressed concern with what type of business could move in where an existing store had failed such as a tattoo parlor or similar uses that may not be so neighborhood friendly.

Shauna Kerr of 907 N 31st Street testified in opposition to the proposed regulations. Ms. Kerr stated the older neighborhoods have been fighting hard to keep out commercial uses and this would create more jeopardy for her neighborhood. Ms. Kerr stated she thought a special review should be required across the board and shouldn't be allowed by right in multi-family zoning districts. Ms. Kerr thought the proposal would be too tempting to some commercial developers to try for commercial zone changes in multi-family areas.

Mary Westwood of 2808 Montana testified in opposition to the regulations. Ms. Westwood testified that she already had two tattoo shops within a few blocks of her home. More are not needed in her neighborhood. Ms. Westwood testified that multi-family neighborhoods are more threatened than other residential zones, but these convenience stores would be allowed by right in the multi-family areas. She stated that the regulations should require special review approval for all residential zones.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #826.

ATTACHMENTS:

A: Ordinance

ATTACHMENT A
ORDINANCE NO. 08-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-201, DEFINITIONS; SECTION 27-305, DISTRICT REGULATIONS, RESIDENTIAL USES AND SECTION 27-612, SUPPLEMENTAL COMMERCIAL DEVELOPMENT STANDARDS TO ALLOW NEIGHBORHOOD CONVENIENCE STORES IN CERTAIN DISTRICTS BY SPECIAL REVIEW APPROVAL, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. 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 proposed amendments to the City Zoning Regulations.*

Section 2. DESCRIPTION. The zoning regulation shall apply to all land within the City of Billings.

Section 3. That the Billings, Montana City Code be amended by revising Section 27-201 to add new language in alphanumeric order to the existing definitions to read as follows:

Neighborhood Convenience Store means a retail establishment of 3,000 square feet or less in gross floor area not including any outdoor seating area, located in a residential zoning district, offering for sale a relatively limited selection of prepackaged food products, household items, and other related goods, not including gasoline or fuel sales. Included in this definition are coffee, soup, and sandwich shops, bakeries, mail packaging and delivery services, laundromats and similar retail establishments. This definition specifically excludes any establishment engaged in body painting, body piercing, tattooing, selling second hand goods, flea markets, junk shops, antique stores, pawn shops, mini-storage, taxidermists, massage parlors, serving alcoholic beverages for on-premise consumption, any establishment or group of establishments with more than 100 square feet of gross floor area for the sale of alcoholic beverages for off-premise consumption and any establishment or group of establishments with more than 25 square feet of gross floor area for the sale of tobacco products.

Section 4. That the Billings, Montana City Code be amended by revising Section 27-305 to add new language in alphanumeric order to the existing uses to read as follows:

Sec. 27-305. District Regulations: Residential Uses.

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
<u>Neighborhood Convenience Store</u>			SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR

Section 5. That the Billings, Montana City Code be amended by revising Section 27-612 to add new language to read as follows:

(d) Neighborhood Convenience Store. Any person desiring to construct or remodel an existing structure for use as a Neighborhood Convenience Store in a residential zoning district shall apply for special review approval as shown in Section 27-305 of this chapter. In addition to conditions that may be imposed as part of a special review approval the following standards shall apply to every Neighborhood Convenience Store in a residential zoning district:

- (1) Limited to 3,000 square feet or less of gross floor area not including any outdoor seating area.
- (2) No service of alcoholic beverages for on-premise consumption.
- (3) No more than 100 square feet of gross floor area for the display of alcoholic beverages for off-premise consumption in any single establishment or group of establishments.
- (4) No more than 25 square feet of gross floor area for the display of tobacco products in any single establishment or group of establishments.
- (5) Located no closer than 1,500 feet from another Neighborhood Convenience Store.
- (6) Comply with the underlying zoning district setbacks, building height and lot area per dwelling unit if dwelling units are included as part of the store development.
- (7) Lot coverage may be up to 55% regardless of the underlying zoning district.
- (8) Shall include one off-street parking space per 500 square feet of gross floor area of retail space, one of which will be a handicapped accessible space.

(9) If a dwelling unit is included in a store development, one additional off-street parking space shall be provided per dwelling unit.

(10) The off-street parking requirements in subsections d(5) and d(6) supersedes and replace the off-street parking standards in Section 6-1203 and Sections 27-1202 through 27-1211 of the BMCC. Design and construction standards for curb cuts, driveways, size of off-street parking spaces, storm water control and paving standards shall otherwise apply.

(11) No such store shall take delivery of goods before 8:00 am or after 8:00 pm.

(12) At least two trash receptacles shall be provided per store that are accessible to the public on the store property. These trash receptacles will be emptied daily near the time of close of business.

(13) Lighting on the building, in the parking lot or other yard area shall have full cut-off shields.

(14) No light fixture shall exceed 15 feet in height from grade to the top of the fixture.

(15) Signage shall be limited to one non-illuminated wall sign of 24 square feet or less per retail business.

(16) No store shall have an outdoor announcement or music system.

Section 6. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 7. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 8. 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 April 14, 2008.

PASSED, ADOPTED AND APPROVED on second reading April 28, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Cari Martin, City Clerk

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

AGENDA ITEM:
AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: SID 1384 Yellowstone Club Estates Public Hearing and Resolution
Creating District

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The City is in the process of extending sanitary sewer service into Yellowstone Club Estates. Yellowstone Club Estates is currently served by a privately owned and maintained sanitary sewer system and treatment plant. W.O. 07-19, Yellowstone Country Club Sanitary Sewer Extension, extends the existing City sewer main in Rimrock Road to a point in Yellowstone Country Club where it will intercept the private system just prior to entering the treatment plant. This will essentially connect all users of the private system to the City's main sanitary sewer system, and the treatment plant will subsequently be removed.

As when any property connects to the City's sewer system, there are sewer construction and sewer system development fees associated with the connection. SID 1384 will allow all affected property owners in Yellowstone Club Estates the option of paying their respective sewer fees over a 15-year span instead of having to pay for everything up front when the connection is completed as part of W.O. 07-19. The protest period for SID 1384 will end April 11th. The protest count will be announced at the Council meeting.

ALTERNATIVES ANALYZED:

1. After holding a public hearing, approve the Resolution Creating SID 1384; or
2. After holding a public hearing, do not approve the Resolution Creating SID 1384.

FINANCIAL IMPACT: The costs of the improvements (fees) are \$1,224,130.81, not including incidental bonding costs. The total costs of the improvements, including such incidental costs, to be financed by the Bonds and included in SID 1384, are \$1,458,000.00. A breakdown of the assessment to each affected property is shown in Part III of the Resolution of Intent to Create the District on file with the City Clerk.

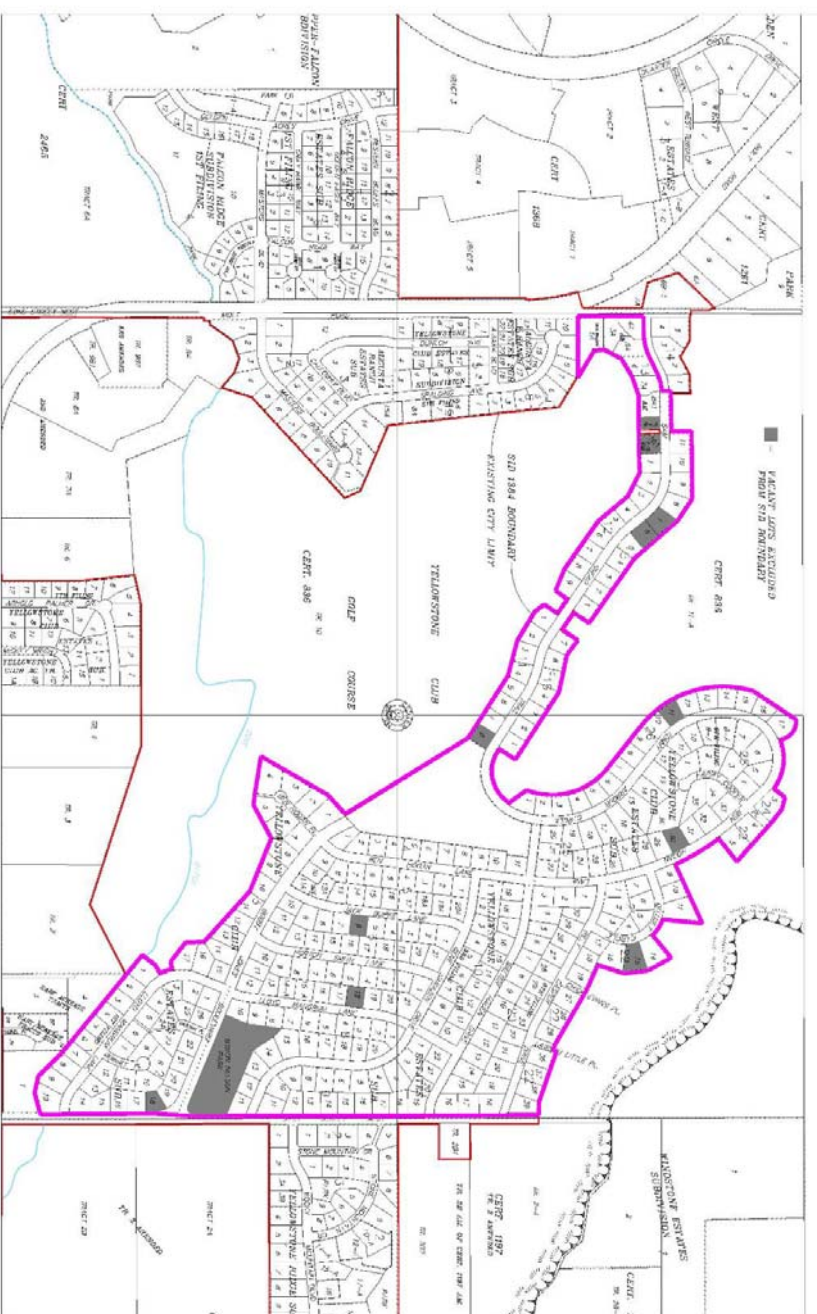
RECOMMENDATION

Staff recommends that Council approve the Resolution Creating SID 1384.

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

ATTACHMENTS

- A. Boundary Map of Proposed Special Improvement District 1384
- B. Resolution

$$A_{\alpha\beta}$$


CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 08-18694 entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1384; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on **April 14, 2008**, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

_____ ; voted against the same: _____

_____ ; abstained from voting thereon: _____

_____ ; or were absent: _____

WITNESS my hand officially this _____ day of _____.

Cari Martin

CITY CLERK

RESOLUTION NO. 08-

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1384**; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

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

Section 1. Passage of Resolution of Intention. This Council, on **March 24, 2008**, adopted Resolution No. **08-18694** (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No. **1384** of the City, under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds drawn on the District (the "Bonds"), the creating and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

Section 2. Notice and Public Hearing. Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with the law, and on **April 14, 2008**, this Council conducted a public hearing on the creation or extension of the District and the making of the Improvements. The meeting of this Council at which this resolution was adopted is the first regular meeting of the Council following the expiration of the period ended 15 days after the first date of publication of the notice of passage of the Resolution of Intention (the "Protest Period").

Section 3. Protests. Within the Protest Period, _____ protests were filed with the City Clerk and not withdrawn by the owners of property in the District subject to assessment for ____% of the total costs of the Improvements or representing ____% of the area of the District to be assessed for the cost of the Improvements. **The protest represents ____% of the assessed cost.**

Section 4. Creation of the District; Insufficiency of Protests. The District is hereby created on the terms and conditions set forth in, and otherwise in accordance with, the Resolution of Intention. The protests against the creation or extension of the District or the making of the Improvements filed during the Protest Period, if any, are hereby found to be insufficient. The findings and determinations made in the Resolution of Intention are hereby ratified and confirmed.

Section 5. Reimbursement Expenditures.

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

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

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

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs for the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of **\$1,458,000** after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2 (d) (3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are not City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

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

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this **14th** **Day of April, 2008.**

THE CITY OF BILLINGS:

BY _____
Ron Tussing MAYOR

ATTEST:

BY _____
Cari Martin CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA

 Monday, April 14, 2008

TITLE: Public Hearing and Resolution to Create SID 1372 Summerhill Subdivision, superseding Resolution No. 05-18330.
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Jeff Essman, owner of 13 of the 23 lots proposed in the SID district boundary, has the desire to construct public improvements on Winter Green Drive, West Antelope Trail, and Antelope Place within Summerhill Subdivision. These improvements consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements within Summerhill Subdivision as shown on the attached exhibit. On September 12, 2005, City Council approved Resolution No. 05-18330, creating SID 1372. The city has bid this project twice and each time the bid was too high to award. Changes have been made to the cost estimate and a new Resolution of Intent was approved at the March 10, 2008, Council Meeting.

ALTERNATIVES ANALYZED:

3. After holding a public hearing, approve a new Resolution to Create SID 1372; or
4. After holding a public hearing, do not approve a new Resolution to Create SID 1372.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$755,004.89. The costs of the Improvements are to be paid from the following sources: (1) \$358,000.00 of Special Improvement District bonds hereinafter described; and (2) \$397,004.89 of cash contribution by Jeff Essman, the owner of 13 of the 23 lots in the District.

RECOMMENDATION

Staff recommends that Council repeal Resolution No. 05-18330 and approve the Resolution to Create SID 1372.

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

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. New Resolution to Create SID 1372

INTRODUCTION

Jeff Essman, owner of 13 of the 23 lots within the proposed boundary of the SID, has a desire to develop lots within Summerhill Subdivision. In order to develop these lots, all the necessary street improvements need to be constructed on Winter Green Drive, West Antelope Trail, and Antelope Place. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements. To complete the project, it is necessary to create a Special Improvement District.

PROCEDURAL HISTORY

- August 22, 2005 – Original Resolution of Intent to Create SID 1372 approved.
- September 12, 2005 – Original Resolution Creating SID 1372 approved.
- February 28, 2006 – Bid SID 1372, bids too high to award
- February 13, 2007 – Bid SID 1372 for a second time, bids too high to award
- March 10, 2008 – New Resolution of Intent to Create SID 1372
- April 14, 2008 – New Resolution to Create SID 1372

BACKGROUND

The boundary of this proposed special improvement district is as indicated on the attached map. The public improvements contemplated under the terms of this project include water, sanitary sewer, storm drain, curb and gutter, street improvements to Winter Green Drive, West Antelope Trail, and Antelope Place. Jeff Essman, owner of 13 of the 23 lots in the District will pay a cash contribution to the project. The total cost of the project including bond costs is \$755,004.89. The total cash contribution is equal to \$397,004.89 and represents 52.58 percent of the total costs. This is necessary to meet the requirements of the city's raw land policy. The total cost of the project was estimated to be \$467,315.67 in 2005 when this project was originally created and Jeff Essman's cash contribution was estimated to be \$225,315.67. The increase in cost is due to two factors. This project was created August 2005 before the huge increase in oil prices and there is a large amount of sandrock within the subdivision that was not expected in 2005. Jeff Essman has completed a geotechnical study that has assisted our office in updating the cost estimate. If approved, it is anticipated that construction of SID 1372 will begin in the spring of 2008 and be completed by the summer of 2008.

RECOMMENDATION

Staff recommends that Council repeal Resolution No. 05-18330 and approve the Resolution to Create SID 1372.

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. New Resolution to Create SID 1372

EXHIBIT A



CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 08-_____, entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1372**; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" **and Repealing and Superseding Resolution No. 05-18330** (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on **April 14, 2008**, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

_____; voted against the same: _____

_____; abstained from voting thereon: _____

_____; or were absent: _____

WITNESS my hand officially this _____ day of _____.

Cari Martin

CITY CLERK

RESOLUTION NO. 08-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1372**; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE, **AND REPEALING AND SUPERSEDING RESOLUTION NO. 05-18330.**

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

Section 1. Recitals: Repeal of Resolution No. 05-018330. On September 12, 2005, the City Council of the City of Billings approved Resolution No. 05-18330, creating Special Improvement District No. 1372. Changes have occurred within the District that make it necessary and desirable to repeal Resolution No. 05-18330, and to proceed anew with the creation of Special Improvement District No. 1372.

Section 2. Passage of Resolution of Intention. This Council, on **March 10, 2008**, adopted Resolution No. **08-18688** (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No. **1372** of the City, under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds drawn on the District (the "Bonds"), the creating and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

Section 2. Notice and Public Hearing. Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with the law, and on **April 14, 2008**, this Council conducted a public hearing on the creation or extension of the District and the making of the Improvements. The meeting of this Council at which this resolution was adopted is the first regular meeting of the Council following the expiration of the period ended 15 days after the first date of publication of the notice of passage of the Resolution of Intention (the "Protest Period").

Section 3. Protests. Within the Protest Period, _____ protest was filed with the City Clerk and not withdrawn by the owners of property in the District subject to assessment for 100% of the total costs of the Improvements or representing 100% of the area of the District to be assessed for the cost of the Improvements. **The protest represents _____% of the assessed cost.**

Section 4. Creation of the District; Insufficiency of Protests. The District is hereby created on the terms and conditions set forth in, and otherwise in accordance with, the Resolution of Intention. The protests against the creation or extension of the District or the making of the Improvements filed during the Protest Period, if any, are hereby found to be insufficient. The findings and determinations made in the Resolution of Intention are hereby ratified and confirmed.

Section 5. Reimbursement Expenditures.

5.03. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

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

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs for the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of **\$358,000** after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2 (d) (3) of the Regulations.

5.06. Budgetary Matters. As of the date hereof, there are not City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

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

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this **14th** day of April 2008.

THE CITY OF BILLINGS:

BY _____
Ron Tussing MAYOR

ATTEST:

BY _____
Cari Martin CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Public Hearing & Resolution Adopting Water/Wastewater Rates & Fees
DEPARTMENT: Public Works
PRESENTED BY: David Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The existing water and wastewater rates and fees are no longer adequate to provide for the operation and maintenance and capital investment necessary to continue providing quality service and infrastructure to the City's customers. A cost-of-service rate study was completed by Red Oak Consulting and the Council, in accordance with statutory requirements, is scheduled to hold a public hearing on April 14 to receive public comment on the proposed changes. The proposed rate and fee adjustments include:

1. Establishing an inclining-block, conservation-minded rate structure for residential water customers where the cost of each additional volume block increases. This reflects the added cost of providing these additional volumes of water.
2. Maintaining a uniform rate structure for all user classes other than residential, but providing for increases in the volume charge.
3. Maintaining the current strength-based wastewater charge structure for all customer classes, but providing for increases in these charges.
4. Increasing the minimum monthly charges based on meter size for both water and wastewater customers. This charge collects fixed charges from customers, such as for meters and billing.
5. Adjusting both the water and wastewater system development fees and construction fees, which are currently separate fees. The proposed structure will combine these two fees into one.
6. Adjusting miscellaneous fees and charges, most of which were last adjusted in the 1980's.

FINANCIAL IMPACT: The proposed rate and fee adjustments are recommended to take place over the next three years with the first adjustment being implemented July 1, 2008. Staff has

provided a copy of the rate study report under separate cover to the Council showing the various adjustments along with the attached Resolution that summarizes the changes.

RECOMMENDATION

Staffs recommends that Council hold the required public hearing on April 14 and adopt the attached Resolution.

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

ATTACHMENTS

Attachment A – A Resolution Specifying Water and Wastewater Rate Schedule Adjustments
Enacted Pursuant to Title 69, Chapter 7, Montana Code Annotated.

Attachment B – Fees Advisory Committee Membership

INTRODUCTION

The existing water and wastewater rates and fees are no longer adequate to provide for the operation and maintenance and capital investment necessary to continue providing quality service and infrastructure to the City's customers. A cost-of-service rate study was completed by Red Oak Consulting and the Council, in accordance with statutory requirements, is scheduled to hold a public hearing on April 14 to receive public comment on the proposed changes.

PROCEDURAL HISTORY

- In accordance with state statutes, staff formed a stakeholder group, referred to as the Fees Advisory Committee (FAC), primarily for review of the system development and construction fees issue. This group endorsed the recommendations being made to the Council.
- Three members of the Public Utilities Board regularly attended the FAC meetings. The last FAC meeting was combined with a special meeting of the Public Utilities Board. The Public Utilities Board recommends the inclining-block rate for water and the other rates and fees being recommended to the Council.

STAKEHOLDERS

- The Fees Advisory Committee (FAC) was comprised of members representing the development community, Public Utilities Board, Community Development Board and Public Works staff. The individuals involved in the group are shown on Attachment B. The group met four times between October 2007 and February 2008 in meetings facilitated by the rate consultant. This group focused primarily on the system development and construction fee issues, but also reviewed the overall financial picture, which included the user rates. This group supports the recommendation being made to the Council.
- The Public Utilities Board was represented on the FAC and also considered the issues in their separate advisory capacity. This board supports the inclining-block water rates for residential customers and the other rates and fees as being recommended to the Council.

RECOMMENDATION

Staffs recommends that Council hold the required public hearing on April 14 and adopt Resolution 08-_____.

ATTACHMENTS

Attachment A - Resolution 08-_____ - A Resolution Specifying Water and Wastewater Rate
Schedule Adjustments Enacted Pursuant to Title 69,
Chapter 7, Montana Code Annotated.

Attachment B – Fees Advisory Committee Membership

RESOLUTION 08-_____

**A RESOLUTION SPECIFYING WATER AND WASTEWATER RATE
AND FEE SCHEDULE ADJUSTMENTS ENACTED PURSUANT TO
TITLE 69, CHAPTER 7, MONTANA CODE ANNOTATED.**

WHEREAS, the City Council of the City of Billings, Montana, retained Red Oak Consulting to prepare water and wastewater rate and fee schedules for the municipal water and wastewater utility that would generate adequate funds to operate the utilities over the next three years as well as require each customer class of the utilities to pay its fair share of the cost of operating the water and wastewater systems; and

WHEREAS, the *WATER AND WASTEWATER RATE AND FEE STUDY, CITY OF BILLINGS, MONTANA*, dated March 2008, prepared by Red Oak Consulting projects a need for extension, expansion, repair, improvement, and continued operation and maintenance of existing and proposed water and wastewater system facilities for the providing of water and wastewater service to the inhabitants of the City of Billings, Montana, during the period beginning July 1, 2008 and ending June 20, 2011; and

WHEREAS, under Title 69, Chapter 7 of the Montana Code Annotated, and under the terms of City Resolution Number 13585, the City of Billings is authorized to regulate the City's municipal water and wastewater utility and to change water and wastewater rates, fees, and charges as may be deemed by the City Council to be reasonable and just, and

WHEREAS, it is essential to the public health, welfare, and safety of the inhabitants of the City of Billings and its environs to provide an adequate public water and wastewater system and to provide adequate funding to meet the cost of constructing, maintaining, and operating the same;

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

1. That the following schedule of rates, fees, and charges are found to be just, reasonable, and necessary for the continued sound operation of the water and wastewater utilities and that the proposed rates, fees, and charges are approved and adopted and published as the rates, fees, and charges of the City of Billings, Montana water and wastewater utilities, effective July 1, 2008; July 1, 2009; and July 1, 2010.

