

CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

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

AGENDA

COUNCIL CHAMBERS

May 12, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Clark

ROLL CALL

MINUTES – April 28, 2008

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 10b, AND 11 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

1. A. **Bid Awards:**

(1) **Airport Improvement Program (AIP) 34 Airport Perimeter Security Fence Project** (Opened 4/15/08) Delayed from 4/28/08. Recommend Frontier Fence, \$655,255.53.
[\(Corresponding Staff Memo A1\)](#)

B. **Change Order #8**, Dehler Park - Front Entry Plaza Lighting, Langlas and Associates, Inc., \$12,385.00.

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

C. Approval of Assignment of the Limited Commercial Aviation Ground Lease with Corporate Jet, LLC, to Stockman Bank for financing purposes, at no cost to the City.

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

D. Approval of Assignment of the Commercial Aviation Ground Lease for Fuel Farm Site with Corporate Jet, LLC, to Stockman Bank for financing purposes, at no cost to the City.

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

E. Acceptance of Federal Aviation Administration Airport Improvement Program Grant 34.

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

F. Approval of Downtown Revolving Loan Fund for Bin 119, LLC, \$77,000.00.

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

G. Approval of State Revolving Loan Fund Application to supplement 2008 water line replacement expense - \$1,700,000.00; and 2008 sanitary sewer line replacement expense - \$3,500,000.00.

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

H. Notice of Intent to Create a Railroad Quiet Zone at the 27th Street, 28th Street, and 29th Street railroad crossings.

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

I. Acknowledging Receipt of Petition to Annex #08-07: 4.765 acres described as Tract 1, Certificate of Survey 2350, generally located on the northeast corner of King Avenue East and Calhoun Lane, Robert Medvec, owner and petitioner, and setting a public hearing date for 5/27/08.

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

J. W.O. 04-33 Lake Elmo Drive (Hilltop to Wicks Lane) Right-of-Way Acquisition:

(1) **Parcel 44:** Portion of Tract 1B, Certificate of Survey 2121 Amended, Lake Elmo Limited Partnership, \$12,900.00.

[\(Corresponding Staff Memo J1\)](#)

K. Street Closure: Central Heights PTA Community Fun Run, May 31, 2008, 8:30 a.m. to 10:30 a.m., commencing at 120 Lexington Drive, north on Lexington Drive, west on Eldorado Drive, south on Pueblo Drive, east on Alamo Drive, north on Lexington Drive, east on Eldorado Drive, north on S. Santa Fe Drive, east on Concord Drive, south on Birchwood Drive; west on Beloit Drive, northwest on Fair Park Drive, southeast on S. Santa Fe Drive, south on Berthoud Drive, west on Pueblo Drive, north on Pueblo Drive, east on Beloit Drive, northwest on Lexington Drive, west on Dallas

Drive, north on Pueblo Drive, east on Eldorado Drive, and south on Lexington Drive.
[\(Corresponding Staff Memo K\)](#)

L. (a) Approval and Acceptance of Financial Donations from Lyle Johnson, \$10,748.00, for concrete base to display and secure his bronze sculpture of Ed Bayne; and from Bill Rains, \$5,818.00, for concrete base to display and secure his bronze sculpture of Dave McNally, to be placed in the entry plaza of Dehler Park.
[\(Corresponding Staff Memo La\)](#)

(b) Change Order #9, Two concrete bases for display of Ed Bayne and Dave McNally bronze sculptures, Langlas & Associates, \$16,566.00.
[\(Corresponding Staff Memo Lb\)](#)

M. Approval and Acceptance of Anonymous Donation to the Police Department for trauma first aid kits and training, \$2,613.00.
[\(Corresponding Staff Memo M\)](#)

N. Approval and Acceptance of Donations from the Yellowstone County Homeless Board on behalf of the Mayor's Committee on Homelessness' Project Homeless Connect, \$2,500.00; and the Billings Area Resource Network, \$640.79.
[\(Corresponding Staff Memo N\)](#)

O. Approval and Acceptance of Donation to the Billings Animal Shelter from William E. Coburn in honor of Jayne Winegardner, \$500.00.
[\(Corresponding Staff Memo O\)](#)