Schedule I

METERED WATER MONTHLY VOLUME CHARGES

Customer Class

Effective Date

	<u>7/1/08</u>	<u>7/1/09</u>	<u>7/1/10</u>
Residential			
Block 1 (0-4 Ccf)	\$1.51	\$1.63	\$1.75
Block 2 (5-16 Ccf)	1.60	1.72	1.86
Block 3 (>16 Ccf)	2.39	2.57	2.77
Non-Residential	1.20	1.28	1.36
Seasonal	2.02	2.18	2.34
Resale	1.28	1.29	1.30

Schedule II

MINIMUM MONTHLY WATER CHARGES

	<u>Effective Date</u>		
<u>Meter Size (inches)</u>	<u>7/1/08</u>	<u>7/1/09</u>	<u>7/1/10</u>
Inside-City Customers			
3/4"	\$7.35	7.68	8.01
1"	8.33	8.71	9.11
1½"	9.63	10.08	10.56
2"	13.20	13.86	14.56
3"	39.50	41.69	44.02
4"	49.24	52.00	54.93
6"	71.96	76.05	80.39
8"	97.94	103.54	109.48
10"	150.90	159.59	168.81
Outside-City Customers			
3/4"	\$8.35	8.51	8.68
1"	9.53	9.70	9.89
1½"	11.10	11.29	11.50
2"	15.42	15.66	15.92
3"	47.24	47.85	48.48
4"	59.03	59.77	60.54
6"	86.53	87.59	88.68
8"	117.96	119.38	120.85
10"	182.05	184.20	186.43

Schedule IV

RE-ESTABLISHMENT OF WATER SERVICE CHARGE

Normal Working Hours\$55.00

Outside Normal Working Hours.....\$100.00

Schedule V

WATER SPECIAL FEES AND CHARGES

<u>Item</u>	<u>Fee/Charges</u>
(1) Application for enlargement of the water service area of the city	75.00
(2) Application for extension of the water system of the city	130.00
(3) Application for introduction of water service to a previously unserved tract or parcel of land which does not require an extension of the water distribution system.....	45.00
(4) Application for water service line installation permits:	
(a) Water service line permit.....	60.00
(b) Fireline permit.....	60.00
(c) Combination water service line and fireline permit	60.00
(6) Water meter accuracy test fee	
Small meter (in shop).....	25.00
Large meter (in field).....	50.00
Hydrant Meter Rental (\$/day).....	2.00
(8) Fireflow fee (\$/hydrant).....	80.00
(9) Turn-on/Turn-off charge:	
(a) Normal working hours.....	20.00
(b) Outside normal working hours.....	75.00
(11) Water main tapping fee:	
(a) Two inch diameter tap or smaller (\$/tap-initial visit).....	135.00
1) Subsequent site visits (\$/visit).....	135.00
(b) Over two inch diameter tap (\$/tap)	300.00
1) Subsequent site visits (\$/visit).....	300.00
2) Extra charge for cylinder pipe.....	850.00
(12) Flushing, testing, and chlorinating fee (\$/initial visit).....	80.00
(a) Water for flushing, testing and chlorinating (\$/Ccf)	Current Seasonal Rate
(b) Subsequent site visits (\$/visit).....	80.00
(15) Water Service Line/Fireline Repair Program Fee (\$/month).....	1.25
(16) Private Fireline Service Repair Program Fee.....	1.00 DELETE
(17) Credit/Debit/Charge Card Convenience Fee (%/transaction).....	3.00 DELETE

Schedule VI

WATER SYSTEM DEVELOPMENT FEES

<u>Meter or Service Line Size</u>	<u>7/1/08</u>
3/4-Inch or less (1 EDU)	\$2,504
1-Inch	6,282
1½-Inch	15,487
2-Inch	26,064
3-Inch	63,395
4-Inch	139,686

For connections to the water system with meters larger than 4-inches, or when the unique usage characteristics of a large water user may require, the City will forecast the demands on an average-day and peak-day basis. The number of EDUs associated with the demands will be determined by the following:

$$EDUs = \left[\frac{ADD * 0.538}{489.7} \right] + \left[\frac{(PDD - ADD) * 0.462}{587.6} \right]$$

Where:

- ADD is the projected average-day demand of the new user in gallons per day, and
- PDD is the projected peak-day demand of the new user in gallons per day.

The constants used in the above formula are:

- 0.538 equals the proportion of the City's water facilities allocated to the average-day function in the City's cost-of-service analysis
- 489.7 equals the estimated average gallons per day demanded by an EDU
- 0.462 equals the proportion of the City's water facilities allocated to the max-day extra-capacity function in the City's cost-of-service analysis
- 587.6 equals the estimated gallons per day of max-day extra-capacity demanded by an EDU

Schedule VII

WATER INTERIOR AND LOCAL MAINS CONSTRUCTION FEE

Eliminate this schedule.

Resolution 08-_____

Schedule I

WASTEWATER MONTHLY VOLUME CHARGES

<u>Description</u>	<u>Effective Date</u>		
<u>Dollars per Ccf</u>	<u>7/1/08</u>	<u>7/1/09</u>	<u>7/1/10</u>
Customers Within the City			
Residential	\$1.42	\$1.54	\$1.67
Commercial – Domestic	1.42	1.54	1.67
Commercial – High	1.96	2.11	2.28
Outside City	1.42	1.54	1.67

Schedule IA

MINIMUM MONTHLY WASTEWATER CHARGES

	<u>Effective Date</u>		
<u>Meter Size (inches)</u>	<u>7/1/08</u>	<u>7/1/09</u>	<u>7/1/10</u>
Inside-City			
3/4"	\$5.44	\$5.75	\$6.07
1"	6.09	6.45	6.84
1½"	6.78	7.20	7.66
2"	6.95	7.40	7.87
3"	9.34	9.99	10.69
4"	26.90	29.09	31.44
6"	33.41	36.16	39.13
8"	48.59	52.67	57.07
10"	65.94	71.53	77.57
Outside-City			
3/4"	\$5.99	\$6.33	\$6.69
1"	6.70	7.11	7.53
1½"	7.46	7.93	8.43
2"	7.65	8.14	8.66
3"	10.27	10.98	11.75
4"	29.59	32.00	34.59
6"	36.75	39.78	43.05

8"	53.45	57.94	62.78
10"	72.54	78.69	85.34

Schedule II

WASTEWATER EXTRA STRENGTH SURCHARGE

<u>Unit Charges</u>	<u>Effective Date</u>		
	<u>7/1/08</u>	<u>7/1/09</u>	<u>7/1/10</u>
X – BOD (\$/lb)	\$0.3306	\$0.3527	\$0.3763
Y – TSS (\$/lb)	\$0.3307	\$0.3527	\$0.3764

Schedule III

WASTEWATER SPECIAL FEES AND CHARGES

<u>Item</u>	<u>Fee/Charges</u>
(1) Application for enlargement of the wastewater service area of the city	75.00
(2) Application for extension of the wastewater collection system of the city	130.00
(3) Application for introduction of wastewater service to a previously unserved tract or parcel of land, which does not require extension of the wastewater collection system	45.00
(4) Application for sanitary sewer service permits:	
(a) Domestic users sewer service line installation permit	60.00
(b) Industrial users permit	1,200.00
(c) Minor industrial users permit	56.00 DELETE
(6) Septage Disposal Permit Fee (\$/1,000 gallons):	
As of July 01, 2008.....	28.62
As of July 01, 2009.....	30.53
As of July 01, 2010.....	32.58
(9) Credit/Debit/Charge Card Convenience Fee (5/transaction)	3.00 DELETE

Schedule IV

CHARGE FOR RE-ESTABLISHMENT OF WASTEWATER SERVICE

Normal Working Hours	\$55.00
Outside Normal Working Hours	\$100.00

Schedule VI

WASTEWATER SYSTEM DEVELOPMENT FEES

<u>Meter or Service Line Size</u>	<u>7/1/08</u>
3/4-Inch or less (1 EDU)	\$1,778
1-Inch	5,464
1½-Inch	15,850
2-Inch	27,342
3-Inch	70,948
4-Inch	166,086

For connections to the water system with meters larger than 4-inches, or when the unique usage characteristics of a large water user may require, the City will forecast the demands on an average-day and peak-day basis. The number of EDUs associated with the demands will be determined by the following:

$$EDUs = \left[\frac{ADD * 0.538}{489.7} \right] + \left[\frac{(PDD - ADD) * 0.462}{587.6} \right]$$

Where:

- ADD is the projected average-day demand of the new user in gallons per day, and
- PDD is the projected peak-day demand of the new user in gallons per day.

The constants used in the above formula are:

- 0.538 equals the proportion of the City's water facilities allocated to the average-day function in the City's cost-of-service analysis
- 489.7 equals the estimated average gallons per day demanded by an EDU
- 0.462 equals the proportion of the City's water facilities allocated to the max-day extra-capacity function in the City's cost-of-service analysis
- 587.6 equals the estimated gallons per day of max-day extra-capacity demanded by an EDU

Schedule VII

WASTEWATER INTERIOR AND LOCAL MAINS CONSTRUCTION FEE

Eliminate this schedule.

Resolution 08-_____

2. That this Resolution is to be immediately filed in the City Clerk's Office, and that the decision adopting the adjusted rates shall be final ten days after such are so filed.
3. That the Public Works Department is directed to file a copy of the revised wastewater rate schedules with the Public Service Commission within ten days after filing of this Resolution by the City Clerk.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, on the _____ day of _____, 2008.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

**SYSTEM DEVELOPMENT FEE/CONSTRUCTION FEE
FEES ADVISORY COMMITTEE (FAC)**

MEMBERS

Development

Greg McCall
Jack Sprague
Bob Glasgow
Jim Boyer
Ron Hill
Jeff Junkert
Rick Leuthold

Realtors

Tom Llewellyn
Myles Egan

Public Utilities Board

Barry Nolan
Rod Wilson

Community Development Board

Duane Loken

City Council

Larry Brewster
Shoots Veis

Public Works Staff

Alan Towler
Dwile Weigel

Dave Mumford

Jennifer Duray

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Public Hearing and Contract
Housing Authority Site Development Grant for Lake Elmo Project

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, Planning and Community Services Director
Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The Housing Authority of Billings has requested a grant of \$62,000 in CDBG funding to fund site development costs in order to plan for a large affordable housing project in the Heights area. The Housing Authority submitted an application for CDBG funding through the routine CDBG / HOME allocation process in January 2008.

Staff reviewed the application and has opted to facilitate a review of the project outside of the FY2008-2009 allocation processes as there is approximately \$187,000 in CDBG funding available for immediate allocation. The Community Development Board was presented with project information on February 5, 2008, and voted on March 4, 2008, to recommend full funding for site development.

The project involves a 13.77 acre parcel located along Lake Elmo Drive which is currently zoned multi-family residential. The property was purchased by the Housing Authority in 2002 for \$302,000. The Housing Authority met with the Heights Task Force in February 2008 to facilitate communication regarding the needs of the area and for comments on project design. The project will involve green and universal design elements during construction and will provide much-needed affordable workforce housing options for low income households.

According to CDBG regulations, this project is eligible for CDBG funding as assistance to support the construction of new permanent residential housing to benefit low-moderate income households. Assistance provided for this project will be limited to site improvements of this publicly-owned land to enable the property to be used for new housing construction.

ALTERNATIVES ANALYZED:

- To fund the requested \$62,000 as a grant for allowed CDBG site development costs; or
- To not fund the request.

FINANCIAL IMPACT:

Adverse financial impact is not anticipated. Funding this request will leave an additional \$116,056 in CDBG funding for affordable housing projects until July 1, 2008, when an additional allocation is expected to be made for future projects.

RECOMMENDATION

Staff and the Community Development Board recommend Council hold a public hearing and fund the Housing Authority's application for \$62,000 as a grant for site development costs for the Lake Elmo Drive affordable housing project.

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

ATTACHMENTS

Attachment A: Community Development Block Grant Contract (8 pages)

INTRODUCTION

The Housing Authority of Billings has requested a grant of \$62,000 in CDBG funding to fund site development costs in order to plan for a large affordable housing project in the Heights area. The Housing Authority submitted an application for CDBG funding through the routine CDBG / HOME allocation process in January 2008.

PROCEDURAL HISTORY

- 2002: Housing Authority purchased 13.77 acre lot in the Heights for \$302,000.
- January 23, 2008: Housing Authority submitted a CDBG application for funding through the routine allocation process.
- February 5, 2008: Community Development Board was presented with project concept information from the Housing Authority.
- February 26, 2008: Housing Authority met with the Heights Community Development Task Force to discuss the project.
- March 4, 2008: Community Development Board approved the recommendation to fund the Housing Authority's request for grant funding for site development.

BACKGROUND

The City of Billings conducted a Housing Needs Assessment in 2005 in which the combination of the household forecast and housing needs surveys were the basis for the housing needs assessment and the determination of the priorities to meet those needs. This report lists the critical concerns identified related to rental housing, which were affordability, condition, rental deposits and application fees. Mail survey respondents indicated that low income residents, elderly residents and single mothers / parents with children were three of the four top groups of people in the community that have the greatest unmet housing need.

The 2005 Housing Needs Assessment indicates that twice as many renters as homeowners are cost burdened or paying more than 30% of their income for their housing costs. It also showed two-thirds of renter households are considered low income and 32% of the total renter households are cost burdened, and living in overcrowded and / or substandard housing.

There are 5,637 renter households under 50% median family household income. This report indicates 67.5%, of the renter households with incomes at or below 50% area median income (which is the income group this project is targeting) are cost burdened. This translates into approximately 3,805 households that could benefit from this project.

Almost 34% of the survey respondents indicated that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community; the second most needed housing type, only behind affordable single family homes for purchase.

This project meets the following strategies in the City's Consolidated Plan:

- Promote new affordable housing opportunities;
- Work as an active partner with non-profits, neighborhood groups and others to address housing, community and neighborhood needs; and
- Improve the economic conditions of lower income households in the community.

ALTERNATIVES ANALYSIS

- To fund the requested \$62,000 as a grant for allowed CDBG site development costs; or
- To not fund the request.

Funding this request will leave an additional \$125,000 in CDBG funding for affordable housing projects until July 1, 2008 when an additional allocation is expected to be made for future projects.

RECOMMENDATION

Staff and the Community Development Board recommend Council hold a public hearing and fund the Housing Authority's application for \$62,000 as a grant for site development costs for the Lake Elmo Drive affordable housing project.

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

ATTACHMENTS

Attachment A: Community Development Block Grant Contract (8 pages)

CITY OF BILLINGS
COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT
FY 2007 – 2008

This Contract is entered into by the City of Billings, (City), and the
Housing Authority of Billings, (Subrecipient).

The City and the Subrecipient agree to the following terms:

1. PURPOSE

The purpose of this Contract is to provide funding for project activities approved under the City's Community Development Block Grant Program (CDBG) for FY 2007-2008.

2. APPLICATION INCORPORATED BY REFERENCE

The Subrecipient's FY 2007-2008 application for CDBG assistance is incorporated into this Contract by this reference and the representations made in the application are binding upon the Subrecipient.

3. ACCEPTANCE OF CDBG PROGRAM REQUIREMENTS

The Subrecipient will comply with all applicable parts of Title I of the Housing and Community Development Act of 1974, as amended; the applicable Department of Housing and Urban Development (HUD) regulations in 24 CFR Part 570, as now in effect or as they may be amended during the term of this Contract; all requirements established by the City; applicable State and Federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet one or more of the CDBG program's National Objectives as defined in 24 CFR Part 570.208:

- ☒ Project benefits at least 51% low / moderate-income persons;
- ☐ Aids in the prevention or elimination of slums or blight;
- ☐ Meets community development needs having a particular urgency, as defined in 24 CFR 570.208 (does not apply to Fair Housing and Planning activities).

The Subrecipient will provide necessary documentation to the City of the Subrecipient's compliance with this requirement.

The Subrecipient agrees that all Contracts entered into by it for the completion of the activities described in Section 5 of this Contract will contain special provisions requiring Contractors to comply with all applicable State and Federal requirements.

The Subrecipient expressly agrees to repay to the City any funds provided to the Subrecipient under this Contract which the Subrecipient, its subcontractors or subrecipient entities, or any public or private agent

or agency to which it delegates authority to carry out portions of this Contract expends in violation of the terms of this Contract or the Federal and State statutes and regulations governing the CDBG Program.

4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect on **April 14, 2008** and will terminate upon completion of the final project closeout by the City. The Activities to be performed by the Subrecipient will be completed by **April 14, 2011**.

5. SCOPE OF SERVICES

The Subrecipient will engage in the activities set forth in the Subrecipient's application for CDBG grant assistance. The major components of the project include:

Activity #1 *Site development for planned subdivision and infrastructure for 13.77 acre residential multi-family site on Lake Elmo Drive, Billings, Montana.*

6. BUDGET

(a) **The total amount of this Contract will not exceed \$62,000.**

(b) A copy of the preliminary project budget is included as Attachment A and by this reference is made a part of this Contract and binding upon the Subrecipient.

(c) Budget adjustments must be approved in advance by the City and may include review by the Community Development Board and City Council.

(d) The Subrecipient will expend any program income it receives before requesting additional CDBG funds. The City will deduct the amount of program income on hand, shown on the drawdown form, from the amount requested by the Subrecipient. This program income will be treated as additional CDBG funds and will be subject to all applicable requirements governing the use of CDBG funds. The Subrecipient will record receipt and expenditure of program income as part of the financial transactions of the grant program. If the Subrecipient anticipates program

income after project closeout, a program income plan must be developed and submitted for review and written approval by the City at the time of closeout. At the time of closeout, the City will specify the conditions and requirements that will apply to program income received by the Subrecipient after project closeout.

7. STAFFING

The Subrecipient shall assign the following staff as Key Personnel to this project:

Staff Member / Title	General Project Duties	Time Allocation
Lucy Brown Executive Director	Project and site development	To be completed by April 14, 2011

8. PERFORMANCE MONITORING

The Grantor will monitor the performance of the Subrecipient against goals and performance standards as stated in this Agreement. Substandard performance as determined by the Grantor will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantor, Contract suspension or termination procedures will be initiated.

9. AMOUNT OF GRANT AND METHOD OF PAYMENT

- (a) The City will authorize the Subrecipient to request up to 25% of the total award amount against the funding reserved for it by the City on a reimbursement basis.
- (b) The City will reimburse all eligible expenses incurred in furtherance of this Contract as provided in this Contract and upon approval by the City of the Subrecipient's request for payment. The City agrees to reimburse the Subrecipient for successfully completing the activities set forth in Section 5. SCOPE OF ACTIVITIES, as the Subrecipient incurs project costs.

- (c) The City will reimburse the Subrecipient for approved, eligible and necessary expenses according to the documentation submitted by the Subrecipient to support the expenditures. The City will not reimburse the Subrecipient for any expenses not included in the approved budget or not clearly and accurately supported by the Subrecipient's records. Any authorized funds not expended under this grant will revert to the City and will be used to finance other CDBG projects.
- (d) The reimbursement of eligible costs incurred is contingent upon Section 18. SPECIAL PROJECT START UP CONDITIONS. **In the event the Subrecipient is unable to comply with the terms and the conditions of this Contract, any costs incurred will be the Subrecipient's sole responsibility.**
- (e) If the actual total cost of completing the project is less than has been projected by the Subrecipient in its budget (Attachment A), the City may, at its discretion, reduce the amount to be provided under this Contract in proportion to the overall savings.
- (f) If the City determines that the Subrecipient has failed to satisfactorily carry out its responsibilities under this Contract, the City may revoke the Subrecipient's authority to request CDBG funds approved under this Contract until the City and the Subrecipient agree on a plan to remedy the deficiency.
- (g) Funding allocated for any City of Billings CDBG or HOME project must be expended within three (3) years after the project was approved for funding. Funding not expended within three years shall be considered un-programmed funds and made available for allocation to new projects.

10. LIAISON

Grantor	Subrecipient
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Brenda Beckett Community Development Manager	Name: Lucy Brown Title: Executive Director
City of Billings PO Box 1178 Billings, MT 59103	Company: Housing Authority of Billings Address: 2415 1 st Avenue North City, State, Zip: Billings, MT 59101
Phone: 406-657-8286	Phone: (406) 245-6391
Fax: 406-657-8327	Email: Lucyb@billingsha.org
Email: beckettb@ci.billings.mt.us	

11. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any Contractor or subcontractor pursuant to this Contract are to be the property of the City and the Subrecipient which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating thereto. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the City's prior written approval.

12. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) The Subrecipient will maintain adequate and reasonable records of its performance under this Contract and will allow access to these records at any time during normal business hours by the City, the U.S. Department of Housing and Urban Development, the Comptroller General and, when required by law, the Montana Legislative Auditor. These records will be kept in the Subrecipient's offices in Billings, Montana, located at **2415 1st Avenue North** for a period of five (5) years post project completion.
- (b) The City or its agents may monitor and inspect all phases and aspects of the Subrecipient's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of the Subrecipient's records and accounts. The City will advise the Subrecipient of any specific areas of concern and provide the Subrecipient opportunity to propose corrective actions acceptable to the City.

13. PROJECT PROGRESS REPORTING

(a) During the term of this Contract, the Subrecipient will submit progress reports to the City **with each request for payment.** This report will describe the status of the project with respect to each implementation objective including, at a minimum, the percentage of the project which has been completed, costs incurred, funds remaining and anticipated completion date. The report must also describe any significant problems encountered and any necessary modification of the project scope or implementation schedule being requested. **A project narrative for each payment is a mandatory requirement.**

(b) The City will not honor claims for payment until the required progress report has been submitted to and approved by the City.

14. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Subrecipient under this Agreement will be on the basis of merit and qualification, and the Subrecipient will not discriminate against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin. As used herein, "qualifications" means qualification as are generally related to competent performance of the particular occupational task.

15. PERSONNEL & PARTICIPANT CONDITIONS

(a) Civil Rights

1. Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient will not discriminate against any employee or applicant for employment due to race, color, creed, religion, ancestry, national origin, sex, disability, or other handicap, age, marital / familial status, or status with regard to public assistance. The Subrecipient will take affirmative action to ensure all employment practices are free from such discrimination. The Subrecipient agrees to comply with the non-discrimination in employment and Contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279.

3. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantor shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

(b) Affirmative Action

1. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Contract. As used in this Contract, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

2. Access to Records

The Subrecipient shall furnish and cause each of its own Subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantor, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

3. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

4. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Subrecipients or subcontractors.

(c) Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

16. AVOIDANCE OF CONFLICT OF INTEREST

The Subrecipient will comply with the provisions of the applicable HUD regulations of 24 CFR 570.611 Subpart J; and with sections 2-2-125, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

17. MODIFICATION AND ASSIGNABILITY OF CONTRACT

This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this written Contract, are valid or binding. This Contract may not be enlarged, modified, or altered except upon written agreement, and does not imply any continuing commitment by the City of Billings beyond the termination date noted in the Contract. The Subrecipient accepts responsibility for the adherence to the terms of this Contract by subcontractor of Subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Contract.

18. SPECIAL PROJECT START UP CONDITIONS

The Subrecipient will not obligate or utilize funds for any activities provided for by this Contract until:

- (a) An Environmental Review Record (ERR) is completed. The ERR will be completed by the City.
- (b) The Subrecipient submits to the City evidence of the firm commitment of the other resources necessary for the completion of the project, if any, as defined in Section 5 and Attachment A of this Contract.

(c) If the project includes construction activity, the Subrecipient must receive written permission from the City to enter into a Contract. This provision is to assure that the Subrecipient has complied with applicable procurement requirements and Labor Standards.

(d) Subrecipients providing assistance to low and moderate-income persons, households, or neighborhoods must provide documentation that demonstrates that fifty-one (51) percent of the persons or households assisted are low and moderate income.

The City will not release any CDBG funds to the Subrecipient until the Subrecipient has obtained firm commitments for all non-CDBG resources to be involved in the project. The Subrecipient may not expend or obligate any CDBG funds, until the City determines that this condition has been satisfied.

19. CONSTRUCTION AND VENUE

Consultation **is required** with the Community Development Manager for the City prior to undertaking CDBG financed construction work. Technical assistance will be required to assure compliance with: Federal Labor Standards; Davis-Bacon wage rates; lead-based paint; environmental review; historic preservation; and procurement practices to assure work is competitively bid when required.

This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court in and for the County of Yellowstone, State of Montana.

20. GRANTOR RECOGNITION

The Subrecipient shall ensure recognition of the role of the Grantor in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

21. INDEMNIFICATION

- (a) The Subrecipient waives any and all claims and recourse against the City, including the right of contribution, for loss or damage to persons or property arising from, growing out of, or in a any way connected with or incidental to the Subrecipient's or any Subrecipient's performance under this Contract.
- (b) Further, the Subrecipient will indemnify, hold harmless, and defend the City and the State of Montana against any and all claims, liabilities, actions, suits, charges, injunctions and judgments of any kind, demands, damages, costs, expenses, or liability arising out of the Subrecipient's or any Subrecipient's intentional or negligent acts or omissions while performing the services or subject matter called for in this Agreement. In the event that the City is named as a codefendant

in any action relating to activities to be performed by the Subrecipient or a Subrecipient under this Contract, the Subrecipient will notify the City in writing of the action and will represent the City in the action unless the City undertakes to represent itself as a codefendant, in which case the City will bear its own litigation costs, expenses, and attorneys' fees.

22. INSURANCE & BONDING

The Subrecipient shall secure and maintain such insurance policies, including those set forth below, as will protect itself, its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this agreement; whether the acts were made by the City or Subrecipient or by any subcontractor or anyone employed by the Subrecipient directly or indirectly.

The following insurance policies are required:

1. Commercial General Liability in an amount not less than \$1.5 million per occurrence for injuries, including accidental death to any one person;
2. Builder's Risk Insurance in an amount not less than the completed value of the whole property, or \$1,500,000.00, whichever is greater; and
3. The City shall be listed as an additional insured on the policy during the entire project.

Insurance certificates shall be filed with the City giving satisfactory evidence of insurance as stipulated above at the time the Agreement is signed. The Public Liability Insurance certificate shall be maintained during the life of the Agreement. The Builders Risk Insurance shall be secured prior to initiating construction on the first unit.

All insurance certificates shall name the City as an insured party and contain the following language, *"The company agrees that it will give the City of Billings, Montana, 10 days prior written notice of its intent to cancel or materially change the described policy."* This language, however, if accompanied by a disclaimer or any other language, which negates company responsibility for failing to provide said notice, will not be acceptable.

The insurer must be satisfactory to the City Attorney for the City of Billings. Further, the Subrecipient will assure all subcontractors performing work on the project maintain public liability, property, and casualty insurance and stationary workers compensation insurance coverage in compliance with State Law.

23. CONTRACT AMENDMENT

The Subrecipient may request that this Contract be amended. However, the City will allow an amendment only if the Subrecipient clearly demonstrates that the modification is justified and will enhance the overall impact of the original project. The Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Subrecipient's governing body.

Such amendments shall not invalidate this Agreement, nor relieve or release the Subrecipient from its obligations under this Agreement.

The Subrecipient may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and Subrecipient.

24. PROPERTY MANAGEMENT

Title to real property or equipment acquired under a grant will vest upon acquisition in the City or Subrecipient. The City or Subrecipient will use, manage, and dispose of this property or equipment in accordance with the requirements set out in 24 CFR Part 85, Subpart C and 24 CFR Part 570, Subpart J.

25. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) Termination and Modification Due Loss of Funding. If, for any reason, federal financial resources required by the City to fund the Subrecipient's projects are withdrawn from the City, the City may unilaterally terminate or modify the terms of this Contract to reflect the loss of funding. If a termination or modification is required, the City will, to the extent permitted by available CDBG funds, compensate the Subrecipient for eligible expenses incurred by the Subrecipient as of the revised termination date. The City will give the Subrecipient written notice of the effective date of the modification or termination of this Contract and, if a reduction in funding is required, the Subrecipient will provide the City with a modified project budget.
- (b) Termination Due to Noncompliance with Contract Terms. If the City determines that the Subrecipient has failed to comply with the general terms and conditions of this Contract, the project schedule, or any special conditions, and if upon notification of the defect the Subrecipient does not remedy the deficiency within a reasonable period to be specified in the notice, the City may terminate this Contract in whole or in part at any time before the date of completion. The City will promptly notify the Subrecipient in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.
- (c) Termination Due to Adverse Environmental Impact. This Contract will terminate at the conclusion of the environmental review process if the City or Subrecipient determines that the project would have a significant adverse impact on the quality of the human environment and that this impact cannot be avoided or sufficiently mitigated by reasonable, cost-effective means.
- (d) Effect of Termination. In the event of termination due to the Subrecipient's failure to comply with the terms of this Contract or the project's adverse environmental impact, any cost incurred will be the responsibility of the Subrecipient. However, at its discretion, the City may approve request by the Subrecipient for reimbursement of expenses incurred. The City's decision to authorize payment of these costs or to recover expended CDBG funds will be based on a

consideration of the extent to which the expenditure of those funds represented a good faith effort of the Subrecipient to comply with the terms of this Contract and on whether any failure to comply with the terms of this Contract was the result of circumstances beyond the Subrecipient's control.

(e) Failure of Subrecipient to notify the Subrecipient within five (5) days of receiving any claim or threatened claim of liability against subrecipient or when named as a party to litigation arising from this Agreement including but not limited to failure to notify the City of threatened, filed, or pending litigation arising from Subrecipient's performance under this Agreement.

The City shall notify Subrecipient in writing of any breach of this Agreement and shall allow Subrecipient thirty (30) days to cure such breach prior to initiating a suspension or termination of the Agreement. The City shall also notify Subrecipient in writing thirty (30) in advance of its intent to suspend or terminate this Agreement for breach of its terms by Subrecipient.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the City or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties have executed this Contract.

CITY

Mayor
City of Billings

Date

SUBRECIPIENT

By: _____
Authorized Official

Date

Print Name

Mailing Address

Phone Number

E-mail address

ATTACHMENT A: PROJECT BUDGET

Part V: Project Budget					
<input type="checkbox"/>	New Project	<input type="checkbox"/>	One-Time Funding Request		
<input type="checkbox"/>	Ongoing Project with CDBG Support	<input type="checkbox"/>	On-going Project with Other Support		

<i>An alternative format providing the information below is acceptable (must include all itemized costs above \$500)</i>					
Revenue Sources	Source: CDBG/HOME	Source: Fundraising	Source: Grants	Source: Other	Total Project Cost:
	\$62,000	\$	\$	\$22,000	\$
<i>Project Costs (include all costs directly related to delivering this service or accomplishing this project)</i>					
Salaries & Wages					
Employee Benefits					
Professional Contract Services	\$84,000				
Office Supplies					
Postage / Printing					
Notices / Subscriptions					
Utilities					
Travel / Training					
Rent / Facility Costs					
Repair / Maintenance					
Insurance, Legal & Financial Services					
Fundraising					
Subtotal: Project Costs	\$84,000				
<i>Explain Other Costs (include other costs over \$500 needed to implement this service or project)</i>					
Subtotal: Other Costs					
Grand Total:	\$84,000				
<p><i>Please provide a brief budget narrative including a summary of your overall organizations' budget:</i></p> <p>The Housing Authority of Billings will be paying \$22,000 de-federalized administration funds and is asking that the remainder of the pre-development costs come from an Community Development Block Grant pre-development eligible project cost under the affordable housing guidelines for that program of \$62,000.</p> <p>This will pay for the engineering fees and allow us to head toward creating a lot space for more affordable housing for the low income of our community.</p> <p>Even most reserves are to be only committed to programs we currently operate by legislation. Some funds once they have been consider de-federalized may be used in other low income program areas but are mostly allocated to their existing programs to pay for budget cuts in the HUD programs over the last several years.</p>					

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Nuisance Weeds, Public Hearing and 1st Reading of Ordinance
 Amending Section 25-300

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: Section 25-300 of the BMCC defines and regulates nuisance weeds within the city limits. The current regulations do not provide a method for property owners to properly appeal notices of violation or charges, fees and penalties for city removal of nuisance weeds. In addition, some of the language of the existing regulations is not in conformance with current state statute and is ambiguous. The City Council directed the Code Enforcement Division, the Planning and Community Services Department and the City Attorney to consider appropriate revisions to the existing regulations to address these deficiencies.

ALTERNATIVES ANALYZED: The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed weed regulation amendments.

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

RECOMMENDATION

The Code Enforcement Division, Planning & Community Services Department and the City Attorney recommends that the City Council approve the amendments to the nuisance weed regulations.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

A: Ordinance

INTRODUCTION

The Code Enforcement Division is the agency responsible for enforcing Section 25-300 that prohibits nuisance weeds and offending vegetation within the city limits. The Division sends between 1,500 and 2,500 weed notices to property owners each season that begins on May 1st and ends on October 31st. The enforcement of this code is important for maintaining the public health, safety and quality of life in existing and new city neighborhoods. The 2007 weed season included for the first time the services of a private contractor to remove nuisance weeds on property where owners neglect to remove the nuisance weeds after proper notification from the Code Enforcement Division. Previously, the Street and Traffic Division of the Public Works Department provided this service.

PROCEDURAL HISTORY

- On November 15, 2007, the Code Enforcement Division, the Planning Director, the City Administrator, the private mowing contractor and the City Attorney met to review the 2007 nuisance weed season activity and to discuss issues regarding the current code, assessments and notifications.
- The City Attorney's office agreed to research and prepare draft changes to the nuisance weed code.
- The Code Enforcement Division Staff, the Planning Director and the City Attorney reviewed three drafts of revisions to the ordinance.
- On February 20, 2008, a final draft was circulated and accepted by the staff.
- If the ordinance is approved on first reading, the City Council will consider it for second reading on April 28, 2008.

BACKGROUND

The 2007 weed season resulted in a record amount of assessments for the mowing, cutting and removal of nuisance weeds that property owners neglected to remove after notice from the Code Enforcement Division. In previous years, many property owners had additional time to cut nuisance weeds based on the limited availability of the Street and Traffic Division to mow these properties. The private contract with the weed cutting service requires the contractor to mow a property within 72 hours (3 days) of receipt of the request to mow from the Code Enforcement Division. In previous weed seasons, up to three weeks could elapse between the request to mow from the Code Enforcement Division until the Street and Traffic Division could provide the service. These delays made it possible for property owners to mow weeds without incurring weed charges from the city.

Inconsistent language in the existing regulations also presented enforcement problems during the 2007 weed season. The current state statute uses language that is different from the city code. The current code also does not provide a method for property owners to appeal notices of violation or assessment of charges for weed abatement. This resulted in less than ideal customer service for several property owners.

The proposed regulation refines the current definitions in the code, clarifies the responsibility for removal of weeds by property owners throughout the weed season and provides an appeal process that is specific and provides better customer service.

ALTERNATIVES ANALYSIS

The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed weed regulation amendments.

RECOMMENDATION

The Code Enforcement Division, Planning & Community Services Department and the City Attorney recommends that the City Council approve the amendments to the nuisance weed regulations.

ATTACHMENTS:

A: Ordinance

ATTACHMENT A
ORDINANCE NO. 08-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 25-300, WEEDS AND/OR OFFENDING VEGETATION, TO AMEND DEFINITIONS, DUTY TO REMOVE NUISANCE VEGETATION, NOTICE AND ADD APPEAL PROCEDURES, ADOPT THE REVISIONS AS AN AMENDMENT TO THE VEGETATION REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 7, Chapter 22, Part 41, MCA, and Section 25-300, allows the City of Billings to declare and determine what vegetation within the city or town shall be nuisance weeds; require the owner or owners of any property within the city to exterminate or remove nuisance weeds from their premises and the one-half of any road or street lying next to the land or boulevard abutting thereon; and provide the manner in which they shall be exterminated; and, in the event the owner or owners of any of said premises neglect to exterminate or remove the nuisance weeds, for levying the cost of such extermination or removal as a special tax against the property.*

Section 2. DESCRIPTION. *The regulation shall apply to all land within the City of Billings.*

Section 3. *That the Billings, Montana City Code be amended by revising Section 25-300 to delete language and add new language to the existing regulations to read as follows:*

Sec. 25-301. Definitions.

[For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein:]

Developed parcel means any parcel of land that has been used or is being used for commercial or residential use with a principal structure covering over five (5) percent of the parcel.

~~Offending vegetation means vegetation which violates the sections of this article.~~

Nuisance Weeds means:

- (a) all weeds, grasses, noxious weeds, and untended vegetation growing in excess of twelve inches (12") in height located on any premises in the City,*
- (b) any other untended vegetation creating a potential fire hazard, visual or physical obstruction for pedestrians or vehicles, potential for the spread of said vegetation, or unsightly condition.*

~~Owner and/or occupant means any person who alone, jointly, or severally with others:-~~

~~(1) Has a legal or equitable interest in a dwelling unit, with or without accompanying actual possession thereof;~~

~~(2) Acts as the agent of a person having a legal or equitable interest in a dwelling or dwelling unit thereof; or~~

~~(3) Is the general representative or fiduciary of an estate through which a legal or equitable interest in a dwelling unit is administered.~~

means the title owner(s), representative(s) of any title owner, occupant(s), contract purchaser, or any other person or representative of any entity which holds a legal or equitable interest in any parcel.

Ownership means ownership of land which shall be deemed to exist from the center line of any abutting alley, to and including the curb and gutter area of any abutting street of such lot or tract of land.

Parcel includes both developed and undeveloped parcels.

Undeveloped parcel of land means any parcel of land zoned for but not currently being used for commercial or residential use.

~~*Weed* means any plant which:-~~

~~(a) Ordinarily grow without cultivation; and~~

~~(b) Is not grown for the purposes of landscaping or food production.~~

Weeds cut or removed means weeds that can normally be cut by the use of a push or ridden mower.

Sec. 25-302. Duty to remove nuisance weeds.

The existence of nuisance weeds ~~or offensive vegetation~~ in violation of this section constitutes a public nuisance.

(a) *Developed parcel.* It shall be the duty of every owner (~~occupant~~) of a developed parcel to cut, destroy or remove, or cause to be cut, destroyed or removed, all nuisance weeds in excess of twelve (12) inches in height growing thereon and upon one-half (1/2) of any road, street or alley abutting this property to a height of four (4) inches or less.

(b) *Undeveloped parcel.* It shall be the duty of every owner (~~occupant~~) of an undeveloped parcel to cut, destroy or remove, or cause to be cut, destroyed or removed, all nuisance weeds in excess of twelve (12) inches in height growing thereon and upon one-half (1/2) of any road, street or alley abutting this property to a height of four (4) inches or less on property located within one hundred fifty (150) feet of any developed parcel, road, or park.

(c) *Traffic hazards.* All nuisance weeds ~~and offensive vegetation in developed and undeveloped areas on any parcel~~ shall also comply with and be subject to all requirements imposed under sections ~~6-1204(b) and section 6-1205 [concerning]~~ 22-441, 22-443 and 27-615, B.M.C.C. concerning visibility at intersections, alleys and drive approaches.

(d) *City Property.* The City Administrator shall designate responsibility for removal of nuisance weeds on City properties to the appropriate City Department(s).

Sec. 25-303. Notice to destroy.

The city clerk or designee shall give notice to destroy nuisance ~~offending~~ weeds within the city limits by publishing notice to the public at least once each week for two (2) consecutive weeks in a newspaper of wide circulation within the city. The last publication shall not be less than seven (7) days prior to April 30th ~~thirtieth~~. Such notice shall at a minimum advise the public as follows:

(1) That all owners of real property ~~or agents having control thereof~~ are responsible for destroying all nuisance weeds in prohibited areas by extermination, removal or cutting not later than April 30th ~~thirtieth~~ of each year and to keep the areas free of nuisance weeds through September 30th ~~October thirtieth~~ of that year.

(2) Failure to remove the ~~offending~~ nuisance weeds may cause the city to cut or remove the weeds and charge the cost thereof against the real property together with an administrative cost equal to twenty-five (25) percent of the removal cost and a penalty of twenty-five dollars (\$25.00) for the first time the city provides the cutting/removal, fifty dollars (\$50.00) for the second cutting/removal and seventy-five dollars (\$75.00) for the third and any ~~following~~ subsequent times the city provides cutting/removal per ~~season~~ calendar year.

Sec. 25-304. Failure to comply.

Upon first failure, neglect or refusal to maintain the prohibited areas free from nuisance weeds during the prescribed period, the city shall give notice to the non-complying owner, agent or occupant thereof. Such notice shall provide ~~as~~ at a minimum:

(1) That the non-complying owner, or agent thereof, ~~is~~ shall be allowed ~~seven (7)~~ ten (10) days from the date of notice of noncompliance to exterminate or remove nuisance weeds;

(2) That upon failure to comply the city may by its own work forces or by contract cause the weeds to be exterminated, removed or cut and the cost thereof shall be assessed against the non-complying real property together with an additional administrative cost fee as set forth in sec. 25-303(2). ~~equal to twenty-five (25) percent of the cost of removal and a twenty-five dollar (\$25.00) penalty;~~

(3) If the owner, ~~or agent of the property of any parcel~~ continues to ~~neglect to maintain the prohibited areas free from weeds,~~ allow nuisance weeds to grow in violation of this article after the City has already exterminated, removed, or cut nuisance weeds at that same parcel during the preceding 12 months, the city may at its sole discretion exterminate, remove or cut the weeds again as needed without any additional notice to the owner. ~~of any kind.~~ Charges as in Sec. 25-303(2) ~~subsection (2)~~, including penalty, will be assessed for each time the city removes the nuisance weeds;

(4) That the assessed amount together with costs and penalties shall constitute a lien on the non-complying real property and will be taxed as a special assessment against the real property.

Sec. 25-305. Notice.

~~Notice under this article is sufficient if served personally or mailed regular mail to the last known address or the last address shown on the tax rolls of the county. Upon~~

~~mailing, the city clerk shall execute an affidavit of mailing. Notice shall be deemed given when deposited in a United States Postal Service receptacle.~~

Notice of a violation under this article shall be made by either:

(a) Posting a copy of the notice on the parcel;

(b) Mailing a copy of the notice by first class U. S. Mail to the owner of the property at the last known address shown on the tax rolls of Yellowstone County; or

(c) Personal service upon the owner.

Notice shall be deemed given and complete the day the notice is posted, mailed, or personally served.

Sec. 25-306. Failure to comply misdemeanor.

Any person who willfully fails to comply with the provisions of this article is guilty of a misdemeanor and upon a signed complaint or citation shall be punished as provided in section 1-110.

Sec. 25-307. Assessment.

(a) Annually the city shall prepare a list of all lots, tracts and parcels of real property within the city from which and adjacent to which nuisance weeds were removed or exterminated by the city and for which such charges and penalties have not yet been paid, the list shall include as a minimum the following:

(1) Name as shown by the tax rolls, common address if known;

(2) Tax code of the property;

(3) Legal description of the lot, tract or parcel;

(4) Cost of the weed removal for that property;

(5) Administrative costs;

(6) Penalty assessed.

(b) The assessment list shall be incorporated into a special assessment resolution in proper form which resolution shall be presented to the city council ~~for consideration.~~

From and after passage of the resolution, the assessments stated therein, together with administrative costs and penalty shall constitute a special tax, as provided in MCA 7-22-4101 and a lien on the real property shown on the assessment list. A copy of the resolution after passage shall be certified to the official collecting the city taxes and assessments.

Sec. 25-308. Appeals

(a) In the event an owner disagrees with a notice of violation, or due to extreme hardship is incapable of complying with the provisions of this article, the owner may appeal a violation notice to the Director of Planning within seven (7) days of receiving the violation notice. Such appeal must be in writing and must set forth the specific reasons why the violation notice is not well taken, or why the owner is unable to comply with the provisions of this chapter. The Director of Planning shall review the appeal and make a determination as to the validity of the owner's basis for objecting to the action demanded, and shall promptly notify the owner of the decision reached. For good cause shown, or in cases of extreme hardship, the Director of Planning may make a

determination that the provisions of this article are inapplicable to a certain parcel.
Decisions of the Director of Planning are final, and subject only to judicial review.

(b) An owner may file a written appeal of any costs, fees and penalties imposed under this article to the Director of Planning within seven (7) days of being billed. Such appeal must be in writing and must set forth the specific reasons as to the owner's objections to the costs, fees, and penalties imposed. The Director of Planning shall review the appeal and make a determination as to the validity of the owner's basis for objecting the costs, fees, and penalties imposed, and shall promptly notify the owner of the decision reached. For good cause shown, or in cases of extreme hardship, the Director of Planning may modify or waive costs, fees and penalties imposed under this article. Decisions of the Director of Planning are final, and subject only to judicial review.

Sec. 25-309. Time Calculations

All time periods referenced in this article shall be calculated as actual calendar days, including weekends and holidays.

Section 6. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 7. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 8. 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 April 14, 2008.

PASSED, ADOPTED AND APPROVED on second reading April 28, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Cari Martin, City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Public Hearing and Resolution for Annexation #08-01 – Lenhardt Square
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, property owners, have submitted a petition for annexation of property to the City of Billings under 7-2-4600 MCA. The 114-acre property is described as Tracts 1-5, Certificate of Survey 2063 and is located north of King Avenue West between 48th Street West and Shiloh Road. The property owner is requesting annexation in order to obtain city services and move forward with development of the property at urban densities.

The City Council at its meeting on February 25, 2008, accepted an Urban Planning Study for the property and voted to maintain the property within the Urban Planning Area boundary; and approved a request to include the entire property within the Limits of Annexation Map area for immediate annexation. The Council denied the petition for annexation of the property on February 25 and, consequently, did not consider a zone change application for the property. At its meeting on March 10, the Council voted to reconsider the annexation petition for the property and the zone change request and set April 14 as the Council meeting to hear the reconsideration.

The City Council's policy is to consider annexations at two separate meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property. The Council acknowledged the petition at its meeting on February 11. After denying the annexation at its meeting on February 25, the Council voted at its meeting on March 10 to conduct a public hearing and reconsider the annexation petition at its meeting on April 14. This public service report describes the City's capacity to serve the property.

ALTERNATIVES ANALYZED: The City Council may approve or disapprove a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT: Financial issues are discussed in the Alternatives Analysis section of this report as they pertain to servicing the property if it were annexed into the City.

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation contingent upon the following conditions:

1. The maximum quantity of City water supplied to this property will be 600,000 gallons/day until such time as the first water storage improvement project for Zone 3 is completed. At the time of completion of the first reservoir improvement, an additional 300,000 gallons/day will be available. Once the final improvement to Zone 3 is completed the entire 1.2 million gallons/day will be available. Availability of water will be evaluated by the Public Works Department after 600,000 gallons/day based on actual and proposed usage to ensure domestic and fire supply and pressure.
2. Prior to site development, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; and/or
3. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. If required, the subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

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

ATTACHMENTS

- A.** Resolution
- B.** Petition for Annexation
- C.** Exhibit A Map
- D.** Applicant Tax Analysis Document

INTRODUCTION

The property owner on August 14, 2007, submitted a petition for annexation of a 114-acre property located north of King Avenue West between 48th Street West and Shiloh Road. The property is currently zoned Agricultural Open Space (A-1). The property will automatically be zoned Residential-9600 if it is annexed into the City. In November 2007, the property owner submitted an Urban Planning Study to support a request to maintain the property within the Urban Planning Area boundary, requested to amend the Limits of Annexation Map to include the entire subject property in the red (2007-2013) immediate annexation area, submitted a petition to annex the subject property, and submitted an application to change the zoning from A-1 to Planned Development (PD) with multiple residential and mixed use zoning.

The City Council at its February 25 meeting voted to accept the Urban Planning Study and maintain the property within the Urban Planning Area boundary, and voted to include the entire property within the red limits of annexation area for immediate annexation. The Council denied the petition for annexation on February 25 and, consequently, did not hear the zoning application for the property. After denying the annexation at its meeting on February 25, the Council voted at its meeting on March 10 to conduct a public hearing and reconsider the annexation petition at its meeting on April 14. This public service report describes the City's capacity to serve the property.

PROCEDURAL HISTORY

Winter 2006: The property owner requested inclusion in the immediate area for annexation when the Limits of Annexation Map was reviewed for amendments in winter 2006-07. The City denied the request at that time and a portion of the property remained in the red area expected to annex between 2007-2012 and a portion remained in the orange area expected to be annexed between 2012-2023 on the Limits of Annexation Map.

November 2007: The property owner submitted an Urban Planning Study to support a request to maintain the property within the Urban Planning Area boundary, requested to amend the Limits of Annexation Map to include the entire subject property in the red (2007-2013) immediate annexation area, submitted a petition to annex the subject property, and submitted an application to change the zoning from A-1 to PD zoning.

December 5, 2007: City Annexation Committee held first meeting for 2008 review. Committee reviewed the Lenhardt request to amend the Limits of Annexation Map for 2008.

December 20, 2007: Design Review Committee Meeting was held to review PD Zoning Application. Concerns about the development density were expressed by staff.

January 2, 2008: City Zoning Commission reviewed the PD application and approved a 30-day delay for the application. The Zoning Commission made its recommendation to City Council at its meeting on February 5.

January 3, 2008: City Annexation Committee reviewed Lenhardt request and agreed to delay a final recommendation until its meeting on January 31st at the applicant's request.

January 22: Planning Board Meeting was held to review the proposed amendment to the Urban Planning Area Boundary to maintain the Lenhardt Square property in the boundary and made its recommendation to the City Council.

January 31: City Annexation Committee made recommendation to City Council for amendment to the Limits of Annexation Map for the Lenhardt Property.

February 5: The City Zoning Commission held a second hearing to review the PD application for this property and made its recommendation to the City Council.

February 11: City Council acknowledged the petition to annex Lenhardt Square property and set a public hearing date for its February 25 meeting.

February 25: In the following order: The City Council to conducted a public hearing and approved the Urban Planning Study and expansion of Urban Planning Boundary; conducted a public hearing and approved an amendment to the Limits of Annexation Map; conduct a public hearing and denied annexation of the subject property; did not conduct a public hearing and take action on the PD zoning application since the annexation petition was denied.

March 10: The City Council voted to reconsider the annexation petition and PD zoning application for the Lenhardt Square Property and set the date for reconsideration for April 14.

April 14: The City Council is scheduled to conduct a public hearing and reconsider the petition for annexation of the property. If the Council approved the annexation petition, the Council will conduct a public hearing and consider the PD zone change application.

ALTERNATIVES ANALYSIS

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

1. The area is located within the Limits of Annexation and within the Urban Planning Area (pending approval of the City Council at its February 25th Meeting).
2. The City is able to provide adequate services if the development of the property is phased based on future public infrastructure improvements.
3. Any proposed improvements would meet City standards.
4. The property owners will have to sign a Development Agreement and/or SIA and a Waiver of Right to Protest the Creation of SIDs prior to development of the property.
5. Given the size of the property and the proposed PD zoning, residential densities will be approximately 12 dwelling units per acre.
6. The proposed annexation meets several goals of the City-County Growth Policy as outlined in this report.