P. Approval of Donation of spare parking meters by the City of Billings Parking Division to the Downtown Business Improvement District and the Mayor's Committee on Homelessness for the "Spare Change for Real Change" Program at no cost to the City.
[\(Corresponding Staff Memo P\)](#)

Q. Grant Application Request to submit HUD Federal Housing Initiatives Program (FHIP) application and accept award, \$100,000.00 maximum.
[\(Corresponding Staff Memo Q\)](#)

R. Second/Final Reading Ordinance repealing Ordinance 07-5441 and creating the South Billings Boulevard Urban Renewal District.
[\(Corresponding Staff Memo R\)](#)

S. Second/Final Reading Ordinance Expanding Ward III (Annexation #08-01) for an approximate 114-acre parcel legally described as Tracts 1A through 5A, Certificate of Survey 2063, Amended. Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, owners.
[\(Corresponding Staff Memo S\)](#)

T. Bills and Payroll

(1) April 11, 2008

[\(Corresponding Staff Memo T1\)](#)

(2) April 18, 2008

[\(Corresponding Staff Memo T2\)](#)

(3) January 1, 2008 – January 31, 2008 (Municipal Court)

[\(Corresponding Staff Memo T3\)](#)

(4) February 1, 2008 – February 29, 2008 (Municipal Court)

[\(Corresponding Staff Memo T4\)](#)

(5) March 1, 2008 – March 31, 2008 (Municipal Court)

[\(Corresponding Staff Memo T5\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. INCREASE IN CHANGE ORDER APPROVAL LIMIT for City Administrator for SID 1379 – King Avenue West.

[\(Corresponding Staff Memo 2\)](#)

3. COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP PROGRAMS AND THE FY2008-2009 ANNUAL ACTION PLAN. Public hearing held April 28, 2008; final action delayed until May 12, 2008. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 3\)](#)

4. CONTINUANCE OF PUBLIC HEARING AND APPROVAL OF AGREEMENT with Real Estate Dynamics, Inc. for King's Green Subdivision, Phase III, for the construction of 14 new homes. (Continued from 4/28/08) Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 4\)](#)

5. PUBLIC HEARING AND RESOLUTION approving and adopting third quarter budget amendments for Fiscal Year 2007-2008. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 5\)](#)

6. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in Annex #08-06, a

20.6-acre parcel legally described as Tracts 1A, 1B, and 1C, Amended Tract 1, C/S 2055, and located north of Alkali Creek Road. Jim Pickens, Best Development Corporation, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 6\)](#)

7. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-08-03: A variance from Section 1203(j) of the Site Development Ordinance regarding off-street parking for a proposed medical facility at 1407 Wyoming Avenue, Mike Stock, Wyoming Plaza, LLC, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 7\)](#)

8. PUBLIC HEARING AND RESOLUTION CREATING EXPANDED PMD #4026 to include Twin Oaks Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

9. PUBLIC HEARING AND RESOLUTION vacating a portion of North 26th Street and 2nd Avenue N., Big Sky Economic Development Agency (BSEDA) and Downtown Billings Partnership (DBP), owners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 9\)](#)

10. (a) PUBLIC HEARING AND RESOLUTION approving the sale of approximately 10 acres in Cottonwood Park to School District No. 2. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 10a\)](#)

(b) CONSIDERATION AND APPROVAL of the Cottonwood Park School Site Purchase and Sale Agreement. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 10b\)](#)

11. MAINTENANCE AGREEMENT with Montana Department of Transportation for improvements to Rimrock Road from Shiloh Road to 54th Street West. Staff recommends approval. (Action: approval or disapproval of staff recommendations.)

[\(Corresponding Staff Memo 11\)](#)

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

Council Initiatives

ADJOURN

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

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

A₁

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 12, 2008

TITLE: Award of Airport Improvement Program (AIP) 34 Airport Perimeter Security Fence Project

DEPARTMENT: Aviation and transit

PRESENTED BY: Tom 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 replacement of the Airport Perimeter Security Fence. This project will replace approximately 20,000 lineal feet of perimeter security fence that does not comply with current Transportation Security Administration (TSA) or Federal Aviation Administration (FAA) standards on the west, east, and north sides of the Airport. The new chain link fence will be 7' tall with an additional 1' of barbed wire on the top. Additionally, this project will also enhance the Airport's Federally Mandated Wildlife Hazard Management Plan by installing wildlife deterrents a minimum of 6' on the outside of the fence. In most cases an 8' wide by 6" deep section of roto-milled tailings will provide a non-diggable surface as a deterrent. Where the fence is placed in steep ravines or on rock the project calls for the installation of a 6' piece of chain link fabric attached to the bottom of the fence and secured to the surrounding terrain.