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

Departmental Response: City departments, the Yellowstone County Public Works Department and the Board of County Commissioners were given the opportunity to comment on this

annexation. School District #2 also was notified of this annexation. City department comments are provided later in this report. No comments were received from Yellowstone County. School District 2 has a representative on the City's Annexation Committee and provided comments provided later in this report.

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

Water: The Public Works Department supports annexation of the property provided that the development of the property is restricted using a maximum daily demand of 600,000 gallons per day of water until such time as two water storage projects in Zone 3 are completed for the City of Billings. These projects are identified as PWU-W022, Zone 3 Storage Expansion and PWU-W030, Zone 3 West End Storage. The remaining build out of the property, estimated at a total of 1.26 million gallons per day maximum demand, may be allowed by the Public Works Department after completion of the two capital improvement projects. Both projects are dependant on funding and City Council approval. If one of these projects is completed, the water usage may be increased as determined by the Public Works Department. Like any other new development, the developer will pay the cost of extending infrastructure to serve the property. Sanitary sewer extension in this area is now in construction between 32nd Street West and Shiloh Road which would allow the continued extension west beyond Shiloh Road to serve this property.

Sewer: Sanitary sewer extension in this area is now under construction between 32nd Street West and Shiloh Road which would allow the continued extension west beyond Shiloh Road to serve this property. A 27-inch sanitary sewer main in King Avenue West will need to be extended to serve this property. This sewer main is expected to be extended to 44th Street (near the western edge of the subject property) if the King Meadows Subdivision begins improvements in 2008. The developer will pay for any extension of existing mains and internal infrastructure to serve the property.

Stormwater: There are no storm drains available to serve the subject property at this time. A 72-inch trunk storm drain is expected to be constructed with development of the property east and south along King Avenue West and Shiloh Road. A City-wide Stormwater Master Plan Update is in the process of being drafted that will address existing stormwater issues in this area of the City. Storm water will be addressed during development most likely using on-site storage facilities. Public Works is concerned over the number of on-site storage facilities that are being constructed and have been constructed in recent years. It is nearly 2,000 feet from the southeastern edge of this property to the Shiloh Drain. The Shiloh Drain is at capacity under the BBWA canal east of Shiloh Road and downstream of the culvert under the BBWA. It is nearly 2,500 feet from the southern boundary of this property to Hogan's slough which should be investigated for drainage opportunities during development of this property.

Road Capacities and Connections: King Avenue West is classified as a Principal Arterial and runs along the south edge of the property. King Avenue West is under the jurisdiction of the Montana Department of Transportation (MDT) and any accesses to the road will require MDT approval.

Monad Road is classified as a Minor Arterial and is proposed to run through the northern portion of the property from east to west. It is not clear how Monad Road will pass through this property and the service needs for alignment and service capabilities of Monad Road will need to be carefully considered. King Avenue and Monad are likely to provide the only external traffic access to this property. It is expected that a Traffic Accessibility Study to match the PD plans for the property will be required prior to development of the property. The owner or developers will waive the right to protest creating Special Improvement Districts through a development agreement or subdivision improvement agreement if they are necessary to make area-wide transportation infrastructure improvements.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal.

Street/traffic: The Street/Traffic division for public works has area for concern to serve this area if it is annexed to the city due to FY 2008 budget limitations within this division and the potential for additional budgetary changes in the future.

Solid waste: The City is expected to provide solid waste collection and disposal at the City's landfill. The landfill has used 4 million tons of its current estimated 20 million tons of solid waste capacity. This development is expected to generate about 0.2% of the remaining landfill capacity.

MET Transit: MET has no plans to expand the current bus services to this property. MET staff explained that the Department has no plans in expand service in any area of the City at this time due to funding limitations.

Police: The Police Department already serves the properties within the City Limits in close proximity to this property. The Police Station is located in City Hall about 7 miles from the subject property. While the new Fire Station at 54th Street West and Grand Avenue has a satellite facility for the Police Department, the Police Department staff indicated there is no immediate plan to staff the facility as a 24-hour substation operation. The Police Department also indicated that while two additional officers will be added in 2008, the additional staff will bring the Department up to current authorized strength and will not address the significant City growth that is occurring.

Fire: The area is in the BUFSA and is served by the Billings Fire Department. The nearest fire station for this property is located about 3 miles away at 54th Street West and Grand Avenue. This station just started operations in December. The next nearest station is at 24th Street West and King Avenue West about 5.3 miles from the property.

The Fire Department is supportive of annexing the property as long as the water supply limitations specified by the Public Works Department are followed. The Fire Department also noted that the limited service provided by the Department's ladder truck out of Station #1, about 7 miles from the subject property, may create some service challenges in this area of the City in the future.

Emergency Medical Services: American Medical Response provides emergency medical services to the City. AMR must comply with the City's mandate that 90% of calls be answered within 8 minutes. AMR's facility is located about 8 miles from the property and response time may depend on the location of mobile rescue units in the City. It is not known how this added development will affect AMR's service abilities. The nearest medical treatment facility for emergencies is located at either Billings Clinic or St. Vincent's in downtown Billings about 7 miles from the property.

Parks and Recreation: There are no existing City parks developed in the area. There is a large County Park parcel about one ¼ of a mile south of the subject property adjacent to the Knife River (formerly JTL) gravel mining operation. This park has not been developed and its future use is not known. Several smaller parks are planned for the King Meadows Subdivision across King Avenue West to the south of this property.

The Parks Department expressed concern that additional development in the City without large park areas to provide "programmable" space for soccer and ball fields, playground areas and other uses continues to place stress on the existing community parks already in the City. The Department specifically responded to the Lenhardt Square Planned Development Agreement specifications that include a large central park area in the middle of the development, several additional smaller park spaces throughout the property, and a network of pedestrian trails connecting the parks. The Parks Department found that the larger park areas were more acceptable to provide space for large outdoor recreation activities but is interested in having the maintenance of all of the park spaces in the proposed development privately maintained. The Parks Department does not want to take on maintenance responsibilities of the number of small park spaces and corridors proposed in the development.

Schools: Elementary school age children will attend Central Heights Elementary School, Riverside Middle School and West High School, according to the UPS and School District 2 staff. This development is estimated to generate about 1,000 students at full build out.

District 2 staff expressed serious concern that without a new elementary school built west of Shiloh Road and either an additional high school or addition to West High, ongoing over capacity problems will continue. District 2 staff indicated that there are already 580 elementary students west of Shiloh Road. A new elementary school would be expected to serve about 450 students, so just the addition of one new elementary school will likely only address current student demand in this area of Billings. While the District is moving forward to purchase property at Cottonwood Park for an elementary school, there is no immediate plan to fund and build a school at that location.

Finance Department Comments: Information provided in the UPS and submitted to City staff for review by the applicant roughly estimated that the raw land taxes on the subject property after annexation would be about \$71,800.00 and the taxes on the property at full build out based on current values and taxes would be between \$1.3-\$1.5 million (See Attachment D).

Assistant City Administrator Bruce McCandless attended the Annexation Committee meetings on behalf of City Administration and Finance, and reviewed the Lenhardt Square UPS. He commented that in Fiscal Year 2008, every property tax supported department in the City is spending reserves in order balance their operating budgets and a reappraisal of property value by the DOR and the 2009 Legislature is expected to further reduce property tax revenue to the City.

McCandless also indicated that tax revenue from new development that comes on line in a current year is distributed to the City in increments over a six year time period. The means that there is no immediate realization of the total new development tax benefit while the City services must be provided as soon as the new development is occupied. He explained that in many instances the City can generate capital funding, but funding operating costs is a major issue. Even fee and assessment supported services, such as street maintenance and water/wastewater, are beginning to feel a budget pinch and are reducing services or spreading them thinner. While the City has historically been willing to maintain property within the UPA, include property within the red Limits of Annexation Map area, and annex property annually, he expressed concern that any additions to the City at this time will diminish services to existing City residents.

Other Departments: City/County services such as Library, Planning, and Environmental Health are only slightly affected by the annexation since they will serve new development if it is in the City or if it remains in the County.

STAKEHOLDERS

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Times more than 15 days prior to the Council hearing as required. The Planning Division had not received comments on this proposed

annexation at the time this staff report was submitted to the Council.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Annexation of the entire Lenhardt Square Property is inconsistent with some goals and consistent with other goals of the Yellowstone County and City of Billings 2003 Growth Policy, and is generally consistent with the West Billings Plan.

Yellowstone County – City of Billings 2003 Growth Policy

Inclusion of the subject property is consistent with the following goals and policies of the Growth Policy:

- Goal: More housing and business choices within each neighborhood (Land Use Element, Page 6). *The proposed mixed-use design of this property could provide a variety of housing and business choices for a future urban neighborhood in this area of Billings.*
- Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (Open Space and Recreation, Page 9). *The proposed design of this property could provide a series of trails that would provide internal connections to the development on the property and external connections to the planned trail corridor along Shiloh Road.*

Inclusion of the subject property is not consistent with the following goals of the Growth Policy:

- Goal: Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land (Natural Resources Goal, Page 8). *Development of the property will take 114 acres of irrigated agricultural land out of production. While it is stated that larger agricultural tracts are needed for cost-effective agricultural operations, it is gradual reduction in the acreage of farm land in West Billings like this that contributes to this situation.*
- Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6). *This property is on the western fringe of the City Limits. While it is contiguous to the City Limits on the east side, it is in an area that has limited City services at this time and is about 8 miles from the City core.*
- Goal: Protect public lives and property (Public Services Goal, Page 11). *The location of this property in relation to overall delivery of City services challenges the City's ability to ensure adequate and acceptable levels of service to existing City neighborhoods when new service expansion for property like this is considered. The proposal to require phasing of development on the property based on infrastructure and service limitations is one option for mitigating this concern.*

2001 West Billings Plan

Annexation of the property is somewhat consistent with the West Billings Plan. The plan to develop the property at urban densities is in line with the managed growth theme of the West Billings Plan. However, the Plan also encourages compact and infill development to conserve land and natural resources (Theme 1, Planned Growth, Page 15). The development proposed for this property is compact but property is on the fringe of the urban area and is not infill.

The subject property is located in an area that the West Billings Plan identifies as a place for residential development, with a commercial center identified to the east at the intersection of Shiloh Road and King Avenue West. The proposal for development of the property would include both residential and commercial uses in a mixed use environment (Theme 3, Achieving a Distinctive Community Character, Page 38).

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation contingent upon the following conditions:

1. The maximum quantity of City water supplied to this property will be 600,000 gallons/day until such time as the first water storage improvement project for Zone 3 is completed. At the time of completion of the first reservoir improvement, an additional 300,000 gallons/day will be available. Once the final improvement to Zone 3 is completed the entire 1.2 million gallons/day will be available. Availability of water will be evaluated by the Public Works Department after 600,000 gallons/day based on actual and proposed usage to ensure domestic and fire supply and pressure.
2. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
3. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

ATTACHMENTS

- A.** Resolution
- B.** Exhibit A Map
- C.** Annexation Petition
- D.** Applicant Tax Analysis Document

ATTACHMENT A
RESOLUTION NO. 08-

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

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

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

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

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

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

Tracts of land situated in the S1/2 of Section 10, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:
Tracts 1,2,3,4, & 5, Certificate of Survey 2063, Recorded March 20, 1981, under Document No. 1192727, Records of Yellowstone County.
Including all adjacent right-of-way of King Avenue West.
Containing 114.669 gross acres, and 114.298 net acres.
(# 08-01) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved contingent upon the following conditions:
 1. The maximum quantity of City water supplied to this property will be 600,000 gallons/day until such time as the first water storage improvement project for Zone 3 is completed. At the time of completion of the first reservoir improvement, an additional 300,000 gallons/day will be available. Once the final improvement to Zone 3 is completed the entire 1.2 million gallons/day will be available. Availability of water will be evaluated by the Public Works Department after 600,000 gallons/day based on actual and proposed usage to ensure domestic and fire supply and pressure.

2. Prior to site development, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; and/or
 3. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. If required, the subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 14th day of April, 2008.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

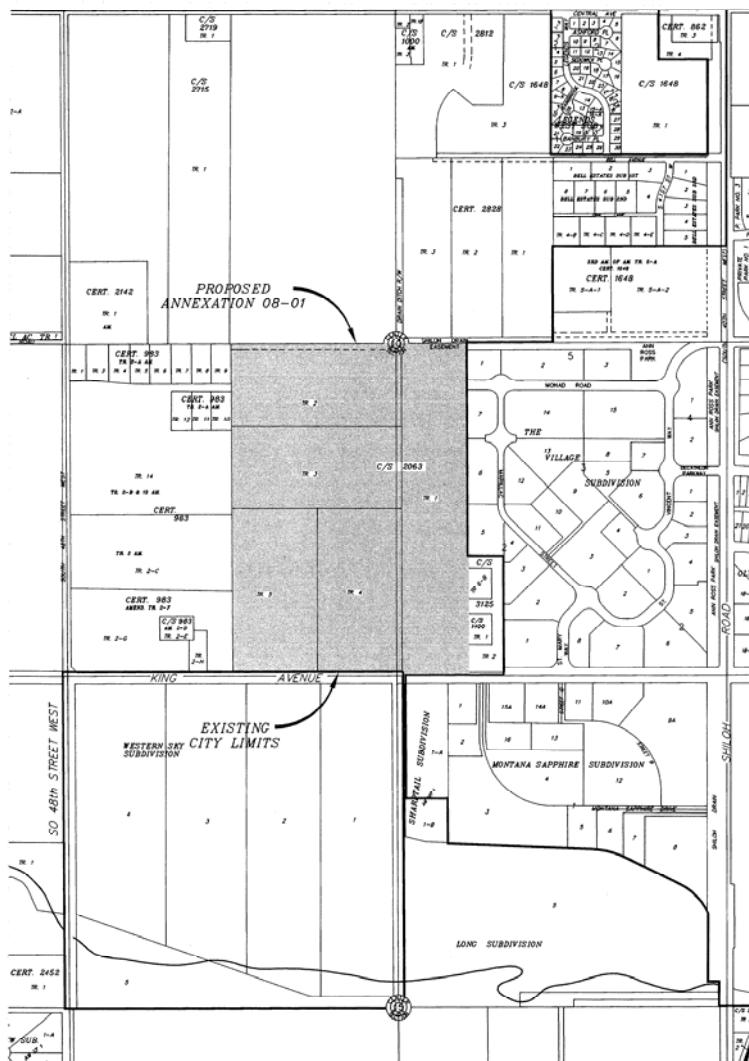
ATTEST:

BY: _____

CITY CLERK

(AN #08-01)

EXHIBIT A



ATTACHMENT C

PETITION FOR ANNEXATION TO THE CITY OF BILLINGS

NOTICE TO PETITIONER

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

INSTRUCTIONS

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

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

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
8/2/07	Lenhardt Property LP		4035 Cedarbrook Court
	Lorraine Newman, member		Bellingham, WA 98229
	Allan Lenhardt, member		
	Jan Rehberg, member		

(continued on separate page)

07-747

DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

11/6/07

Received By: Therese Davis / Westlye F. Davis

Petition Number:

#08-01

(08/09/06) dml

Revised 6/99

ATTACHMENT D

Estimated Property Tax Revenues:
Leinhardt Square
Reduced Residential Sq. Ft. MU @ Residential Rate

RESIDENTIAL										
Zoning	Total Developable Area ¹	Average Density Limit	Total Allowed Units	Est. FMV Per Sq. Ft.	Est. Sq. Ft. Per Unit	Est. FMV Per Unit	Est. Taxable MV (85%)	Est. Taxable Value Per Unit (3.07%)	Est. Tax Revenue Per Unit (616 milly)	Est. Tax Rev. To City Per Unit (157 milly)
Tract 2A	15.49	10	155	\$175	1430	\$245,000	\$161,120	\$4,954	\$3,068	\$719
Tract 3A	15.27	15	229	\$165	1400	\$231,000	\$152,460	\$4,631	\$2,893	\$735
Tract 4A	13.94	20	279	\$135	1000	\$132,000	\$89,100	\$2,735	\$1,690	\$429
Tract 5A.1	10.72	10	107	\$175	1400	\$245,000	\$161,120	\$4,954	\$3,068	\$719
Tract 5A.2	3.76	20	76	\$135	1000	\$135,000	\$89,100	\$2,735	\$1,690	\$429
Totals	59.18		845			\$1,350,000	\$891,000	\$2,735	\$1,690	\$429

¹ Gross acreage less public roads and open space (parks and trails) shown on master plan.

NON-RESIDENTIAL (COMMERCIAL OFFICE, MULTI-FAMILY APT., PARKING)										
Zoning	Total Developable Area	USE	Est. Sq. Ft. Per Acre	Est. FMV Per Sq. Ft.	Est. FMV Per Tract	Est. Taxable Value Per Tract (85%)	Est. Taxable Value Per Tract (3.07%)	Est. Tax Revenue Per Tract (616 milly)	Est. Tax Rev. To City Per Tract (157 milly)	Est. Tax Rev. To City (157 milly)
Tract 1A	28.34	MF	23,000	\$150	\$3,450,000	\$2,925,000	\$87,750	\$2,662,500	\$665,625	\$166,406
Tract 4A	13.94	Comm/Prof	30,000	\$200	\$6,380,000	\$5,420,000	\$1,626,000	\$49,581	\$3,126	\$781
Tract 5A.2	3.76	Comm/Prof	30,000	\$200	\$6,380,000	\$5,420,000	\$1,626,000	\$49,581	\$3,126	\$781
Tr. 4A & 5A.2	17.70	Parking	30,000	\$20	\$638,000	\$539,000	\$161,700	\$4,911	\$312	\$78
Totals					\$12,226,000	\$10,520,000	\$3,213,200	\$97,968	\$6,125	\$1,565

¹ Assumes two floors of non-residential retail, commercial office, parking, etc. per structure in MU zone with 50% of non-residential space utilized for parking.

Estimated total tax revenue from residential development at full build out	\$2,084,502
Estimated total tax revenue from non-residential development at full build out	\$5,077,850
Estimated total tax revenue from Leinhardt Square at full build out	\$1,306,416

Estimated Property Tax Revenues
Lennard Square
Reduced Residential Sq Ft

RESIDENTIAL										
Zoning	Total Developable Area ¹	Average Density Limit	Total Allowed Units	Est. FMV Per Sq. Ft.	Est. Sq. Ft. Per Unit	Est. FMV Per Unit	Est. Taxable MV (65%)	Est. Taxable Value Per Unit (3.07%)	Est. Tax Revenue Per Unit (\$18 Mills)	Est. Tax Rev. To City Per Tract (\$17 Mills)
Tract 2A MF-4	13.49	10	135	\$175	1400	\$245,000	\$161,750	\$4,964	\$3,068	\$475,550
Tract 3A MF-R	15.27	15	223	\$165	1400	\$231,000	\$152,460	\$4,681	\$2,893	\$552,397
Tract 4A MU	13.94	20	279	\$135	1000	\$135,000	\$89,100	\$2,735	\$1,690	\$471,638
Tract 5A.1 MF-4	10.72	10	107	\$175	1400	\$245,000	\$161,700	\$4,954	\$3,068	\$328,252
Tract 5A.2 MU	3.75	20	75	\$135	1000	\$135,000	\$89,100	\$2,735	\$1,690	\$176,784
Totals	59.18		845							\$2,064,501

¹ Gross acreage less public roads and open space (parks and trails) shown on master plan.

NON-RESIDENTIAL (COMMERCIAL, OFFICE, MULTI-FAMILY APT., PARKING)										
Zoning	Total Developable Area	USE	Est. Sq. Ft. Per Acre	Total Sq. Ft. Per Tract	Est. FMV Per Sq. Ft.	Est. FMV Per Tract	Est. Taxable MV (85%)	Est. Taxable Value Per Tract (3.07%)	Est. Total Tax Rev. Per Tract (\$18 Mills)	Est. Tax Rev. To City Per Tract (\$17 Mills)
Tract 1A MF-R	28.34	MF	23,050	651,820	\$150	\$97,773,000	\$83,107,050	\$2,651,368	\$1,576,757	\$400,368
Tract 4A MU	13.84	Comm/Prof	30,000	418,200	\$200	\$83,640,000	\$71,094,000	\$2,182,565	\$1,348,816	\$342,866
Tract 5A.2 MU	3.75	Comm/Prof	30,000	112,800	\$200	\$22,560,000	\$19,175,000	\$586,703	\$363,819	\$92,425
Tr. 4A & 5A.2	17.70	Parking	30,000	531,000	\$20	\$10,620,000	\$9,027,000	\$277,129	\$171,295	\$43,509
Totals							\$132,404,050	\$5,559,804	\$3,459,679	\$579,159

¹ Assumes two floors of non-residential retail, commercial, office, parking, etc. per structure in MU zone with 50% of non-residential space utilized for parking.

Estimated total tax revenue from residential development at full build out	\$2,064,501	\$524,502
Estimated total tax revenue from non-residential development at full build out	\$3,460,679	\$879,159
Estimated total tax revenue from Lennard Square at full build out	<u>\$5,955,280</u>	<u>\$1,403,671</u>

Estimated Property Tax Revenues:
Lenthart Square
Moderate Residential Sq Ft

RESIDENTIAL										
Zoning	Total Developable Area, ²	Average Density Unit	Total Allowed Units	Est. FMV Per Sq. Ft.	Est. Sq. Ft. Per Unit	Est. FMV Per Unit	Est. Taxable MV 66%	Est. Taxable Value Per Unit (3.07%)	Est. Tax Revenue Per Unit (\$18 mills)	Est. Tax Rev. To City Per Tract (157 mills)
Tract 2A MF-4	15.49	10	155	\$170	2200	\$261,000	\$254,100	\$7,801	\$4,821	\$189,834
Tract 3A MF-R	15.27	15	229	\$165	1800	\$297,000	\$195,020	\$5,018	\$3,719	\$216,358
Tract 4A MF**	13.94	20	279	\$135	1700	\$162,000	\$105,920	\$3,262	\$2,029	\$143,781
Tract 5A.1 MF-4	10.72	10	107	\$175	2700	\$186,000	\$254,100	\$7,801	\$4,821	\$131,047
Tract 5A.2 MU**	3.72	20	75	\$135	1200	\$162,000	\$105,920	\$3,262	\$2,029	\$59,651
Totals	59.18		845						\$2,832,846	\$719,671

¹ Grass average less public roads and open space (parks and trails) shown on master plan.

NON-RESIDENTIAL (COMMERCIAL OFFICE, MULTI-FAMILY, APT., PARKING)										
Zoning	Total Developable Area	USE	Est. Sq. Ft. Per Acre	Total Sq. Ft. Per Tract	Est. FMV Per Sq. Ft.	Est. FMV Per Tract	Est. Taxable MV Per Tract (8%)	Est. Taxable Value Per Tract (3.07%)	Est. Total Tax Rev. Per Tract (618 Mills)	Est. Tax Rev. to City Per Tract (157 Mills)
Tract 1A MF-R	28.34	MF	23,000	651,500	\$150	\$97,725,000	\$83,307,050	\$2,551,368	\$1,576,757	\$400,768
Tract 4A MU	13.94	Comm/Prod.	30,000	416,000	\$200	\$83,200,000	\$1,094,000	\$2,102,360	\$1,348,835	\$342,665
Tract 5A.2 MU	3.76	Comm/Prod.	30,000	112,000	\$700	\$22,400,000	\$3,176,000	\$888,723	\$393,819	\$92,426
Tr. 4A & 5A.2	17.70	Parking	30,000	631,000	\$20	\$10,250,000	\$9,027,000	\$277,729	\$171,260	\$43,509
Totals								\$362,494,000	\$3,460,679	\$879,169

¹ Assumes two floors of non-residential retail commercial office parking, etc. per structure in MU zone with 50% of non-residential space utilized for parking.

Estimated total tax revenue from residential development at full build out	\$2,832,846
Estimated total tax revenue from non-residential development at full build out	\$3,460,679
Estimated total tax revenue from Lenthart Square at full build out	\$879,169
	\$6,292,625

1/31/2008 1:17 PM

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 14, 2008

TITLE: Zone Change #829 Public Hearing and 1st 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 Agriculture-Open Space (A-1), a county zoning district, to Planned Development with several underlying zoning districts including mixed uses (commercial & residential), multi-family apartments, single-family & patio homes as well as parks for open space. The property is located at 4345 King Avenue West and is a 113.29 acre parcel of land described as Tracts 1 through 5 of Certificate of Survey 2063. The property is owned by the Lenhardt Property, LP, Lenhardt Farm, LLC and Lenhardt Enterprises, LLC. Engineering, Inc. and Bill Cole of the Cole Law Firm are the agents. The Zoning Commission conducted a hearing on January 2, 2008, and allowed a 30-day delay for the applicant to address Planning Division and other City staff concerns with the Planned Development. The Zoning Commission conducted a second public hearing on February 5, 2008, and voted 5-0 to recommend approval to the City Council. The City Council denied a petition for annexation of the property on February 25, 2008 and rendered this zone change request moot. On March 10, 2008, the City Council voted to reconsider the annexation so the zone change can be considered at the same hearing.

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 will increase the City's tax base when the property is developed.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #829 and adopt the determinations of the 12 criteria, as discussed within this report.

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

ATTACHMENTS:

- A: Surrounding Zoning
- B: Proposed minor amendments to the Planned Development Agreement: February 25, 2008
- C: Ordinance and Planned Development Agreement

INTRODUCTION

This is a zone change request from A-1, a County zoning district, to Planned Development with three underlying zoning districts: Mixed Use (MU), Multi-family Residential (MF-R) and Single Family, Residential Multi-Family (Four-Plex) (MF-4). The property is five tracts in a certificate of survey totaling about 113 acres of land. The owners have also petitioned to be annexed in to the city and have city services provided for the proposed development. The current limit of annexation includes Tract 1, the 32.4 acre tract in the survey that adjoins the Village Subdivision to the east. AT its meeting on February 25, the City Council accepted an Urban Planning Study, maintained the property within the Urban Planning Area, and amended the limits of annexation map. The Council denied a petition to annex all five tracts for this zone change to be considered.

PROCEDURAL HISTORY

- A pre-application Neighborhood Meeting was conducted by the applicant and agent at the offices of Engineering, Inc. on October 29, 2007.
- The Planning Division received a Planned Development zone change application on November 5, 2007.
- A Preliminary Review meeting was held with the applicant, agent, city staff and the surrounding property owners on December 20, 2007.
- The City Zoning Commission held a public hearing on January 2, 2008, and granted a 30-day delay so the applicant could address city staff concerns with the draft Planned Development Agreement.
- The City Zoning Commission held a second public hearing on February 5, 2008, and voted 5-0 to forward a recommendation of approval.
- The City Council was scheduled to hold a public hearing and 1st reading of the ordinance on February 25, 2008.
- The City Council denied the annexation request for the property on February 25, 2008, and rendered the zone change request moot.
- On March 10, 2008, the City Council voted to reconsider the annexation request.
- If the Zone Change Ordinance is approved on the first reading on April 14, 2008, the City Council will consider it for second reading on April 28, 2008.

BACKGROUND

This is a Planned Development zone change for the proposed Lenhardt Square neighborhood. The underlying zoning districts are similar to existing zoning districts but have different building height, setbacks, lot coverage and proposed uses that will be particular to this 113 acre property. The purpose of a Planned Development (PD) zone is to “*encourage unique development or re-development through a flexible, timely and efficient process. Developments which utilize innovative, progressive planning and site design techniques and methods to allow a mixture of land uses, densities, setbacks and building heights will be encouraged. In addition, this zone is intended to encourage the preservation and enhancement of the physical characteristics of the site.*” (BMCC 27- 1301) The Planned Development regulation also requires the City to consider each request to vary from a standard zoning district to be weighed against the additional benefits the development would provide. As an example, a PD zone that allows 12.5 dwelling units per

acre should be weighed against some additional amenity not otherwise required in a high density residential subdivision. The regulations specifically state this guideline: *“For example, permitting greater density in a PD could be approved, in exchange for a greater amount of open space than a similar project, not located in a planned development zone, would be required to provide.”* (BMCC 27-1303) The proposal for Lenhardt Square offers more open space than would otherwise be required. In a residential multi-family subdivision 11% of the net land area is required for parkland dedication. Lenhardt Square is proposed to have 14% of the net land area dedicated as common open space. In addition, the Open Space will be developed for bikeways, trails, and central squares or palazzos. This is an unusual amenity in so far that most residential developments that dedicate parkland are not required to construct the park improvements. The development guidelines and architectural control proposed will assure the Common Open Space areas will be an integral part of the development.

The proposed zoning district within the PD for Mixed Use (MU) allows a wide range of commercial & retail uses as well as residential uses. The recommended PD agreement limits the density in the MU zone to 20 dwelling units per acre. In addition, the zoning Master Plan (Exhibit A of the PD agreement) shows the location of the 3 proposed zoning districts, MU, MF-R and MF-4 and has assigned maximum density limits as follows: 10 dwelling units per acre in the MF-4 zone (Tracts 2A & 5A.1), 20 dwelling units per acre for 32.69 acres of the MF-R zone (Tract 1A), 15 dwelling units per acre for 19.31 acres of the MF-R zone (Tract 3A) and 20 dwelling units per acre in the MU zone (Tracts 4A & 5A.2) The overall development density of the Lenhardt Planned Development is proposed at 12.5 dwelling units per acre. This density is compatible with existing and proposed city neighborhoods to the east, north and southwest of the subject property.

The PD zoning Master Plan indicates the following areas for each zone:

January 24, 2008

19.97 acres as MU (Tract 4A & 5A.2)

50.92 acres as MF-R (Tract 1A & 3A)

28.08 acres as MF-4 (Tract 2A & 5A.1)

14.27 acres as Open Space (throughout)

113.24 Total acres (includes area that may be right-of-ways)

The remaining area is intended for dedication of an easement for the Shiloh Drain that runs along the north property line.

The recommended PD agreement also proposes maximum heights for structures in the MU zone of 80 feet, in the MF-R zone of 40 feet, and in the MF-4 zone of 34 feet. This will allow 7-story structures in the MU zone but the maximum dwelling unit density will limit the total population. This may result in additional commercial, retail, office or entertainment space available for a 7-story structure. For example, there may be 4 stories of commercial, office or retail uses with 2 or 3 stories of residential units above. The maximum building height in the MU zone will allow the Fire Department to bring the 75-foot bucket truck from the Terry Fire Station if necessary. The Terry station is 5.5 miles from the subject property. Two other stations would be first responders

to a fire – 24th Street West Station 2.6 miles away and the new Station at 54th Street West and Grand Avenue 3.2 miles away.

The Fire Department had expressed concern that sprinkler systems and fire apparatus may not be able to provide adequate water pressure above the fifth story of structures in the MU zone. The location is at the lowest elevation of the Water Supply Zone #3 and water pressure should be adequate based on information from the Public Works Department. Water quantity issues will likely be alleviated by water storage improvements planned for 2009 and 2013 as shown in the Capital Improvement Plan (CIP). The Public Works Department has indicated it is able to enter an agreement to provide the Lenhardt Planned Development with up to a maximum of 600,000 gallons of water per day until the water storage improvements are completed. This amount will not accommodate the full-build out population. In addition, commercial, retail, office or entertainment uses will also take up some of this proposed maximum water supply. The maximum population is estimated at 3,302 (2.34 persons per household in the Billings census area). Average daily residential water demand is estimated 219 gallons per person for an average daily demand of 723,138 gallons. Peak demand is usually 2.2 times the average daily demand so a peak demand daily average would be 1,590,903 gallons per day. These estimates do not include water usage for commercial, retail or office uses.

PLANNED DEVELOPMENT AGREEMENT CHANGES

The Planning Division recommended and the Zoning Commission concurred with several changes to be made to the PD agreement. These changes will not materially change the proposed density, setbacks, or uses of the subject property but will bring the agreement in to alignment with standard practices for Planned Developments. The Zoning Commission recommended changes are shown in the PD Agreement (Attachment C) and are detailed below. Where language is recommended for deletion it is shown with a line strikethrough (~~example~~) and where language is recommended for addition it is shown underlined (example).

1. The Planning Staff recommended, and the Zoning Commission did not concur, to eliminate Footnotes #1 and #2 as shown on Exhibit B of the PD Agreement (page 61 of 62). Footnotes #1 and #2 will allow the “Reviewer”, the person or group appointed by the owners to review developments prior to submission to the City, to grant reductions in setbacks of up to 10% and grant a zero front setback. This is less than what is specified in Exhibit B – General Requirements. This is in opposition to what the City can grant as an administrative change to the PD. The Planned Development regulations (BMCC 27-1310) specify the amount and type of changes the Zoning Coordinator is allowed to grant as a ministerial action. Granting a reduction in setbacks is not an allowed ministerial act. Reductions in setbacks need to go through a variance application, even for property within a Planned Development. The Zoning Commission heard testimony from Bill Cole, the applicant’s agent, on this matter. Mr. Cole stated that even though the Zoning Coordinator may be limited by the regulations in BMCC 27-1310, this limitation does not apply to other parties. The Zoning Commission therefore recommended to leave footnotes #1 and #2 in Exhibit B in place and recommended the related legal issues be resolved through discussion with the City Attorney, the City Council and the applicant’s agents.

2. The Planning Staff recommended and the Zoning Commission concurred that Footnote #7 in Exhibit B of the PD Agreement (page 62 of 62) be deleted. The current language states the Zoning Coordinator could allow a density increase of 10%. The Planned Development regulations (BMCC 27-1310) only allow the Zoning Coordinator to increase the number of residential units by 2%. The applicant's agent, Bill Cole, also concurred with this recommended change.
3. In Article IX.A.2., Amendments or Changes (page 52 of 62), the percentage should be changed from 5% to 2% for the reasons stated above concerning Footnote #7 in Exhibit B. The Zoning Commission and the applicant's agent concurred with this proposed change.
4. In Article VI.C. Roof-Top Amenity Areas (page 51 of 62), the City of Billings Building Division will need to review most of the types of amenities listed in this section, particularly if it involves the installation of any structure. The language can still provide an exemption for the "Reviewer". The Zoning Commission and the applicant's agent concurred with this proposed change.
5. In Article V.B.14 –Design Standards (page 50 of 62), the Fire Department requested that language be inserted to reference the International Fire Code, the code now adopted for the City of Billings. The Zoning Commission and applicant's agent concurred with this change.
6. In Article IV.J.8 – Home Occupations (pages 44 & 43 of 62), the Building Official requested that language be inserted to notify owners of the building codes that may apply when Home Occupations have non-resident employees. The Zoning Commission and the applicant's agent concurred.
7. In regards to Exhibit A of the PD Agreement – Conceptual Master Plan (page 60 of 62), the Zoning Commission received testimony from surrounding property owners, the Dyk family and Leo Barsanti, that concerned the proposed street layout, in particular the alignment of Monad Road. The surrounding owners were concerned that Monad Road be continued on its current east to west alignment and not deviate to the north or south as shown on the Conceptual Master Plan. Planning Staff stated the Conceptual Master Plan in the PD Agreement only shows a proposed layout of streets and action on the PD Agreement would not approve or deny the proposed streets including any locations for access to King Avenue West or the alignment of Monad Road. The Urban Transportation Plan (UTP) currently shows Monad Road continuing west of Shiloh Road as a Collector street. East of Shiloh Road, Monad Road is a Minor Arterial street. The primary difference between a Minor Arterial and a Collector is the volume of traffic the street is expected to carry. A two-lane Minor Arterial has an average daily capacity of 20,400 vehicle trips per day and a two-lane Collector has an average daily capacity of 15,800 vehicle trips per day. The Functional Classification Map in the UTP shows Monad Road west of Shiloh along the same alignment and then deviating to the north above the Lenhardt property to intersect with 44th Street West – a proposed north-south Collector street. The alignment, design and construction of Monad Road west of Shiloh Road will be reviewed and approved by the City through a subdivision

or development agreement that will be necessary for any development to begin on the Lenhardt Square property. The Zoning Commission recommended and the applicant's agent concurred to amend the Conceptual Master Plan to eliminate the area shown as right-of-ways and add the area to the adjacent underlying zoning districts as developable area.

On February 25, 2008, the applicant's agent Bill Cole submitted a list of minor corrections and revisions to the proposed PD document (Attachment B). Staff has reviewed the proposed corrections and revisions and believes the proposed language can be incorporated in to the PD document. The proposed corrections do not change the meaning or underlying zoning of the proposed PD document.

The West Billings Neighborhood Plan did envision allowing mixed uses and higher density residential uses along arterial streets between major intersections. The proposed Lenhardt Square neighborhood does achieve some of these goals listed in the West Billings Neighborhood Plan. The PD is sensitive to the adjacent land uses and zoning. The maximum building heights and available residential density is compatible with the adopted or proposed land uses in the area. The developer has balanced this request to vary from standard zoning district requirements with an amenity not otherwise required for other developments.

The Planning Division reviewed the proposed zone change and recommended approval to the Zoning Commission based on the attached twelve (12) criteria for zone changes and Section 27-1303 Planned Development Guidelines. The applicant has prepared a zoning plan that does provide compatibility with surrounding properties and does not unduly concentrate population in a small area. Reductions in maximum building height and allowable residential densities make the development compatible with surrounding land uses. City services capacity is constrained at this time to serve this proposed development. City departments will endeavor to create additional capacity to accommodate the entire build out of the development in the future.

The Zoning Commission conducted a public hearing on February 5, 2008, and recommended approval of the zone change on a 5-0 vote.

ALTERNATIVES ANALYSIS

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

1. *Is the new zoning designed in accordance with the Growth Policy?*
The Growth Policy and the West Billings Neighborhood Plan support higher density residential and mixed uses along arterial streets between intersections. The proposed density could be supported at this location. Standard density for Residential Multi-family (RMF) zoning districts is a maximum of 76 dwelling units per acre. This zone does not limit height, however 1.5 parking spaces must be provided for each unit and the maximum lot coverage is 55%. The proposed Mixed Use (MU) zone has a maximum density of up to 20 dwelling units per acre, or 26% of the maximum residential density in an RMF zone. The Growth Policy encourages new development that is compatible and complementary of the

surrounding land uses or planned land uses. All of the surrounding zoning districts have maximum building heights of 45 feet and maximum lot coverage ranging from 30% to 50%. The proposed zoning allows maximum building height in the MU zone of 80 feet and lot coverage of 100%. This is compatible and complementary to the surrounding existing and proposed land uses.

2. *Is the new zoning designed to lessen congestion in the streets?*
The new zoning is not designed to lessen congestion in the streets but does locate zoning districts that generate the highest number of vehicle trips on arterial streets that are designed to handle the increase in traffic. Traffic impacts have not been identified but may be identified in a future Traffic Accessibility Study when a subdivision of one of the tracts is submitted or site development occurs. If developed to a maximum residential density of 1,411 dwelling units, up to 14,110 new vehicle trips could be generated from residential uses. Commercial, retail and office uses will add to the trip generation. The Montana Department of Transportation will control access to King Avenue West as well as determine what mitigation will be required such as traffic lights, turning lanes or other mitigation measures.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
The property has public street frontage on King Avenue West and is proposing to extend Monad Road from the adjacent property to the east. The zoning master plan shows a proposed road layout that jogs the right-of-way for Monad Road to the south after it enters Lenhardt Square. There is concern about street continuity for Monad Road, a designated collector street west of Shiloh Road. The zoning Master Plan is not the final layout of streets and access points for any future development. Those details will be finalized in a future subdivision or development agreement. There is some concern about providing water for the full build out of the development. Planned water storage improvements should mitigate this concern, but may limit the timing of build out of the property.
4. *Will the new zoning promote health and general welfare?*
The new zoning contains restrictions on uses allowed. In general, this list of allowed uses restricts the development of any type of manufacturing. The zoning does allow zero lot line setbacks in the Mixed Use zone and higher density. This should not affect the health and general welfare.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks in the Residential Single Family and Multi-Family zoning districts. The Mixed Use zone has a central Common Open Space area that will allow for adequate light and air even with zero setbacks for structures and 100% lot coverage.
6. *Will the new zoning prevent overcrowding of land?*

The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. In the Residential zoning districts this is proposed at 50% of the lot area. The Mixed Use zone allows 100% lot coverage but the central Open Space area will mitigate this allowance. In addition, maximum residential densities are proposed that will prevent the overcrowding of the land.

7. *Will the new zoning avoid undue concentration of population?*

The Residential zones allow single family and multi-family dwellings. The average density of the entire parcel will result in approximately 12.5 dwelling units per acre (maximum) or a population of 1,411 families. This is a similar density to other existing or proposed neighborhoods in the area. The average household in Billings is 2.34 persons resulting in a population increase of approximately 3,302 over an estimated 10-year build out period. The existing population of this area of Billings is about 9,450.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The new zoning will have an effect on the adjacent streets and traffic patterns. A traffic study has not been completed but additional traffic analysis to determine how traffic will be accommodated must be completed.

Water and Sewerage: The City will provide water and sewer service to the property and does not have adequate capacity to serve this property at full build out at this time. The Urban Planning Study indicates the total build out may use more than the remaining capacity for this water service zone. The Public Works Department is proposing an interim maximum of 600,000 gallons per day until the storage improvements are completed.

Schools and Parks: There will be an effect on parks and schools from this rezoning. The proposed parks will be developed at the time of the subdivision and will need to be maintained through the private owners association. The school district will be impacted by this development. The potential increase in school age population will require additional classroom space and staff. This will not be off set by an overall increase in mill levy to the School District.

Fire and Police: The property is within the Billings Urban Fire Service area. It is currently active agriculture land with one existing dwelling. At the proposed maximum building height of 80 feet in the MU zone, service calls for new buildings in the MU zone may require the bucket truck from Fire Station #4 at Terry Park to respond. Response time will be greater than otherwise anticipated for these structures. Other structures can be protected by apparatus at Fire Station #5 on 24th Street West or new Fire Station #7 at 54th Street West and Grand Avenue.

9. *Does the new zoning give reasonable consideration to the character of the district?*
The primary zoning in this area is Planned Development to the east with mixed uses of commercial, medical and residential dwellings, Entryway Light Industrial to the south with primarily commercial development, and Agriculture Open-Space zoning to the north and west with very low density residential uses and active irrigated crop land. The proposed density and mixed uses are compatible with the existing and planned land uses to the east and south. The King Meadows Subdivision south and west of Lenhardt Square does provide for a mix of residential densities including Residential Multi-family-Restricted (RMF-R) and Community Commercial zoning at the intersection of King Avenue West and 48th Street West.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*
The subject property is suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*
The new zoning may alter the value of buildings in the area. There are three parcels of land directly east at 4245, 4249 and 4253 King Avenue West that have single family homes and the marketability of these properties may be significantly reduced if sold as single family homes. These parcels are also bordered by the Village Planned Development further east on King Avenue West.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
The new zoning will encourage the most appropriate use of this land in the area for urban development.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on February 5, 2008, and forwarded a positive recommendation to the City Council by a 5-0 vote. The applicants and agents attended the hearing and explained the proposal to the Zoning Commission. Rick Leuthold of Engineering, Inc. testified that previous staff concerns with the PD Agreement have been addressed and staff forwarded a recommendation of approval. The applicant and the city are working on a phased development agreement to address water supply concerns. He asked the Zoning Commission to forward a favorable recommendation to the City Council based on the amended PD Agreement.

Dan McElmurray of VBM Design Studios, Las Vegas, Nevada, and agent for the applicants, explained the design criteria, building setbacks and mixture of uses that will apply throughout the Lenhardt Square neighborhood. Defining features will include emphasis on the interaction with the outdoors through parks, bikeways and linear parkways, vertical mixed uses in the MU zone and the provision for central squares as places for residents to gather and have social events. The streetscape design standards will be an important feature of the overall development. These provisions will be adopted through covenants and enforced through the owners association.

Allan Lenhardt, an owner, introduced the other property owners, Jan Rehberg and Lorraine Newman, to the Zoning Commission. He asked the Commission to forward a favorable recommendation to the City Council.

Bill Cole of the Cole Law Firm, and agent for the applicants, presented his written testimony to the Zoning Commission for consideration. He asked the Commission to allow Footnotes #1 & #2 in Exhibit B of the PD Agreement to remain in place and allow the City Attorney, the City Council and himself to discuss the legal issues surrounding variations from the PD Agreement. Mr. Cole explained this zoning proposal will be setting the best example of implementation of the West Billings Neighborhood Plan since the plan was adopted in 2001. The proposal allows higher density housing near the intersection of arterial streets, successfully mixes uses to allow a neighborhood where residents can live, work, play and shop. The key elements of the West Billings Neighborhood Plan, especially for areas west of Shiloh Road, were to not allow strip development or low-density residential subdivisions. This proposal meets those goals of the plan. Mr. Cole asked the Commission for a favorable recommendation.

Bruce McIntyre, Billings Chamber of Commerce, testified in favor of the proposed zone change. He stated that the improvements to Shiloh Road will begin in about 18 months and this and similar developments should be allowed to go forward to take advantage of those improvements. Mr. McIntyre asked the Commission to recommend approval.

Mr. Leo Barsanti, Vice-Chair of the West End Task Force, testified against the proposed alignment of Monad Road as shown on the Conceptual Master Plan. He was concerned that West Billings keep as many arterial streets as possible and not dead-end these streets unnecessarily. He stated there were examples of this throughout the city including the dead-end of Poly Drive at 38th Street West, and the dead-end 24th Street West at Colton. He asked the Commission to resolve the issue of street alignments and not forward the Conceptual Master Plan as shown in the PD Agreement.

Rick Leuthold provided rebuttal to Mr. Barsanti's testimony regarding the proposed streets. He stated the Conceptual Master Plan is not a plat, so the road details must be worked out through a subdivision or development agreement. He stated the city has adopted a Transportation Plan that does not continue every half-section minor arterial street. Monad Road west of Shiloh is designated a Collector and could vary from its alignment. He stated he would not want Monad Road to continue all the way through to 48th Street West and dead-end near where the School

District owns property for a new high school. This would make Monad Road a potential drag strip in the future.

Commission Member Ed Workman asked why the concept drawings shown to the Commission did not show buildings 80-feet tall if that was the proposed maximum building height in the MU zone. Mr. Leuthold responded that most buildings in the MU zone will be less than 80-feet but the concept is to mix the uses within a single structure. The owners do not have a proposal yet to build any development in the MU zone.

There was no further testimony and Zoning Commission closed the public hearing.

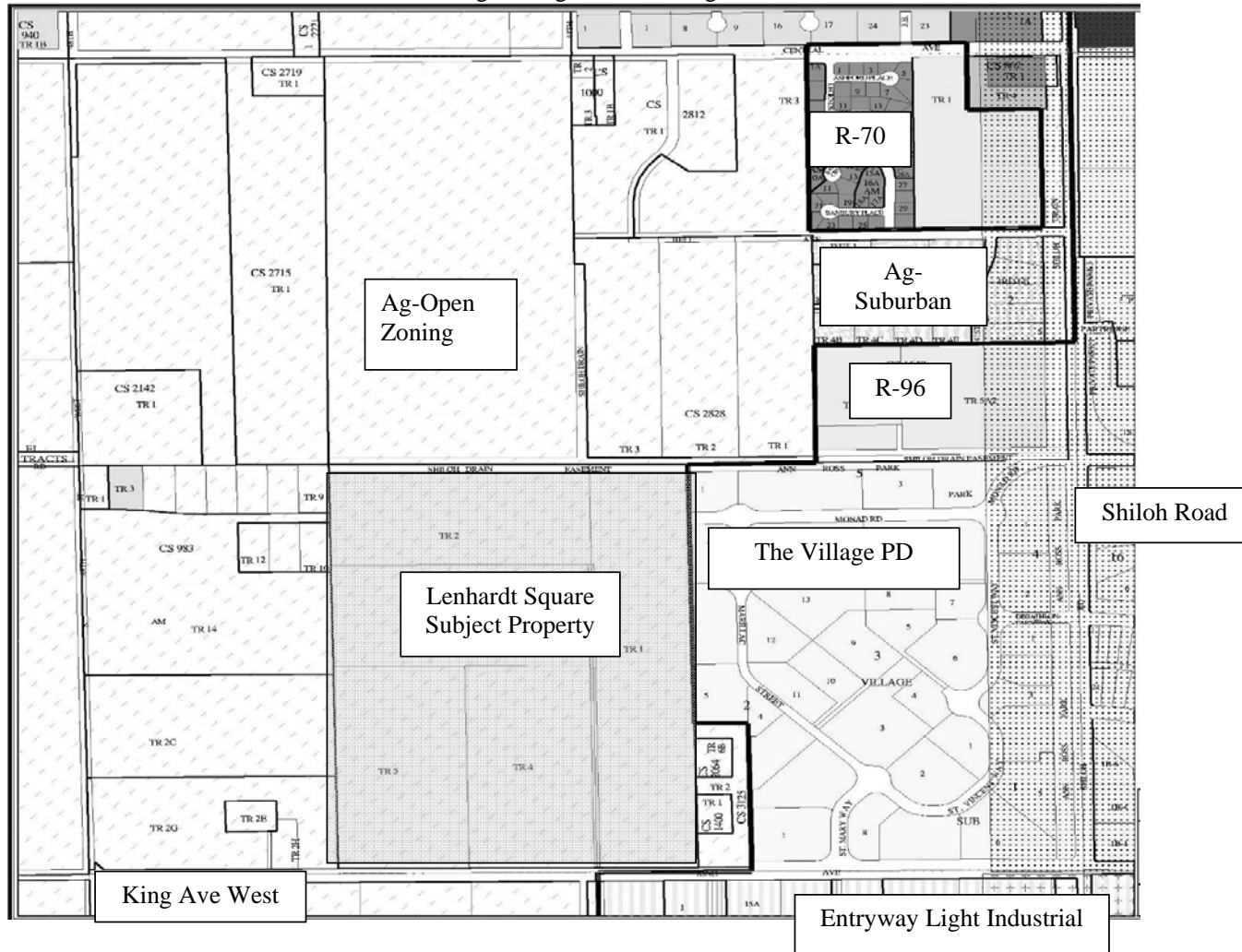
RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #829 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Surrounding Zoning
- B: Proposed minor amendments to the Planned Development Agreement: February 25, 2008
- C: Ordinance and Planned Development Agreement

ATTACHMENT A
 Surrounding Zoning – Zone Change #829



ATTACHMENT B

Proposed Minor Amendments to the Planned Development Agreement: February 25, 2008

The following minor changes have been made to the proposed planned development agreement since review by the Zoning Commission and distribution of the February 25, 2008, staff report to the City Council members. Page numbers referenced below refer to the page number of in this Planning Division staff report.