This project was advertised in the *Billings Times* for three weeks, and was posted on the City's Web site. On April 15, 2008, the following bids on this project were received:

CONTRACTOR

Frontier Fence
Custom Fencing
Crooked Fork Fencing
S&L Industrial
Jares Fence
Grizzly Fence
ESTIMATE

BASE BID AND ALTERNATES

\$ 655,255.53	
\$ 691,391.94 (Non Responsive)	
\$ 709,584.36	
\$ 745,698.40	
\$ 751,010.00	
\$ 986,622.00	
\$1,300,000.00	

During the review of all the proposal forms, it was discovered that Custom Fencing did not correctly submit the bid proposal form in the format required by the Bid Documents. The City's Legal Department reviewed the Instructions to Bidders portion of the Bid Document and agreed

that Custom Fencing's bid proposal did not meet the Bid Documents requirements and was subsequently non responsive and should not be considered. The City of Billings has previously rejected past bids that contained similar errors.

FINANCIAL IMPACT: The total cost of the project is \$655,255.53, and will be funded through a 95% FAA AIP entitlement grant with a 5% local match. The FAA's portion will be \$622,492.75, and the City's match is \$32,762.78, which is available in the Airport's Capital budget.

RECOMMENDATION

Staff recommends that City Council approve the award of the AIP 34 Airport Perimeter Security Fence project to the low responsive bidder Frontier Fence, for the amount of \$655,255.53.

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

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

B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Change Order #8 to Contract for Dehler Park

DEPARTMENT: Parks, Recreation, and Public Lands Department (PRPL)

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: As part of the re-design of the front entry plaza, it was determined that additional lighting was necessary to meet the safe minimum lighting requirements for the area. Four light fixtures mounted on poles are required to achieve the necessary light levels.

FINANCIAL IMPACT: The financial impact will be a net *increase* to the project of \$12,385.00 (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 funds available in the project account.

ALTERNATIVES ANALIZED:

- Accept Change Order No. Eight (8) to fund the additional lighting in the entry plaza or,
- Reject the change order.

RECOMMENDATION: Staff recommends accepting Change Order No. Eight (8) to fund the above items.

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

Attachment A: Change Order No. Eight (8) (2 pages)

Attachment A

CHANGE ORDER

No. Eight (8)

PROJECT: Billings Baseball
And Multi-Use Stadium **DATE OF ISSUANCE:** May13, 2008

OWNER: City of Billings **OWNER'S PROJECT NO.**_____
(Name & Address) 510 N. Broadway, 4th Floor
Billings, MT 59101

CONTRACTOR: Langlas and Associates, Inc. **ARCHITECT:** HNTB Montana
2270 Grant Road
Billings, MT 59102 **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:

Provide and install complete 4 additional lights and poles in the entry plaza.

Attachments: Exhibit A: Letter from Langlas and Associates (February 26, 2008).

CHANGE IN CONTRACT PRICE:

Original Contract Price

\$ 11,459,800.00

CHANGE IN CONTRACT TIME:

Original Contract Time

June 30, 2008
days or date

Previous Change Orders:

- No. 1 \$(279,358.00)
- No. 2 \$33,655.00
- No. 3 \$(21,860.00)
- No. 4 \$84,950.00
- No. 5 \$13,069.00

Net Change from previous Change

Orders

None
days

- No. 6 \$4,242.00
- No. 7 \$7,072.00

Contract Price prior to this Change Order

\$ 11,301,570.00

Net *increase* of this Change Order

\$ 12,385.00

Contract Price with approved Change Order

\$ 11,313,955.00

Contract Time prior to this Change Order

June 30, 2008
days or date

Net Increase (decrease) of this Change Order

None
Days

Contract Time with approved Change Order

June 30, 2008
days or date

RECOMMENDED:

By _____
Architect

APPROVED:

By _____
Owner

APPROVED:

By _____
Contractor

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Assignment of Limited Commercial Aviation Ground Lease with Corporate Jet, LLC to Stockman 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 April 14, 2008, the City Council approved an Assignment of the Limited Commercial Aviation Ground Lease by and between Corporate Air and the City of Billings to Corporate Jet, LLC, so that Corporate Jet, LLC could utilize the facilities located on the leased premises for its new Fixed Base Operator (FBO) business. Corporate Air and Corporate Jet, LLC have entered into an asset purchase agreement so that Corporate Jet, LLC could purchase the large Corporate Air hangar located on the leasehold. Corporate Jet, LLC is working with Stockman 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 Corporate Air, as Stockman Bank seeks to secure its loan for the costs of the hangar purchase by Corporate Jet, LLC.

FINANCIAL IMPACT: There would be no financial impact to the City, as Corporate Jet, LLC will still be required to pay the annual ground lease rentals as established in the Lease dated December 18, 2006, by and between Corporate Air and the City of Billings and subsequently assigned to Corporate Jet, LLC on April 14, 2008.

RECOMMENDATION

Staff recommends that Council approve the Assignment of the Limited Commercial Aviation Ground Lease with Corporate Jet, LLC to Stockman Bank, to secure the bank's loan to Corporate Jet, LLC for the cost of the hangar purchase from Corporate Air.

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

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

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Assignment of Commercial Aviation Ground Lease for a Fuel Farm Site with Corporate Jet, LLC to Stockman 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 December 10, 2007, the City Council approved a Commercial Aviation Ground Lease for a Fuel Farm Site by and between Corporate Jet, LLC and the City of Billings. Corporate Jet, LLC is in the process of starting a second Fixed Base Operator (FBO) business at Billings Logan International Airport. This will be a second operation of that type; Edwards Jet Center is currently the sole FBO at the Airport. Corporate Jet, LLC is working with Stockman Bank on financing the construction of the fuel farm facilities.

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 onsite facilities. This is the case with the fuel farm construction, as Stockman Bank seeks to secure its loan for the costs of construction by Corporate Jet, LLC.

FINANCIAL IMPACT: There would be no financial impact to the City, as Corporate Jet, LLC will still be required to pay the annual ground lease rentals as established in the Lease dated December 10, 2007, by and between Corporate Jet, LLC and the City of Billings.

RECOMMENDATION

Staff recommends that Council approve the Assignment of the Commercial Aviation Ground Lease for a Fuel Farm Site with Corporate Jet, LLC to Stockman Bank, to secure the bank's loan to Corporate Jet, LLC for the cost of the fuel farm construction.

Approved By: City Administrator City Attorney
[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Acceptance of Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grant 34

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: It is necessary to secure the City Council's approval and authorization for the Mayor to execute the Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grant 34, once it has been received from the FAA. Grant 34 contains this year's entitlement funding that will be used to undertake the engineering, planning, and construction projects at the Airport. As required by the FAA, the Grant offer is based on the actual amounts awarded for construction and engineering for these projects. The City Council recently approved this year's projects, which include the Taxiway "H" Rehabilitation, ARFF Pavement Reconstruction, and Security Perimeter Fence replacement.

FINANCIAL IMPACT: The total costs of the engineering services and construction associated with this Grant are \$1,706,535. The Grant will fund 95% of this cost (\$1,621,208.25) and the City will be required to provide a 5% match (\$85,144.75). The source of the City's match is the Department's Capital fund.

RECOMMENDATION

Staff recommends that the City Council approve the acceptance of this Grant and authorize the Mayor to execute the FAA AIP Grant 34.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Revolving Loan Fund Recommendations for Bin 119, LLC
DEPARTMENT: Finance Division
PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The Downtown Revolving Loan Committee met on April 21, 2008 and recommends the following loan:

BIN 119, LLC	\$77,000.00
--------------	-------------

FINANCIAL IMPACT: After awarding this loan, the loan fund will have approximately \$2,000,000.00 available on its Inter-creditor Loan Agreement balance.

RECOMMENDATION

Staff recommends that council approve the loan.