Page 20 of 62, Recitals

Legal Description – certificate of survey number added

Page 24 of 62

Article II – Definitions

B.1 “Master Common Areas” Lines 2 and 3

“owed” changed to “owned”

B.2. “Developer Common Areas” Line 2

“owed” changed to “owned”

Page 26 of 62

Article II – Definitions

O. Owners Association Line 4

“with” changed to “within”

Page 27 of 62

Article II – Definitions

V. **Tract.** “Tract(s)” means one or more of Tracts 1A through 5A of Certificate of Survey No. 2063 Amended, Parcels in Tract 5A designated on the Master Plan by a number (e.g., Tracts 5A, Parcel 1 and Parcel 2, hereafter “Tract 5A.1” and “Tract 5A.2”) are conceptual only and are depicted on the Master Plan for zoning and planning purposes only. Parcels in Tract 5A designated by a number are not legally distinct parcels and may not be separately conveyed or transferred. If the exterior boundaries of any Tract or any parcel in Tract 5A are changed for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, any reference herein to a particular Tract or parcel shall be deemed to instead apply to that successor Tract or parcel that most closely approximates the boundaries, location, size and character of the Tract or parcel originally referenced in this Agreement and depicted on the Master Plan attached hereto. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract or parcel.

Deleted: C.O.S. _____

Page 28 of 62

Article IV – Use Restrictions

A. **Land Use Restrictions Generally.** Tracts in LENHARDT SQUARE shall be located and classified by zone as described below. In the event that the external

Deleted: follows

Deleted: :

boundaries of any Tract changes for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, the zoning classification and other Tract-specific restrictions described in this Agreement that were applicable to the area where the change occurred shall also be deemed to have changed so that the area has the same zoning classification and restrictions as the successor Tract of which the area becomes a part. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract.

Page 48 of 62

Article V – Infrastructure and Tract Development Standards

B.6 Average Density Limits. The number of residential Dwelling Units shall not exceed the maximum density-per-acre limits set forth in Exhibit B. For purposes of determining compliance with this requirement, the total number of residential Dwelling Units in the subject Tract or parcel of the development shall be divided by the gross acres of the Tract or parcel excluding any open space/pathways set aside in such Tract or parcel pursuant to the Master Plan.

Average density limits shall be . . .

Article V – Infrastructure and Tract Development Standards

B.7 Landscaped Green Belts Along King Avenue, C/S 2064, C/S 3125 and C/S1400. A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of all Units in Tracts 1A, 4A, and 5A adjoining King Avenue. A minimum fifteen (15) foot wide

Deleted: an “acre” shall be the gross acreage of the development less the area actually devoted to the open space and public roads conceptually depicted on the Master Plan.

Deleted: A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of Tract 4A adjoining King Avenue.

Page 52 of 62

Article IX – Amendments and Variances

A.2 After “Increase the number of residential units greater than two (2) percent” add “above those approved pursuant to Exhibit B.”

Page 61 of 62

Exhibit B – General Requirements

Line 14, Setback Requirements – After “From Linear Parkway” deleted “closest to building”

Line 15 – Deleted “56 ft.”

Deleted footnote 1

Footnote 2 becomes Footnote 1, revised to read: “If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway.”

Footnote 3 becomes Footnote 2, revised to read: “Staggered building facades and angled placement of structures relative to the front lot line are encouraged in all zones. The minimum setback requirement in the MF-4 zone is also a maximum setback or “build-to” requirement. In that zone at least 20% of the façade must be at the setback line (from the street right-of-way and Linear Parkway) if the structure is oriented parallel to the street. If the structure is oriented at an angle to the street, at least one structural corner of the structure must be located at the setback line.”

Deleted: Pursuant to

Deleted: 0

Deleted: allowed

Deleted: ;

Deleted: one structural corner of structure must be at setback line if set at angle, while

Deleted: for

Deleted: staggered parallel placement

ATTACHMENT C

Zone Change #829

ORDINANCE NO. 08-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR TRACTS 1 THROUGH 5 OF CERTIFICATE OF
SURVEY 2063, A 113.29 ACRE PARCEL OF LAND.

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 Tracts 1 through 5 of Certificate of Survey 2063 a 113.2 9 acre parcel of land is presently zoned Agriculture Open-Space (A-1) and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning on **Tracts 1 through 5 of Certificate of Survey 2063** is hereby changed from **Agriculture Open-Space** to **Planned Development** 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 and by the Lenhardt Square Planned Development Agreement attached as **Exhibit A** to this ordinance.

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 April 14, 2008.

PASSED, ADOPTED AND APPROVED on second reading April 28, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

ZC#829 – Lenhardt Square Planned Development

Exhibit A

PLANNED DEVELOPMENT AGREEMENT FOR

LENHARDT SQUARE

By and between:

LENHARDT PROPERTY, LP, LENHARDT FARM, LLC, LENHARDT
ENTERPRISES, LLC

and

THE CITY OF BILLINGS, MONTANA

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PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE

This PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE (“Agreement” or “PDA”) is made and entered into this ____ day of _____, 2008, by and between tenants in common LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively “Founders”), and the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 North 27th Street, Billings, Montana 59101.

RECITALS

NOW WHEREAS:

1. Founders own as tenants in common approximately 114 acres of real property in Billings, Montana, more particularly described as:

Tracts 1A, 2A, 3A, 4A, 5A of Certificate of Survey _____ according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana as Document Number _____.

The foregoing property, which has been owned and farmed by the Lenhardt family for many decades, shall hereafter be known collectively as “LENHARDT SQUARE.” The five individual parcels that make up the Lenhardt farm shall hereafter be known as the “Tracts” or, if referred to individually, as a “Tract.”

2. In furtherance of their plan to liquidate the property and terminate their co-tenancy relationship, the Founders desire to place certain building and use restrictions on the property within LENHARDT SQUARE, specify certain land use and design regulations for LENHARDT SQUARE, and establish a pattern of development that is consistent with Lenhardt family values and that protects the value of the investment property being liquidated.

3. In 2001 the City of Billings and Yellowstone County adopted a neighborhood plan titled the “West Billings Plan.” The purpose of the plan was to establish development guidelines in West Billings “to meet the community’s shared vision for the future of West Billings, enabling it to thrive on growth and change through innovative, aesthetic land use and responsible development” (page 1). The West Billings Plan established these policy goals, among others, for future development in the West Billings area:

- Recognition that it is not desirable for West Billings to develop with a low-

density, rural character (p. 14);

- More compact development patterns are desirable because they make full use of urban services, offer cost-effective infrastructure, and hold down costs to the taxpayer (p. 15);
- Concentrate multi-family, office, and non-retail uses between commercial nodes along arterial streets (p. 17);
- Provide opportunities for a mix of housing types and mixed-use development by encouraging planned unit developments (pp. 22, 24);
- Increase residential densities and promote medium and high-density residential development within walking distance to commercial centers, medical facilities, and recreational amenities (pp. 21, 23);
- Link pedestrian-friendly residential, commercial, mixed-use, and park areas through a linear open space network, subdivision entryways, and special arterial treatments (p. 38);
- Create commercial developments with unique, identifiable focal points such as parks and linear open space (p. 38).

4. The City of Billings is growing to the west, adding more commercial and professional businesses. By providing convenient, nearby living opportunities for employees, our community can reduce the cost of constructing roads, sewers, and other infrastructure and consume fewer scarce natural resources.

5. The Shiloh Interchange and Shiloh Road have created a major new entryway into Billings that provides convenient access for commuters and visitors coming from Montana communities to the west and Wyoming communities to the south, leading to increased commercial growth along the King Avenue and Shiloh Road corridors.

6. LENHARDT SQUARE is located near what will likely become the most important new commercial area in Billings. In 2001 the City approved Montana Sapphire Subdivision, a 65-acre commercial development located on the southwest corner of the King Avenue/Shiloh Road intersection and southeast of LENHARDT SQUARE. In 2004 the City approved the Planned Development Agreement for The Village, a planned unit development managed by St. Vincent Healthcare Foundation, Inc. located on the northwest corner of the King Avenue/Shiloh Road intersection and directly to the east and adjacent to LENHARDT SQUARE. The Village will be a quality, mixed-use development with commercial, clinical, medical, and residential uses. In July 2007 the City approved a petition to annex the 164 acre Western Sky Subdivision located on the south side of King Avenue immediately south of LENHARDT SQUARE. This subdivision is being re-platted as King Meadows Subdivision and will consist of small single family lots and also provide for multi-family development. Lastly, the City is currently in the process of reviewing an application for approval of Shiloh Crossing Subdivision, which, if approved, will be a 74-acre commercial development on the southeast corner of the King Avenue and Shiloh Road intersection that is intended to house a large retail mall.

7. The increasing cost of residential lot development and single family housing construction makes quality single family housing cost-prohibitive for many young professionals, working families and retired seniors, many of whom will be working in the emerging commercial districts along King Avenue and Shiloh Road and/or seeking convenient access to medical services provided in The Village.

8. Founders desire to provide an opportunity for future development consistent with the West Billings Plan that will accommodate a variety of residential living opportunities and necessary services to support the increased commercial development occurring on the west end of Billings; encourage pedestrian and non-motorized interconnectivity; promote densities that economically support the extension of city services; and utilize economies of scale to increase the affordability of residential housing in West Billings.

9. Founders enter into this Agreement with the City to ensure that LENHARDT SQUARE will be developed and maintained in a manner that is complementary to the neighborhood and other planned developments in the area, including The Village, and that will protect the value of any property of Founders that remains undeveloped.

10. Founders seek the City's approval of the LENHARDT SQUARE planned development zoning district described in this Agreement in accordance with Unified Zoning Regulations Sec. 27-1301 through 27-1310.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for LENHARDT SQUARE, including such restrictions and protective covenants as set forth herein that shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners of such real estate, and shall run with the land.

AGREEMENT

ARTICLE I – PURPOSES

A. Neighborhood Compatibility and Complementary Features. The planned development zoning district 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 in close proximity to the growing commercial development on the west end of Billings. It will include planned circulation patterns to encourage pedestrian access and reduce vehicular congestion and pedestrian/vehicular conflicts. LENHARDT SQUARE will create livable residential areas with necessary services and businesses within walking distance of each other and adjacent residential and commercial areas. It will provide connectivity to other adjacent neighborhoods of West Billings as they develop, and complement the existing planned developments in the area.

B. Flexibility for Future Development. This Agreement and the development it describes shall permit flexibility to meet the demands of the residential, commercial, and health care markets as they change over time. In accordance with that goal, this Agreement is designed and intended to afford the future Developer of each Tract within LENHARDT SQUARE latitude to design and construct future development in a way that meets the needs and desires of the time while still ensuring sound development for the benefit of the Founders' remaining Tracts and the neighborhood generally.

C. Specific Goals for Tract Development. The parties enter into this Agreement to accomplish the purposes set forth herein and further the following additional objectives of LENHARDT SQUARE:

1. To provide for an appealing architectural arrangement of buildings and spaces through the use of a wide variety of living opportunities, architectural sizing, and residential services;
2. To provide for ample but not excessive off-street parking that is well screened and landscaped and that incorporates multilevel parking where feasible;
3. To provide for well-configured squares, plazas, walkways, bikeways, greens/commons, landscaped streets and parks that are woven into the pattern of the entire development and dedicated to collective social activity, recreation, and visual enjoyment;
4. To require attractive landscaping beneficial to residents and the community;
5. To provide for a pedestrian-friendly and bicycle-friendly environment;
6. To facilitate and foster complementary uses serving the needs of the residential, commercial, professional and medical community in the area;
7. To promote a unique, attractive, and distinctive mixed-use development;
8. To promote and assist in the orderly development of LENHARDT SQUARE and the west end of Billings;
9. To encourage creativity in design, quality, and character of new development; and
10. To minimize adverse aesthetic impacts associated with excessive lighting, signage, parking and other design features.

D. Consistency with Overall Community Goals. The parties understand,

acknowledge and agree that this plan for LENHARDT SQUARE includes and promotes consideration of the following:

1. Creating a planned development zone that permits single family, small and large scale multi-family, and residential-commercial mixed-use development uses in proximity to one another, while protecting and respecting the character and quality of adjacent uses;
2. Increasing urban densities to utilize land use efficiencies and economies to slow suburban sprawl;
3. Encouraging flexibility in design and use of mixed-use and residential zones to allow for economy, convenience, variety, and amenity;
4. Enhancing the aesthetics of the increasingly commercialized King Avenue and Shiloh Road corridors;
5. Ensuring adequate provision of public services such as water, sewer, public safety, public parks, open space, storm water control, and vehicular and pedestrian-bicycle circulation; and
6. Reducing traffic congestion and degradation of the existing air quality.

ARTICLE II – DEFINITIONS

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein either expressly or by implication. The following definitions shall apply to this PDA:

A. Annexation Agreement. “Annexation Agreement” refers to the Annexation Agreement for Lenhardt Square executed by Founders and the City in conjunction with this Agreement.

B. Common Areas. “Common Areas” means any property or facility that the Master Association or an Owners Association owns or in which it otherwise holds possessory or use rights or owes maintenance obligations for the common use or benefit of more than one Unit in LENHARDT SQUARE. Common Areas may include but are not limited to open spaces, green roofs, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. Common Areas may include both public or private parks, sidewalks, and other facilities. Common Areas do not include prohibited competitive

sporting facilities described in Article IV.J.9.

1. **“Master Common Areas”** means those Common Areas established in the Master Plan for LENHARDT SQUARE that are owed by, or the possessory or use rights are held or maintenance obligation are owed by, the Master Association. Master Common Areas have been defined by approximate size, general location, and intended purpose. Actual size, location, size, improvements and purpose shall be established by Developers during the platting process for each Tract, subject to the approval and consent of the Reviewer.

2. **“Developer Common Areas”** means those Common Areas that are owned by, or the possessory or use rights are held or maintenance obligations are owed by, an Owners Association.

C. **Conditions, Covenants, and Restrictions.** The “Conditions, Covenants, and Restrictions” (also referred to as the “CCRs”) means those conditions, covenants, and restrictions recorded against all or any part of the real property in LENHARDT SQUARE by Founders as the Declarant.

D. **Developer.** “Developer” means any person or entity who purchases a Tract or any portion of a Tract within LENHARDT SQUARE from Founders or their successors in interest for further subdivision, development, or resale in the ordinary course of business or for investment purposes.

E. **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 studio/efficiency apartment constitutes a Dwelling Unit.

F. **Founders.** “Founders” means Lenhardt Property, L.P., Lenhardt Farm, L.L.C., and Lenhardt Enterprises, L.L.C., co-tenants and co-owners of LENHARDT SQUARE. Any rights inuring to Founders under this Agreement shall be exercised by Founders jointly, and if any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

G. **Green Roof.** “Green Roof” means an engineered roofing system that allows for the propagation of rooftop vegetation and the retention or detention of storm water while maintaining the integrity of the roof structure and membrane. A Green Roof may be intended for exclusively decorative and environmental purposes with a shallow planting medium and a substrate depth ranging between approximately two inches and six inches and weighing between approximately 165 pounds and 375 bounds per square yard, designed to accommodate hardy, low height, drought resistant plant species. Alternatively, a Green Roof may be designed to accommodate deeper planting media, irrigation systems, complex landscaping features, and a broad range of plant species, and may be designed to support human occupant loads.

H. Home Occupation. “Home Occupation” shall have the same meaning as that phrase has in the Unified Zoning Regulations (Sec. 27-606) and shall be subject to the same restrictions described therein except as provided in Article IV.J.8.

I. Linear Parkways. “Linear Parkways” means those Master Common Areas depicted on Exhibit A that are linear open spaces containing developed bikeways, pathways, or pedestrian trails that are intended to provide alternative means of non-motorized transportation within LENHARDT SQUARE and connections to adjacent properties.

J. Lot. “Lot” means a portion of LENHARDT SQUARE depicted as a separately identified parcel of land on a recorded subdivision plat or survey other than a Tract owned by Founders 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 Common Areas, as defined above, or property dedicated to the public.

K. Master Association. “Master Association” means the association established by Founders to own, operate and/or maintain the various Master Common Areas and improvements and to administer and enforce the CCRs and other governing documents pertaining to LENHARDT SQUARE.

L. Master Design Guidelines. “Master Design Guidelines “ means the design standards and architectural and aesthetic guidelines adopted pursuant to the CCRs, as they may be amended, which govern construction, modification, and maintenance of Common Areas and Units, including structures, landscaping, and other improvements.

M. Master Plan. “Master Plan” means a concept plan and drawing showing existing Tracts and zoning as well as proposed streets, access points, Common Areas and other site improvements intended for LENHARDT SQUARE. The details depicted in the Master Plan are conceptual in nature and may be further refined by subsequent platting or amendment of this Agreement. The current Master Plan of LENHARDT SQUARE is attached to this Agreement and marked “Exhibit A.”

N. Mixed-Use. “Mixed-use” refers to the mixing of different land uses – residential, retail, employment, entertainment, lodging, civic, cultural, etc. – in one relatively discrete area featuring stacked uses in low to mid-rise buildings, arranged along streets and around public squares or other open spaces. Mixed-used developments have these additional characteristics:

1. The development promotes synergy of uses and a sense of place featuring an integrated, interactive community with its own recognizable identity, focused on one or more central community features or land uses and dedicated to collective social activity and common, but diverse, business interests;

2. The development includes within the mixed-use area three or more different, significant uses such as retail, entertainment, office, medical, residential, hotel, civic, cultural, and/or recreational that are complementary and together promote a sense of community, but at least one of which is residential; and

3. The development includes uninterrupted pedestrian connections and other physical and functional components that promote integration of community businesses, residential and civic elements to create a mutually supportive community and efficient and intensive use of land.

O. Owners Association. “Owners Association” means an association of owners of property within a portion of LENHARDT SQUARE, other than the Master Association, established by a Developer to administer additional covenants applicable to that particular area, and/or to own, operate and/or maintain any Developer Common Areas with the area, including but not limited to associations of owners of Units, business properties, condominiums, townhomes, or single family homes.

P. Pocket Park. “Pocket Park” means a small park that is approximately one-half (1/2) of an acre or smaller.

Q. The Reviewer. “The Reviewer” means that person, entity, or committee appointed by Founders that shall have all of the rights, duties and responsibilities assigned to the Reviewer in this Agreement and the CCRs, including but not limited to the review and approval or denial of the design and planning elements of all subsequent development of Tracts and subdivision plats filed for property within LENHARDT SQUARE.

R. Shiloh Drain. “Shiloh Drain” means the lateral drainage ditch that lies within the boundaries of the Shiloh Drain Easement Area shown on Exhibit A.

S. Shiloh Drain Easement Area. The “Shiloh Drain Easement Area” means the easement within which the Shiloh Drain is located on the north property line of LENHARDT SQUARE as depicted on Exhibit A hereto.

T. Small In Scale. “Small in scale” means a retail, professional or other commercial space not exceeding 8,000 square feet in total floor space on all levels.

U. Special Review Approval. “Special Review Approval” means approval by the City of Billings pursuant to the Special Review Approval process established in Sections 27-613 and 27-1503 of the Unified Zoning Regulations and as modified by this Agreement, including approval by the Reviewer in its discretion.

V. Tract. “Tract(s)” means one or more of Tracts 1A through 5A of C.O.S. _____ . Parcels in Tract 5A designated on the Master Plan by a number (e.g., Tracts 5A, Parcel 1 and Parcel 2, hereafter “Tract 5A.1” and “Tract 5A.2”) are conceptual only and are

depicted on the Master Plan for zoning and planning purposes only. Parcels designated by a number are not legally distinct parcels and may not be separately conveyed or transferred.

W. Unified Zoning Regulations. “Unified Zoning Regulations” means the Unified Zoning Regulations of the City of Billings, Yellowstone County Jurisdictional Area.

X. Unit. “Unit” means a portion of LENHARDT SQUARE depicted as a separately identified Lot, parcel or condominium on a recorded subdivision plat or survey that may be independently owned and conveyed. The term “Unit” refers to the land, if any, that is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a structure containing multiple dwellings that may be independently owned and conveyed, each such dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat or survey is recorded subdividing it into more than one Unit. The term does not include Common Areas, as defined above, or property dedicated to the public.

Y. Unit Owner. “Unit Owner” means the owner of a Unit within one of the Tracts in LENHARDT SQUARE.

ARTICLE III – BINDING EFFECT

A. Persons Bound by this Agreement. The City of Billings and all individuals, corporations, or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within LENHARDT SQUARE shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement.

B. Founders. Any obligations of Founders arising under this Agreement shall be binding upon all of the Founders jointly, and all rights inuring to Founders under this Agreement shall be exercised by Founders jointly. If any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

ARTICLE IV – USE RESTRICTIONS

A. Land Use Restrictions Generally. Tracts in LENHARDT SQUARE shall be located and classified by zone as follows:

1. Tracts 1A and 3A – Residential Multi-Family-Restricted (MF-R).
Tracts 1A and 3A are located, respectively, along the east border and in the center of LENHARDT SQUARE as shown on Exhibit “A” hereto. The use of the Lots in Tracts 1A and 3A is contemplated to be multi-family residential in scale and character. These

tracts are intended primarily to accommodate apartments, townhomes, condominiums, and other multi-family and attached single-family complexes and uses permitted in the Residential Multi-Family-Restricted Zoning District as defined in the Unified Zoning Regulations; however, single family residences are permitted. Additional requirements for multi-family Units in Tracts 1A and 3A are set forth in Exhibit “B.”

2. Tract 4A and Tract 5A.2 – Mixed-Use (MU). Tracts 4A and 5A.2 are located, respectively, on the southern and western borders of LENHARDT SQUARE near King Avenue West as shown on Exhibit “A.” Tracts 4A and 5A.2 are designed for residential and complementary commercial uses as further described in the definition of “mixed-use” found in Article II, including, but not limited to, in-home and small-scale professional and retail space. These tracts may be developed as a combination residential-commercial-cultural center with retail activities conducted in a unified development designed to serve the residential Dwelling Units in the Tract and surrounding neighborhood with shopping facilities consisting of convenience, retail and personal service establishments that secure their principal trade by supplying the daily needs of the neighboring population. Multi-family residential uses are also permitted.

3. Tract 5A.1 and Tract 2A – Residential Single Family and Residential Multi-Family (Four-Plex) (MF-4). Tract 5A.1 is located along the northwest border and Tract 2A is located along the northern border of LENHARDT SQUARE as shown on Exhibit “A.” Use of the Lots in Tracts 5A.1 and 5 is contemplated to be residential in nature, including single family dwellings and multi-family structures containing up to four Dwelling Units.

B. Procedure for Obtaining Reviewer Approval; Mixed-Use Requirements. Any Developer of property in LENHARDT SQUARE shall obtain the written approval of the Reviewer prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the Developer first presents written evidence of the Reviewer’s approval. Neither the Reviewer nor the City shall approve the Developer’s application unless the proposed development complies with the requirements of this Agreement. Any development proposed for Tract 4A or Tract 5A.2 shall be mixed-use in character as described in this Agreement. In making this determination the Reviewer and the City shall examine the plan for development of all property proposed for development by the Developer in the two tracts. An individual structure or Lot may be devoted to a single use that is not mixed-use as long as the Reviewer determines in its discretion that the Developer’s project as a whole satisfies the mixed-use requirements of this Agreement and:

1. There is or will be sufficient residential, commercial, professional, or other non-residential uses included in the subject structure or on other nearby Lots that are part of the Developer’s project to preserve and promote the mixed-use character of the project and Tracts 4A and 5A.2 intended by this Agreement; and

2. The Developer's project will otherwise comply with all other requirements of this Agreement.

C. Permitted and Prohibited Uses – Generally. Lots in each of the Tracts identified below may be used for any of the uses specifically permitted below. Lots in each of the Tracts identified below may not be used for any of the uses specifically prohibited. If a use is neither specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by the Reviewer.

D. Permitted Uses – Tracts 1A and 3A (MF-R). Units in Tracts 1A and 3A, unless otherwise prohibited herein, may be used for any of the following uses:

1. Accessory uses and detached structures (other than garages) less than 300 square feet in size that are associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement.
2. Assisted living facilities serving up to eight (8) persons;
3. Bus stops;
4. Common Areas;
5. Community center;
6. Community residential facility as defined by Unified Zoning Regulations;
7. Garages, subject to size limitations described in Article V.B.4.(d);
8. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;
9. Home occupations;
10. Family day care home serving up to 6 children or adults;
11. Multi-family or attached dwellings including apartments, residential suites, condominiums, townhomes and other multiplex housing units;
12. Single family residential uses;

13. Any use that is permitted in a residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

E. Permitted Uses – Tract 4A and Tract 5A.2 (Mixed-Use). Units in Tract 4A and Tract 5A.2, unless otherwise prohibited herein, may be used for any of the following uses, provided that nonresidential permitted uses shall be restricted to spaces not exceeding 8,000 square feet of gross floor area except upon special review:

1. Animal grooming facilities;
2. Art galleries;
3. Assisted living facilities serving any number of persons;
4. Bakeries;
5. Banks, credit unions, and savings and loan offices;
6. Barber and beauty shops;
7. Bicycle sales, rental, and repair shops;
8. Boarding, lodging, and bed and breakfast houses;
9. Bookstores;
10. Building supply stores and hardware stores (but not lumber yards);
11. Bus stops;
12. Camera, hobby, toy, and gift stores;
13. Ceramics and pottery shops;
14. Charitable, religious, educational or nonprofit institutions;
15. Clothing and apparel stores;
16. Common Areas;
17. Community centers;
18. Community residential facility as defined by Unified Zoning Regulations

serving up to 8 persons on a 24-hour-a-day basis;

19. Convalescent, nursing, and retirement homes;
20. Convenience and specialty food stores (but no gasoline sales);
21. Cultural, educational, and instructional facilities;
22. Day care center (as defined in Unified Zoning Regulations Sec. 27-201);
23. Denturists;
24. Department stores;
25. Drug stores - prescription and pharmacy;
26. Dry cleaning or laundry drop-off and pick-up store;
27. Eating and drinking establishments that do not sell alcohol for on-site consumption;
28. Education facilities, including elementary and secondary schools, colleges, universities, professional schools, and junior colleges;
29. Family day care home (as defined in Unified Zoning Regulations Sec. 27-201) serving up to six children or adults;
30. Finance and loan companies;
31. Florists;
32. Food and grocery stores;
33. Furniture - retail only;
34. Flower shops and nurseries (provided that there is no outside storage);
35. Garages, subject to size limitations described in Article V.B.4.(d);
36. Group day care home services (as defined in Unified Zoning Regulations Sec. 27-201) for 7 to 12 children or adults;
37. Hardware and appliance – retail only;

38. Health clubs, spas, and gymnasiums;
39. Health and fitness related businesses;
40. Home occupations (mixed-use area)
41. Hotels and motels;
42. Jewelry stores;
43. Libraries, museums, and art galleries;
44. Liquor stores
45. Medical and dental offices;
46. Membership organization offices;
47. Multifamily residential uses consistent with a mixed-use development, including apartments, residential suites, condominiums and townhomes;
48. Offices, including real estate, financial, counseling, professional, medical, and dental;
49. Office supply and equipment, copying and mail services stores – retail only;
50. Open spaces, park areas, gardens, squares, athletic fields, bike trails, playgrounds, and walking paths, and other Common Areas;
51. Parking facilities, including above or below ground parking garages;
52. Parks, playgrounds, pools, sport courts;
53. Pet stores;
54. Photo studios, shops, and processing - retail only;
55. Physical therapy facilities;
56. Postal service facilities;
57. Public administration facilities, including government facilities, except correctional institutions;

- 58. Publicly-owned or government operated buildings and uses;
- 59. Retail stores;
- 60. Satellite dishes up to 2 feet in diameter if not otherwise restricted by applicable design criteria or other restrictions;
- 61. Senior and assisted living residential facility;
- 62. Sports medicine and rehabilitation facilities;
- 63. Theaters;
- 64. Veterinary clinic, outpatient only;
- 65. Wine store;
- 66. Any use permitted in a residential multi-family, residential multi-family restricted, residential professional, neighborhood commercial or community commercial zoning district pursuant to the Unified Zoning, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

F. Permitted Uses – Tracts 5A.1 and 2A. Lots in Tracts 5A.1 and 2A, unless otherwise prohibited herein, may be used for any of the following uses:

- 1. Accessory uses and structures (other than garages) not larger than 300 square feet associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement;
- 2. Assisted living facilities serving up to eight (8) persons;
- 3. Bus stops;
- 4. Common Areas;
- 5. Community centers;
- 6. Community residential facilities as defined by Unified Zoning Regulations serving up to eight (8) persons on a 24-hour-a-day basis;
- 7. Family day care facilities serving up to six (6) children or adults;
- 8. Garages, subject to size limitations described in Article V.B.4(d);

9. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;
10. Home occupations;
11. Multi-family residential structures containing up to four (4) Dwelling Units;
12. Single family residential units;
13. Any use permitted in a single family residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

G. Permitted Uses Subject to Special Review – All Tracts. Uses identified below and designated with an asterisk (*) are permitted in Tracts 4A and 5A.2 without special review under Article IV.E. above. The following uses are permissible in other Tracts only upon consent of the Reviewer and the approval of the City of Billings through the special review process and may be subject to appropriate conditions. For purposes of this provision, the special review procedures contained in the Unified Zoning Regulations shall apply subject to any additional requirements contained in this Agreement, including the requirement of Reviewer consent. The following special review uses may be permitted in Tracts 1A, 2A, 3A, 4A, and 5A unless specifically restricted to particular Tracts:

1. Accessory structures in Tract 4A and Tract 5A.2 (other than garages) associated with a permitted principal structure and subject to the additional allowances and requirements of Article V.B.9 of this Agreement;
2. Animal boarding facilities (allowed in Tract 4A and Tract 5A.2 only);
3. Assisted living facilities serving more than 8 persons;*
4. Bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption (allowed on Tract 4A and Tract 5A.2 only). However, bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption are exempt from Sec. 27-612(a)(1).
5. Cell, communication and satellite towers and satellite dishes greater than 2 feet in diameter provided such towers are incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);
6. Convalescent, nursing and retirement homes;*

7. Day care centers serving more than 12 children or adults;*
8. Churches, synagogues, and places of worship;
9. Emergency services, including fire stations and ambulance services;
10. Funeral homes and mortuaries;
11. Group day care home serving 7 to 12 children or adults;*
12. Health and fitness related businesses not associated with a residential facility;*
13. Hospitals and hospital related services (allowed in Tract 4A and Tract 5A.2 only);
14. Medical, dental and health-related clinics (allowed in Tract 4A and Tract 5A.2 only);
15. Medical, dental, and other professional offices;*
16. Medical laboratories (allowed in Tract 4A and Tract 5A.2 only);
17. Modular homes;
18. Offices and small-scale retail;*
19. Pharmacies (allowed in Tract 4A and Tract 5A.2 only);
20. Physical therapy facilities;*
21. Research and testing facilities (allowed in Tract 4A and Tract 5A.2 only);
22. Residential multi-family housing consisting of more than four (4) Dwelling Units (special review required only in Tracts Tract 5A.1 and 2A);
23. Non-residential permitted uses requiring more than 8,000 square feet of floor space (allowed in Tract 4A and Tract 5A.2 only);
24. Retirement facilities larger than eight (8) persons per Unit;
25. Sports and rehabilitative commercial facilities;*

26. Veterinary clinic with boarding facilities (allowed in Tract 4A and Tract 5A.2 only).

H. Permitted Uses Subject to Special Review – Factors to be Considered. The City of Billings may authorize the preceding special review uses through the Special Review Approval process if the proposed use conforms to the following standards and criteria. To make this determination the City shall conduct a public hearing and make findings of fact to determine whether:

1. The proposed use is consistent with the terms, intent and objectives of this Agreement;
2. The proposed use is compatible with surrounding uses;
3. The proposed use is not detrimental to other property in LENHARDT SQUARE;
4. The proposed use complies with other provisions of law and ordinances of the City of Billings;
5. Reviewer has given its written consent to the special use (Reviewer may, in its discretion, withhold its consent, and no special review shall be granted for any use in LENHARDT SQUARE without the express written consent of Reviewer);
6. The proposed use will not attract large volumes of vehicular traffic or create traffic congestion that cannot be properly managed and regulated with traffic control equipment;
7. The proposed use is of a similar architectural scale to existing development in the neighborhood, or will use an existing building for its purposes;
8. Minimum visual and functional conflict will be created between the proposed use and nearby uses;
9. Anticipated noise and congestion created by the proposed use will be comparable to the levels created by other uses permitted on that Unit.

I. Prohibited Uses. The following operations and uses shall not be permitted on any property in LENHARDT SQUARE, regardless of where the property is located:

1. Amusement park services or facilities;
2. Animal shelters, public or private;

3. Apparel fabrication;
4. Arcades, including but not limited to video arcades;
5. Auction houses or auction yards;
6. Auto body and collision repair;
7. Automobile repair shops;
8. Automotive Sales and Service. Any establishment engaged in automotive sales, leasing, repair, service, salvage, rental, or storage;
9. Auto parts supply;
10. Competitive sporting facilities as described in Article IV.J.9.
11. Beverage bottling plant or wholesaling operations;
12. Billboard signs;
13. Body Alteration Salons. Any establishment engaged in body painting, body piercing, or tattooing;
14. Brewery (except as incidental to a restaurant, such as a brew pub);
15. Broadcasting (radio and television) stations, studios and antenna support structures;
16. Building fabrication, except construction of buildings for use on-site;
17. Building construction operations other than for temporary, on-site construction by general contractors or subcontractors unless office-only without outside equipment or materials storage;
18. Bus terminal and maintenance facilities, except for shuttle bus storage facilities intended to service shuttle buses that operate solely within LENHARDT SQUARE or the immediately surrounding neighborhood;
19. Campground;
20. Car wash;

21. Casinos and gambling or gambling activity, as defined in M.C.A. 23-5-112, unless permitted with legally enforceable restrictions described in the CCRs;
22. Chain link fencing;
23. Crematoriums;
24. Dumping concrete, cement residue, refuse, dirt, garbage, or fill materials without authorization of property owner;
25. Drugs or drug paraphernalia. Using, promoting, or facilitating the use of illegal drugs or any business engaged in selling so-called drug paraphernalia;
26. Dry cleaning, laundry plant or public laundromat, but this prohibition shall not be applicable to facilities for pickup and delivery by the ultimate consumer;
27. Electronic component manufacturing;
28. Equipment rental shop;
29. Excavation. Businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;
30. Exotic dancing. Any establishment permitting exotic dancing, including semi-nude and nude clubs;
31. Extractive industries. Any establishment engaged in the sale, extraction, or storage of sand, gravel, or minerals unless such sale or storage is an ancillary part of a hardware, home-improvement, or similar retail store;
32. Fire sale or bankruptcy sale;
33. Fireworks. Fireworks manufacture and/or sales;
34. Flea markets;
35. Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations;
36. Foundries and factory operations;
37. Furniture fabrication;

38. Garbage handling.. Any dumping, disposing, incineration or reduction of garbage, but this prohibition shall not prohibit garbage compactors located near the rear of any building or small-scale recycling containers intended to collect recyclable materials as a convenience for neighborhood residents;

39. Gas or diesel stations;

40. Go-cart tracks;

41. Greenhouses for commercial or retail purposes;

42. Gun or archery range unless located within a structure and not visible or audible from outside the structure;

43. Guns and Ammunition. The sale of firearms and ammunition, unless incidental to a general retail store or sporting goods store;

44. Heavy equipment sales and service;

45. Ice manufacturing for resale of ice not intended for use on-site ;

46. Illegal Drugs. The sale, manufacture, or possession of illegal drugs;

47. Industrial production or manufacturing facilities;

48. Jails. Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities, except public facilities if permitted by Section 76-2-411, Montana Code Annotated;

49. Junk shops, second-hand stores, and antique stores;

50. Livestock and Wild Animals. No swine, poultry, goats, horses, cows, or other livestock or domestic or wild animals shall be kept on the property within LENHARDT SQUARE except for domestic pets and other animals specifically permitted under this Agreement and, which shall be subject to any applicable restrictions contained herein, and no agricultural grazing is allowed unless specifically permitted by Founders in accordance with this Agreement;

51. Livestock Production. Any establishment engaged in livestock production or slaughter, except for agricultural grazing permitted by Founders on undeveloped tracts within LENHARDT SQUARE;

52. Livestock and Farm Equipment. Any establishment engaged in the sale of livestock, ranch, or farm equipment;

- 53. Machine and welding shops;
- 54. Manufactured Homes and Manufactured Home Parks. The sale, use, maintenance, rental, repair or storage of manufactured housing or mobile homes;
- 55. Manufacturing businesses;
- 56. Metal fabrication and manufacturing;
- 57. Mill work and cabinet shops;
- 58. Motorized sports vehicle repair, storage, and/or sales (including parts sales);
- 59. Mining and Related Activities. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
- 60. Motocross tracks;
- 61. Motorcycle racing;
- 62. Nuisances. Any use that constitutes a nuisance under Article IV.J.3 of this Agreement.
- 63. Paper warehouses;
- 64. Pawn shops;
- 65. Power Poles and Overhead Power Lines. Installing new power poles and overhead power and utility lines; provided, however, this shall not prohibit existing power poles and lines and shall not prohibit adding new lines to the existing poles;
- 66. Product manufacturing unless the product is intended primarily for local consumption or use;
- 67. Propane sales;
- 68. Race tracks;
- 69. Recreational vehicles. The commercial sale, maintenance, rental, repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.

- 70. Recycling centers;
- 71. Rental car dealerships;
- 72. Vehicular, small engine and appliance repair shops;
- 73. Roller skating rinks;
- 74. Roping and rodeo arenas;
- 75. Sanitary dumps;
- 76. Scrap or waste material processing;
- 77. Septic systems;
- 78. Sexually Oriented Businesses. Sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations;
- 79. Repair shops. Shop facilities containing open or visible storage;
- 80. Stables;
- 81. Storage facilities other than garages associated with residential structures;
- 82. Super Stores. Retail sales uses (for goods and/or merchandise) by any person, firm, or entity that utilizes more than 40,000 square feet of any structure (nothing in this prohibition shall be interpreted to permit retail sales uses smaller than 40,000 square feet if otherwise prohibited in this Agreement);
- 83. Surplus store;
- 84. Taxidermists;
- 85. Tire sales, except as incidental to the operation of a general retail store;
- 86. Towers and Dishes. Freestanding communication and satellite towers and dishes greater than two (2) feet in diameter unless incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);
- 87. Trailer Parks and Campgrounds. Mobile home parks, trailer parks, recreational vehicle campgrounds, or any commercial establishment that permits over-night parking of recreational vehicles;

88. Truck Stop. Truck stop, as defined by Section 27-201 of the Unified Zoning Regulations;

89. Truck Terminals. Truck terminals, cartage operations, and similar uses;

90. Truck Wash. Truck wash as defined by Section 27-201 of the Unified Zoning Regulations;

91. Trucks. Sale, leasing, manufacture, rental or repair of trucks;

92. Trucking operation offices and warehouses;

93. Utility sub-stations and other utility installations other than utility lines, utility boxes, and other utility facilities used to service an individual Lot;

94. Warehouses;

95. Wholesale lumber and wholesale building materials;

96. Wild Animals and Livestock. Any establishment, structure, or enterprise housing any wild animals, poultry, or domestic livestock unless sold as domestic pets in a retail pet store;

97. Wholesale distribution and sales.

J. Other Use Regulations

1. **Continued Farming Operations.** Founders may, in their sole and unreviewable discretion permit farming operations (including livestock grazing) on undeveloped parcels within LENHARDT SQUARE on a case-by-case basis. No Unit may be farmed or flood-irrigated without the prior express written consent of Founders. Written consent to farm and to irrigate must be obtained on an annual basis. Livestock grazing, if permitted, will be limited to a reasonable carrying capacity that prevents overgrazing. Founders may prohibit farming and/or flood irrigation in LENHARDT SQUARE in the sole, exclusive and unreviewable discretion of Founders.

2. **Irrigation.** Founders, in their sole and unreviewable discretion, may elect to retain any shares in the irrigation district serving LENHARDT SQUARE, transfer such shares to the Master Association, or transfer such shares back to the irrigation district. Founders specifically reserve, and do not waive or abandon, irrigation and drainage easements for the conveyance of water and collection of waste water wherever irrigation or drainage ditches are currently located in LENHARDT SQUARE. Without limiting the foregoing, Founders currently believe that such ditches are currently located generally

along the north and south boundaries of the property. All such easements shall continue as long as flood irrigation is conducted on any Tract of LENHARDT SQUARE or as long as any such easement is necessary to convey or drain water for the benefit of an adjacent property owner. In addition, Founders reserve a fifteen (15) foot easement along the east boundary of Tract 1A for purposes of installing and maintaining a new irrigation drainage ditch for so long as flood irrigation is conducted on any Tract within LENHARDT SQUARE.

3. Nuisance. No nuisance shall be permitted to exist or operate on any property in LENHARDT SQUARE so as to be offensive or detrimental to other property or occupants in LENHARDT SQUARE. A nuisance includes, but is not limited to, any operations or uses that create vibration, electro-magnetic disturbances, radiation, air or water pollution, dust, emissions of odorous, toxic or nontoxic matter (including steam), and excessive noise; provided, however, that agricultural activities authorized by Founders shall not be considered a nuisance. No noxious, offensive, or hazardous activities shall be permitted upon any Unit in LENHARDT SQUARE, nor shall anything be done or placed upon any Unit that is or may become a nuisance to others. No light shall trespass onto another Unit unless approved by adjacent Unit owners or in conjunction with shared parking facilities, nor shall any light be produced from any Unit that is unreasonably bright or causes unreasonable glare. No sound shall be produced upon any Unit that is unreasonably loud or annoying, including but not limited to speakers, horns, whistles, bells, excessive barking, or other animal noises.

4. The Shiloh Drain. Any Unit Owner or Developer in LENHARDT SQUARE shall at all times conduct its use and activities in a manner that will preserve the integrity of the Shiloh Drain and the Shiloh Drain Easement Area, including preventing any degradation of water quality, any reduction in the flow of water, and any damage to the bed or banks of the Shiloh Drain. Certain portions of the Shiloh Drain Easement Area may require modifications during the course of development of LENHARDT SQUARE to accommodate storm drainage from within the property. No such modifications shall be made without first obtaining written permission from the City of Billings. The cost of these modifications shall be the responsibility of Developer or Unit Owner(s) requiring access for drainage to the Shiloh Drain. In addition to the foregoing, the owner of any Unit or Tract in LENHARDT SQUARE shall not conduct or permit the conduct of the following activities:

- (a) The discharge of any liquid (except storm water runoff as directed by an approved, engineered storm drainage management plan), solid, or gas into the Shiloh Drain;
- (b) Planting or dropping any non-native fish, animal, reptile, or plant into the Shiloh Drain area;
- (c) The dumping of grass clippings or landscaping material or debris

into the Shiloh Drain;

(d) Any activities that permit or encourage refuse dumping in the vicinity of the Shiloh Drain;

(e) Polluting water in the Shiloh Drain;

(f) The discharge of any Hazardous Materials. The term "Hazardous Materials" shall mean: petroleum products, asbestos, poly-chlorinated biphenyls, radioactive materials, and all other dangerous, toxic, or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. The term "Environmental Law" shall mean all federal, state, county, city, local, and other statutes, laws, ordinances, and regulations that relate or deal with human health or the environment, all as may be amended from time to time.

5. Domestic Pets Limitation. Unit Owners must comply with all ordinances or laws applicable to pet ownership. In addition, any establishment, commercial building, or single family residence may not house more than two (2) dogs and no more than a total of four (4) domestic pets other than fish (for example two (2) dogs and two (2) cats). Any Dwelling Unit in a multi-family residence facility may not house more than two (2) domestic pets (excluding fish). Any pet or animal shall be leashed at any time it is outdoors unless it is being kept in a fenced yard area. No pets shall be raised or cared for on a commercial basis except in a retail pet store or as otherwise allowed in this Agreement. Pet owners shall retrieve excrement deposited by household pets on public or private property and dispose of such excrement in a manner so as not to create a nuisance.

6. Inoperable and Junk Vehicles. No inoperable or junk vehicle shall be permitted to park on any street within LENHARDT SQUARE for a period of more than two (2) days and shall not be stored for more than seven (7) days on any Lot unless enclosed within a structure.

7. Recreational Vehicles. Recreational vehicles, including but not limited to snowmobiles, all-terrain vehicles, or motorcycles not licensed to operate on city streets shall not be permitted to operate within the confines of LENHARDT SQUARE. Recreational vehicles may not be stored for more than seven (7) cumulative days in any thirty (30) day period on any Lot unless enclosed within a structure or completely screened from view by a solid privacy fence.

8. Home Occupations. Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by Developers or an Owners Association, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations (Sec. 27-606). Vehicle trips to a dwelling not located in Tract 4A or

Tract 5A.2 where the occupant carries on a Home Occupation shall not exceed, on average, more than two (2) vehicle trips during any hour. A Home Occupation in Tract 4A or Tract 5A.2 is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

- (a) Hours of operation may extend from 7:30 A.M. to 9:00 P.M.;
- (b) The activity must constitute a permitted use in the mixed-use zone established in this Agreement;
- (c) The business may employ up to three persons, including the residents of the dwelling, who are present on the property at any given time or who visit the property at least once a day. The unit must meet any applicable building and fire codes; and
- (d) The business may employ sign advertising, but such advertising must be located on the Lot where the Home Occupation is located and shall comply with all applicable government regulations and private covenants or restrictions. In addition, any signage advertising a Home Occupation shall be displayed in a lobby or other place inside the structure where the business is located or, if located on or outside of the structure, the sign shall not exceed two (2) square feet in size. Only one sign may be displayed for each Home Occupation. Section 27-606(f) and (g) of the Unified Zoning Regulations shall not apply to such a business to the extent those provisions are inconsistent with this subparagraph.
- (e) Residents and Unit Owners are advised that carrying on certain Home Occupations, including those that include employees, may require compliance with special code requirements applicable to commercial establishment. All residents and Unit Owners are advised to consult with local building officials before establishing a Home Occupation. Residents and Unit Owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

9. Scheduled Sporting Events and Related Facilities. Parks and other Common Areas located in LENHARDT SQUARE are intended primarily for the benefit of residents of LENHARDT SQUARE and only secondarily for the benefit of other persons. Common Areas should be constructed to include attractive landscaping, benches, picnic and game tables, walkways, children's play facilities, and other amenities that serve the immediate neighborhood and appeal to a diversity of users. Amenities that promote traffic and parking congestion should be avoided as much as possible. To that end no Common Area shall be used for, and no Common Area shall be constructed to include infrastructure that is specifically intended to be used for the organized play of football, baseball, soccer, track, or other similar sports by competing teams on a

scheduled or regular basis. No permanent goal posts, field-striping, baseball diamonds, baseball pitching mounds, dugouts, or score boards shall be constructed in any Common Area. Nothing in this Agreement shall prohibit the construction of baseball backstops and outdoor basketball or tennis courts in the Common Areas

ARTICLE V – INFRASTRUCTURE AND TRACT DEVELOPMENT STANDARDS

A. Infrastructure Development Standards. The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute the Annexation Agreement that will prescribe additional standards for the dedication, construction and maintenance of public rights-of-way, streets, sidewalks, utilities, and other infrastructure in LENHARDT SQUARE. The standards described in the Annexation Agreement shall apply to all Tracts within LENHARDT SQUARE unless Developer applies for and obtains a variance from the City of Billings. All applications for variance must be approved in writing by Reviewer prior to submittal to the City. Reviewer may approve or disapprove the variance in its sole discretion.