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

ATTACHMENT

A-Loan Description

Attachment A

Revolving Loan Fund Loan

Monday, May 12, 2008

The Bin 119, LLC loan, with members Daniel T. Konen, Jennifer Konen, and Erin Bruner, will have the following terms and requirements:

Loan	The lesser of \$77,000.00 or 20% of allowed project costs.
Interest Rate	5.75% adjusted annually to the greater of 5.00% or the Wall Street Journal prime rate less 200 basis points as of the last banking day in September.
Term	Amortized over seven years.
Payments	Minimum monthly payments based on a 5.75% rate and seven years. Monthly payments will be adjusted with rate changes to maintain a seven year payment schedule.
Personal guarantees	The City will obtain personal guarantees from members Daniel T. Konen, Jennifer Konen, and Erin Bruner.
Security	A UCC filing to secure fixtures, furnishings, equipment, inventory, leasehold improvements and the entity's wine and liquor license which will also be subordinate to earlier filings by the company's primary lender.
Other	Bin 119, LLC will provide a minimum of 20% of total project costs.

This loan is to make leasehold improvements, furnish, equip, and stock inventory for the Bin 119 Wine Bar and Kitchen which will be located in the Carlin building at 117 North Broadway.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: W.O. 08-01 – 2008 Water and Sewer Replacement Projects, State Revolving Fund (SRF) Backed Loan Application

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The cost of the FY 2008 water and wastewater Capital Improvement Program (CIP) exceeds the amount of immediate funding available, thus a loan or revenue bond sale will be required to finance part of the water and wastewater CIP. The State Revolving Fund (SRF) Loan Program was established by the legislature to make at or below market interest rate loans to eligible Montana entities for water and wastewater improvement projects. The SRF programs are funded with capitalization grants from the U.S. Environmental Protection Agency and are matched by 20% with State issued general obligation bonds. Combined, these two sources of funds create the State Revolving Fund from which loans are made and borrower repayments revolve to provide loans for infrastructure projects. Public Works considered obtaining financing for the King Avenue West water and sanitary sewer extension, but this project did not qualify for SRF funding because the intent of the project is to primarily support growth rather than support existing systems. Thus, financing for King Avenue West would need to be secured at a higher interest rate or SRF loans could be obtained for an alternate project. It was determined that the 2008 Water and Sewer Replacement Project which will replace water mains and sanitary sewer lines throughout various locations in Billings qualifies for SRF funding.

The current SRF loan terms are 20 year amortization with a 3.75% interest rate. The current rate for an INTERCAP loan is 4.25% with an annual adjustment of the interest rate. A comparative current market rate for 20 year, non-collateralized revenue bonds is 4.8%. The cost savings for the SRF loans versus INTERCAP loans is estimated to be at least \$385,000 over the life of the loan and the cost savings for the SRF loans versus revenue bond financing is more than \$870,000 over the life of the loan. The SRF Application and Preliminary Engineering Report are both available at the City Clerk's office.

ALTERNATIVES ANALYZED:

- Apply for SRF funding. The cost savings for the SRF loans versus INTERCAP loans is estimated to be \$335,000 over the life of the loan and the cost savings for the SRF loans versus revenue bond financing is more than \$870,000 over the life of the loan.
- Do not apply for the SRF loans. An INTERCAP loan would still need to be secured or revenue bonds would need to be sold for \$1,700,000 water and \$3,500,000 wastewater projects.
-

FINANCIAL IMPACT: The Capital Improvement Plan funding for this project is as follows:

CIP Project PUD 205 - Water Main Replacements

Total Funds Available	\$4,000,000
<u>Allocated to Other Water Improvement Projects</u>	<u>\$2,482,537</u>
Available for 2008 Water Replacements Project	\$1,517,463
<u>Estimated Cost of Water Replacement Project</u>	<u>\$3,217,463</u>
Amount to be funded through SRF Loan	\$1,700,000 (This memo)

CIP Project PUD 302 – Sewer Main Replacements

Total Funds Available	\$4,000,000
<u>Allocated to Other Sewer Improvement Projects</u>	<u>\$3,860,534</u>
Amount Available for 2008 Sewer Replacements Project	\$ 139,466
<u>Estimated Cost of Sewer Replacement Project</u>	<u>\$3,639,466</u>
Amount to be funded through SRF Loan	\$3,500,000 (This memo)

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the applications for a State Revolving Fund backed water loan in the amount of \$1,700,000 and wastewater loan in the amount of \$3,500,000.