B. Tract Development Standards. Tract development standards are provided to establish minimum guidelines for the development of facilities within LENHARDT SQUARE, including site work, buildings, accessory structures, parking, signage, lighting, fencing and landscaping. These standards establish the minimum construction requirements to be adopted by Developers within LENHARDT SQUARE. More detailed architectural and landscape design guidelines (Master Design Guidelines) will be adopted by the Founders pursuant to the CCRs to govern the aesthetic and functional standards for public areas, streetscape, pedestrian areas, buildings and signage. Developers may, subject to approval by the Reviewer, adopt more (but not less) detailed and/or stringent site, building and landscape design criteria to govern construction within their respective Tracts. All construction within LENHARDT SQUARE shall comply with the Unified Zoning Regulations, International Building Code, or any other building codes or building regulations applicable under local, state, or federal law.

1. Lot Size. Developers shall be responsible for submitting plats for further subdivision of each Tract to the City of Billings for subdivision approval. Within these plats, Lots designated for single family construction shall comply with the minimum size requirements described in Exhibit B. In accordance with Exhibit B, Lot size for multi-family, commercial, and mixed-use structures may vary in size depending upon the number of dwelling units contained in the structure. There are no maximum Lot size requirements. All Lots must comply with the lot coverage and setback standards set forth in this Agreement.

2. Lot Coverage. Lot coverage requirements are set forth in the General Requirements in Exhibit B and are based upon a percentage of total square footage of the Lot. The total combined lot coverage for all structures on any Lot shall not exceed the maximum requirements established in Exhibit B.

3. **Setbacks.** Minimum setback requirements are set forth in the General Requirements in Exhibit B.

4. **Parking.**

(a) **Required Parking.** Adequate parking shall be provided by each Unit Owner for residents, visitors, customers, renters, and employees. Parking requirements may be satisfied by on-site parking, approved street parking, off-site parking facilities, or any combination thereof. The following requirements shall apply in each zone:

(i) **MF-4.** At least two enclosed parking spaces must be provided for each Dwelling Unit in the MF-4 zone.

(ii) **MF-R.** Minimum parking requirements for multi-family residential uses shall be 1.5 parking spaces times the number of Dwelling Units (rounded to the next highest number of spaces). Except as provided hereafter, the maximum number of parking spaces shall not exceed 1.75 times the number of Dwelling Units (rounded to the next highest number of spaces). Developer may construct more than 1.75 parking spaces per Dwelling Unit, but all spaces in excess of that number must be incorporated as part of a structure that includes multi-family Dwelling Units or in a separate underground or multi-level parking facility. At least one parking stall for each Dwelling Unit shall be provided in covered or enclosed parking facilities. In order to insure adequate parking, parking spaces, including enclosed spaces, must be maintained in a manner that accommodates vehicle parking and may not be used primarily for non-vehicular storage.

(iii) **MU.** The minimum parking requirements for residential dwelling units within the MU district shall be determined as set forth in the attached Exhibit C. No more than ten percent (10%) of the area of any lot within Tract 4A or 5A.2 may be utilized for surface parking.

(b) **Joint Parking.** Joint parking agreements are encouraged. Unit Owners may enter into agreements with other Unit Owners located within a 600-foot radius to share parking spaces provided the agreement complies with the requirements set forth in Exhibit C. For uses not referenced in the joint use matrix found in Exhibit C, allowable joint use parking reductions requested by the Developer shall be determined by the City zoning coordinator with the consent of Reviewer up to, and not exceeding, a total reduction factor of 1.5.

(c) **Off-Site Parking.** Each off-site parking area shall be accessible

by a public right-of-way. If space is leased in an off-site parking area to meet minimum parking requirements, the term of any lease while minimum parking requirements are in effect shall be for the duration of the time that the building, use, or activity served by such parking area is in existence at such location. Each such lease shall be subject to prior review by the City of Billings and shall provide that if the right to use the designated off-site parking is for any reason terminated or forfeited the City shall be immediately advised. In case of such termination or forfeiture, all uses and activities so served shall cease until adequate off-street parking meeting the requirements of this Agreement is again provided. All requirements for setbacks, landscaping, signage, and lighting established in this Agreement, the CCRs, and/or the Master Design Guidelines or other applicable standards shall apply to off-site parking facilities. All off-site and on-site parking facilities shall satisfy any applicable handicapped accessibility requirements. Off-site parking shall be located within six hundred (600) feet of the building or use for which it is required, which distance shall be measured along a straight line between the two (2) nearest points of the Lots containing the main use and the accessory parking use.

(d) **Garages.** The incorporation of multi-level parking garages into principal building structures in the Mixed-Use and Multi-Family-Restricted zones is encouraged. Ground level parking garages shall be limited to 2,500 square feet and may accommodate no more than ten (10) vehicles unless approved by the Reviewer. Freestanding multi-level parking garages shall be considered a principal structure. A minimum of ten (10) feet, or the applicable IBC minimum standard, whichever is greater, shall be maintained between garages and other structures. Parking garages must conform to CCRs and Master Design Guidelines.

(e) **Landscaping.** Parking lots shall be landscaped in accordance with the CCRs and the Master Design Guidelines.

5. Right-of-Way and Landscaped Green Belt Improvements Generally.
A minimum 10-foot landscaped green belt, which may be incorporated into any required building setback, shall be landscaped and maintained along any property line that abuts the Shiloh Drain or a public or private right-of-way or street unless the same is bordered by a developed Pathway or Linear Parkway maintained by the Master Association, an Owners Association, or the City. Founders shall establish design standards for such landscaped green belt areas. Developers shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. Unless maintenance responsibilities are specifically accepted by the Master Association and/or City, Unit Owners shall maintain their yards as well as the space in the landscaped green belt area and any easement or right-of-way up to the back of the curb, the edge of paving of the street, or the midline of any easement not bordering a street, in conformance with the CCRs and Master Design Guidelines. Landscaped green belts and

required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

6. Average Density Limits. The number of residential Dwelling Units shall not exceed the maximum density-per-acre limits set forth in Exhibit B. For purposes of determining compliance with this requirement, an “acre” shall be the gross acreage of the development less the area actually devoted to the open space and public roads conceptually depicted on the Master Plan. Average density limits shall be measured by evaluating the average, overall per-acre density for each part of a Developer’s project that is subject to a different density limitation. Density limits shall not be measured by evaluating the actual density for each individual acre. Actual per-acre densities in a particular part of a Developer’s project area may be higher than the allowed limits if the average density for the Developer’s property in each zone as a whole complies with the density limitations set out in Exhibit B.

7. Landscaped Green Belts Along King Avenue, C/S 2064, C/S 3125 and C/S 1400. A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of all Units in Tracts 1A and 5A adjoining King Avenue. A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of Tract 4A adjoining King Avenue. A minimum fifteen (15) foot wide landscaped green belt shall be maintained inside the property line of the portion of Tract 1A adjoining C/S 2064 (Tracts 6B), C/S 3125 (Tract 4A), and C/S 1400 (Tract 1A). The Developers of Tracts 1A, 4A, and 5A shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. The landscaped green belts described in this paragraph shall be maintained in accordance with Article V.B.5. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

8. Loading, Storage and Service Areas. Loading and service areas shall not be permitted in the front of any Lot or in any side yard adjacent to and visible from a street within LENHARDT SQUARE and shall be subject to design standards adopted by the Founders.

9. Fence, Wall, Berms and Hedge Improvements. Fences, walls, berms and hedges within LENHARDT SQUARE shall be constructed according to the following minimum standards:

- (a) All improvements shall comply with the City of Billings, Montana clear vision standards and the maximum height restrictions set forth in Exhibit B;
- (b) All improvements shall comply with the CCRs and Master Design Guidelines;
- (c) A permit shall be obtained from the City prior to constructing any

fence over six (6) feet in height or any wall over four (4) feet in height.

10. Accessory Structures. Detached accessory structures other than garages shall be no larger than 300 square feet. A minimum of 5 feet, or the applicable Unified Zoning Regulations minimum standard, whichever is greater, shall be maintained between detached accessory structures other than garages and any other structure. All detached accessory structures must conform to the CCRs and Master Design Guidelines. Accessory structures in Tract 4A and Tract 5A.2 are subject to special review in accordance with Article V.G.1. above.

11. Projections. In Tracts other than Tract 4A and Tract 5A.2, awnings, stoops, open porches, balconies, bay windows, cantilevered decks, permitted signage, and similar projections may extend into fifty percent (50%) of the width of any required building setback provided the projection does not cause a hazard or interfere with any improved Linear Parkway located within the setback. In Tract 4A and Tract 5A.2 such projections may extend to, but not over, the boundary of the public right-of-way. The lowest point of any projection must be at least eight (8') feet beyond the surface of any sidewalk, pathway, driveway or other travel surface located below the projection.

12. Signage. The signage requirements included in Article 27-700 of the Unified Zoning Regulations ("Sign Code") and any subsequent amendments thereto shall govern the regulation of signage in LENHARDT SQUARE so far as they are not inconsistent with this Agreement. To the extent that different Sign Code regulations apply depending upon the zoning category where the signage is located, for this purpose only Tracts 1A and 3A shall be deemed to be a residential professional zone; Tracts 4A and 5A.2 shall be deemed to be a commercial zone; and Tracts 5A.1 and 2A shall be deemed to be a residential zone. For purposes of regulating signage the mixed-used areas (Tract 4A and Tract 5A.2) shall be subject to the same regulations that govern the Central Business District, including Ordinance No. 07-5437 approved October 22, 2007 amending Section 27-705(c) of the Unified Zoning Regulations. In addition all signs shall comply with CCRs and Master Design Guidelines.

13. Lighting.

(a) All outdoor pole lighting shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than twenty (20) feet above grade;

(b) All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

(c) Canopy, marquee and "wall pack" lighting shall be fully shielded. No internally illuminated fascia shall be allowed.

(d) All lighting shall comply with CCRs and Master Design Guidelines.

14. Design Standards. Additional Design Standards may be included within the CCRs and/or Founders may adopt Master Design Guidelines for use in LENHARDT SQUARE. Such standards and guidelines shall govern building, landscape and Common Area construction. Developers may adopt more stringent standards or guidelines and/or additional compatible standards or guidelines for areas located within the Tract being developed, provided such standards or guidelines are compatible with the Master Design Guidelines and approved by the Reviewer. All construction within LENHARDT SQUARE shall comply with the International Building Code, the International Fire Code, and any other building codes or building regulations applicable under local, state, or federal law.

ARTICLE VI – OPEN SPACE

A. Master Plan Common Areas Generally. Founders hereby agree that certain portions of LENHARDT SQUARE will be permanently set aside for park and recreational uses sufficient to meet the needs of the residents of LENHARDT SQUARE. Founders further agree that they will cause an easement for pedestrian and bike travel by the general public to be dedicated in or near the Shiloh Drain Easement Area for inclusion in the Heritage Trail System. The lands set aside in accordance with this Article VI.A. will include the Master Common Areas shown on the Master Plan (Exhibit A) and may include, but are not limited to, open spaces, Green Roofs and other roof-top amenities, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. The total acreage set aside for park and recreational use as depicted on Exhibit A is approximately 15.35 acres. The general size, location, and design of Master Common Areas described in this Agreement and designated in the Master Plan are conceptual in nature and are subject to modification by Founders and future Developers through the platting process. Any such modifications must, however, be approved by the Reviewer, and the City of Billings must receive the consent of the Reviewer prior to approving any plat that modifies the size, location, or design of the Master Common Areas described herein. The City of Billings shall be entitled to review and approve any material reduction in the size of the Master Common Areas or material change of the function of those areas if such reduction or change would entitle the City to withdraw its waiver of statutory and local park dedication requirements mandated under M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A. Nothing in this Agreement shall prohibit a Developer from establishing Developer Common Areas within its Tract, provided maintenance of such additional common areas shall be the responsibility of the Developer and/or any Owners Association created by the Developer, unless the Master Association agrees in writing to undertake such maintenance responsibilities.

Developers may agree to assume maintenance responsibilities for Master Common Areas by entering into a written agreement with the Master Association.

B. Annexation Agreement to Prescribe Standards for Common Areas. The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute an annexation agreement that will prescribe standards for the designation, development, and maintenance of parks and other Common Areas in LENHARDT SQUARE. Although the particular terms of the annexation agreement will be determined later, it is currently anticipated that the agreement will address these and other issues: (1) waiver by the City of statutory and local regulatory park dedication requirements in accordance with M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A.; (2) maintenance obligations of the Master Association, Developers and the City; (3) construction standards for linear parkways; and (4) mutual easements for the construction and maintenance of Common Areas on private and public property.

C. Roof-Top Amenity Areas. The roof area of each building over forty feet (40") in height (measured to the top of the enclosed structure and not including non-enclosed structures, towers, antennae, etc.) in a mixed-use zone (Tract 4A and Tract 5A.2) shall include roof-top amenities that comply with this Agreement. Such roof-top amenities may include, but are not limited to, one or more of the following: Green Roofs, gardens, pools, terraces, decks, balconies, porches, atriums, greenhouses, picnic areas, recreational facilities, or similar amenities. For purposes of this Article VI.C. "roof area" shall include both the roof structure immediately above the uppermost floor of the building and also any horizontal setback areas created when a floor of the building is recessed from the line of the façade of the floor below. One hundred percent of each roof area not necessary for the use, storage, or operation of mechanical equipment related to the function of the building shall be devoted to such roof-top amenities unless the Reviewer grants a partial exemption from this requirement after receiving a written request from the Developer. The Reviewer may exempt part of the roof area from this requirement if the Reviewer determines in its discretion that the portion proposed for exemption is too small, inaccessible, or otherwise unavailable for reasonable construction or maintenance as a roof-top amenity. All roof-top amenities shall be professionally designed and constructed and shall comply with all applicable building codes, ordinances, and laws. ~~Neither Reviewer nor the City~~ shall not be required to review any building design, specifications or drawings for compliance with such codes, ordinances, laws or other building standards and therefore shall not be responsible for any violation of the same or any negligence in the design or construction of any roof-top amenity or other element of any structure. All roof-top amenities shall be well constructed, according to any applicable building and safety codes, repaired, and maintained so that they provide a useful and attractive area for the private or semi-private use of tenants or owners in the subject building or adjacent mixed-use neighborhood in the Tract.

ARTICLE VII - CROSS EASEMENTS FOR PEDESTRIANS AND VEHICLES

At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the Common Areas of LENHARDT SQUARE (or the Tract) devoted to pedestrian walkways, bike paths, and private roadways intended for common use.. At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of LENHARDT SQUARE (or the Tract).

ARTICLE VIII - ENFORCEMENT

A. Statement of Purpose. The parties acknowledge that from time to time disputes may arise involving the City, Founders, Unit Owners, the Master Association, Owners Associations, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

B. Right to Enforce by City. The terms of this Agreement may be enforced by the City as provided for in Article 27-1600 of the City Code of Billings, Montana.

C. Right to Enforce by Unit Owners and Master Association. 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 LENHARDT SQUARE and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as the Unit Owners within LENHARDT SQUARE. The parties further agree that the Master Association shall have standing to enforce the terms of this Agreement relative to the City or any Unit Owner or Owners Association regardless of whether the Master Association owns property in LENHARDT SQUARE. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

ARTICLE IX –AMENDMENTS AND VARIANCES

A. Amendments or Changes. Amendments or changes to this Planned Development Agreement shall be processed using the same procedures 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:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent. ~~five (5) percent~~;
3. Create additional allowed uses;
4. Reduce open space greater than two (2) percent in any Tract; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

B. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not listed within this Agreement or for uses prohibited within the Unified Zoning Regulations.

C. Zone Change Procedures. Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

ARTICLE X - GENERAL PROVISIONS

A. Neutral Interpretation. Founders and the City hereby stipulate and agree that this Agreement shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party.

B. Coordination with Other Regulations. In the event that there is any conflict between this Planned Development Agreement and other zoning regulations and/or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Planned Development Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of LENHARDT SQUARE either by its 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 and/or ordinances applicable to LENHARDT SQUARE are subsequently amended, the amended version of such regulations and/or ordinances shall likewise continue to be applicable to LENHARDT SQUARE to the extent they are not inconsistent with this Agreement.

C. Streets. Founders have provided a list of names for future streets in LENHARDT SQUARE. Developers may use any of these names without further approval of Founders. Proposed street names not contained on this list must be approved by Founders prior to adoption

by the City. Both street names and addresses shall be determined in cooperation with the City and the City Fire Department.

D. 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 thereof 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 receipt therefore.

All notices or demands to Founders or the City shall be given at the following addresses or such other addresses as Founders or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Founders:

Lenhardt Property, LP
4035 Cedarbrook Court
Bellingham, WA 98229-5007

[and]

Lenhardt Enterprises, LLC
c/o Allan R. Lenhardt
240 East Drive
Baton Rouge, LA 70806

[and]

Lenhardt Farm, LLC
c/o Janice L. Rehberg
4401 Highway 3
Billings, MT 59106

With copies to:

William A. Cole
Cole Law Firm, PLLC
3860 Avenue B, Suite C West
Billings, MT 59102-7550

If to the City:

City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

With Copies to:

City-County Planning Department
510 N. Broadway, 4th Floor Parmly Library
330

Billings, MT 59101

City Attorney's Office
P.O. Box 1178
Billings, MT 59103-1178

E. 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.

F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

G. Limitation on Enforcement. This Agreement is for the benefit of Founders, the City, the Unit Owners, the Master Association, and their heirs, devisees, assigns, and trustees, and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce the covenants, conditions, and restrictions contained herein, judicially or otherwise.

H. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restrictions, terrorist acts, governmental regulations, inclement weather, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

I. Attorneys' Fees and Costs. In the event either party shall file any proceeding, whether at law or in equity, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court costs, if any, from the other party.

J. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

K. No Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

L. Captions and Headings. The paragraph headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no

way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

M. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

N. Construction. In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

O. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

P. Recordation. This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Yellowstone, State of Montana.

NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN LENHARDT SQUARE, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN LENHARDT SQUARE, AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.

Q. Run with the Land. The terms and conditions of this Agreement shall run with the land, and shall be binding upon and shall inure to the benefit of Founders, the City, Developers, Unit Owners, the Master Association, and their heirs, successors, and assigns.

R. Contact Person. The Founders hereby designate a contact person who may be contacted with respect to any questions, comments, or concerns. The contact person shall be Janice Rehberg, 4401 Highway 3, Billings, MT 59106.

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

FOUNDERS:

LENHARDT PROPERTY, LP

By: _____

LORRAINE NEWMAN

Its: _____

LENHARDT FARM, LLC

By: _____

JANICE L. REHBERG

Its: _____

LENHARDT ENTERPRISES, LLC

By: _____

ALLAN R. LENHARDT

Its: _____

CITY:

CITY OF BILLINGS

By: _____

Ron Tussing

Its: Mayor

By: _____

Cari Martin

Its: City Clerk

County of _____)

[signature]

[typed/printed name]

Notary Public for the State of _____

Residing at: _____, _____

My Commission Expires: _____, 20____

County of _____)

[signature]

[typed/printed name]

Notary Public for the State of _____

Residing at: _____, _____

My Commission Expires: _____, 20____

STATE OF MONTANA)
)ss.
County of Yellowstone)

 This instrument was acknowledged before me on the ____ day of _____, 2008, by
Allan R. Lenhardt known to me to the _____ of Lenhardt Enterprises, LLC

[signature]

[typed/printed name]
Notary Public for the State of Montana
Residing at: _____, Montana
My Commission Expires: _____, 20__

STATE OF MONTANA)
)ss.
County of Yellowstone)

 This instrument was acknowledged before me on the ____ day of _____, 2008, by
Ron Tussing, known by me to be the Mayor of the City of Billings.

[signature]

[typed/printed name]
Notary Public for the State of Montana
Residing at: _____, Montana
My Commission Expires: _____, 20__

STATE OF MONTANA)
)ss.
County of Yellowstone)

 This instrument was acknowledged before me on the ____ day of _____, 2008, by
Cari Martin, known by me to be the City Clerk of the City of Billings.

[signature]

[typed/printed name]

Notary Public for the State of Montana

Residing at: _____, Montana

My Commission Expires: _____, 20__

EXHIBIT A

* Streets and area shown as right-of-way will be stricken and the area added to the developable area of each Tract

EXHIBIT B
GENERAL REQUIREMENTS*

<i>Minimum Lot Size Per Structure</i>	<i>MF-4**</i>	<i>MF-R**</i>	<i>MU**</i>
1 dwelling unit	6,000	6,000	
2 dwelling units	7,000	7,000	
3 dwelling units	8,500	8,500	
4 dwelling units	10,000	10,000	
5 dwelling units		11,000	
6 dwelling units		12,000	
7 dwelling units		13,000	
8 dwelling units		14,500	
9 dwelling units		16,000	
10 or more dwelling units		1,500 sq ft each additional dwelling unit	
<i>Setback Requirements (in feet)⁴</i>			
Front:²			
From Linear Parkway closest to building	5³	5	5
From streets (56 ft. right-of-way)	20³	20	0⁴
Sides:⁵			
1 Story	5	5	5
2 Story	8	8	8
3+ Story	9 + 1	9 + 1	0
Side Adjacent to Street	10	10	0
Rear⁵	20	15	0
Arterials	25	25	25
Maximum Height (in feet)	34	40	80⁶
Maximum Lot Coverage	50%	50%	100%

<i>Maximum Average Densities Dwelling Units/Acre e)</i>	10	20 (Tract 1A) 15 (Tract 3A) 20⁷	
<i>Fence/Wall/Berm/Shrub Max. Height</i>			
Front Yard and Adjacent to Street	2	2	2
Rear and Side Yards not on Street	8	8	6

* The limitations described in this table are subject to, and in no way supersede, all applicable building codes and regulations. Developers shall at all times comply with the International Building Code, the International Fire Code, and all other local, state, or federal building codes or regulations.

** As of the date this Agreement was originally approved, these zones correspond to the following Tracts: MF-4 (Tract 2A, Tract 5A.1); MF-R (Tract 1A, Tract 3A); MU (Tract 4A, Tract 5A.2).

¹ Upon request, Reviewer may in its sole discretion authorize a reduction in the setback requirements of up to 10%.

² Pursuant to Master Design Guidelines and upon approval of Reviewer, front setback may be reduced to 0 feet, provided structure is a minimum of 5 feet from hard surface walkway or bikeway.

³ Staggered and angled placement allowed; one structural corner of structure must be at setback line if set at angle, while 20% of façade must be at setback for staggered parallel placement.

⁴ At 40 feet or 3 stories visible from street, remainder of floors must be set back at least 30% of the depth of the lot.

⁵ Zero lot lines allowed pursuant to 27-617 Unified Zoning Regulations and for accessory structures and garages.

⁶ Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15') above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

~~⁷ Upon request of the applicant and consent of the Reviewer, the zoning coordinator may approve in his or her discretion and without further hearing, review or approval average density limits that are up to ten percent (10%) greater than the standard limits described herein if the zoning coordinator determines that the increase in density would not materially prejudice any neighboring or nearby property.~~

EXHIBIT C

PART 1

PARKING REQUIREMENTS – MIXED-USE ZONE

<i>TYPE OF USE</i>	<i>REQUIRED PARKING (spaces / dwelling unit)</i>
Residential	1.0/dwelling unit
Lodging	1.0/bedroom
Office	2.0/1,000 square feet
Retail	3.0/1,000 square feet
Other Uses	To be determined by Zoning Coordinator

*upon request
of Developer
and consent of
Reviewer*

PART 2
JOINT PARKING FACTORS REDUCTION MATRIX

Joint use parking agreements may result in a reduction of the combined parking requirements for the Units entering into the agreement. Allowable reductions shall be determined using the following joint parking reduction matrix by dividing the sum of the required parking minimums for each use as specified in Exhibit C, Part 1 by the joint parking reduction factor set forth in the following matrix.

	<i>RESIDENTIAL</i>	<i>LODGING</i>	<i>OFFICE</i>
<i>RESIDENTIAL</i>	<i>1</i>	<i>1.1</i>	<i>1.4</i>
<i>LODGING</i>	<i>1.1</i>	<i>1</i>	<i>1.7</i>
<i>OFFICE</i>	<i>1.4</i>	<i>1.7</i>	<i>1</i>
<i>RETAIL</i>	<i>1.2</i>	<i>1.3</i>	<i>1.2</i>

Example: A residential building with ten units requires 10 parking spaces and a neighboring 2,000 square feet office building requires 4 parking spaces. The adjusted minimum parking requirement for the two buildings is 10. ($10 + 4 = 14 \div 1.4 = 10$). Similarly the adjusted minimum parking requirement for a ten unit residential unit and a 3,000 square foot retail store would be 16. ($16 + 9 = 19 \div 1.2 = 15.83$). (Any remainder shall be rounded up.)

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