Approved By: City Administrator _____ City Attorney _____

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

4

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Work Order 03-17 – Notice of Intent to Create a Railroad Quiet Zone
DEPARTMENT: Public Works Department – Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: City staff recently (March 25, 2008) conducted a Diagnostic Review of at-grade railroad crossing located within the proposed quiet zone location with members from Montana Rail Link, Railroad Controls Limited, the Federal Railroad Administration, and the Montana Department of Transportation . As outlined by the Federal Railroad Authority, a Notice of Intent to Create a Quiet Zone shall be submitted to railroads operating over public highway-rail grade crossings, the State agency responsible for highway and road safety, and the State agency responsible for grade crossing safety.

ALTERNATIVES ANALYZED:

- Authorize the Mayor to sign the Notice of Intent to Create a Quiet Zone
- Do not authorize the Mayor to sign the Notice of Intent to Create a Quiet Zone

FINANCIAL IMPACT: There are no costs to the City identified with the proposed Notice of Intent to Create a Railroad Quiet Zone.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign the Notice of Intent to Create a Railroad Quiet Zone.

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

ATTACHMENTS

A. Notice of Intent to Create a Railroad Quiet Zone (3 Pages)

INTRODUCTION

City staff recently (March 25, 2008) conducted a Diagnostic Review of at-grade railroad crossing located within the proposed quiet zone location with members from Montana Rail Link, Railroad Controls Limited, the Federal Railroad Administration, and the Montana Department of Transportation, . As outlined by the Federal Railroad Authority, a Notice of Intent to Create a Quiet Zone shall be submitted to railroads operating over public highway-rail grade crossings, the State agency responsible for highway and road safety, and the State agency responsible for grade crossing safety.

PROCEDURAL HISTORY

- Sept. 22, 2003 – Original Railroad Feasibility Study Contract signed with S.E.H.
- Feb. 2004 – DBP request that City of Billings pursue implementation of a quiet zone
- Feb. 11, 2008 – Memorandum of Agreement signed with MDT
- Mar. 25, 2008 – Diagnostic Review conducted

BACKGROUND

The Downtown Billings Partnership and various downtown property owners and businesses would like to see a railroad Quiet Zone implemented at the Downtown railroad crossings on South 27th, 28th, and 29th Streets. Railroad Quiet Zones require approval of the Federal Railroad Administration (FRA) before they can be implemented. If implemented, a Quiet Zone allows the prohibition of blowing the horn or whistle on a locomotive as a warning that a locomotive is approaching the crossing. The Notice of Intent warns all affected parities of the proposed quiet zone plan. The affected parties will have 60 days to report any concerns or conditions for approval. After the 60-day protest period, the City will proceed with the design plan for construction of the proposed alternative, which will be paid with an expiring Tax Increment Fund. After construction, a Notice of Quiet Zone Establishment will be distributed to alert all parties that the railroad quiet zone will go into effect in 21 days. A public advertisement describing the project and alerting the public to the cessation of the train whistles will be made when the Notice of Quiet Zone Establishment is distributed.

ALTERNATIVES ANALYSIS

If the Council does not authorize the Mayor to sign the Notice of Intent to Create a Railroad Quiet Zone, the creation of the railroad quiet zone can not be completed.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign the Notice of Intent to Create a Railroad Quiet Zone.

ATTACHMENTS

A. Notice of Intent to Create a Railroad Quiet Zone (3 Pages)

May 13, 2008

Associate Administrator for Safety
Federal Railroad Administration
Office of Safety, RRS-23
1120 Vermont Avenue, NW
Washington, DC 20590

Subject: **Notice for Intent to Establish a Railroad Quiet Zone Under 49 CFR 22.43
Quiet Zone: City of Billings, Montana.**

This letter and the attachments are a Notice of Intent for the creation of a Quiet Zone. As required by the Federal Railroad Administration, the following information is provided to you and other parties.

All public highway-rail grade crossings to be included within the proposed quiet zone are:

<u>Crossing ID</u>	<u>Street Name</u>
087-491-T	27 th Street
087-492-A	28 th Street
087-493-G	29 th Street

The Quiet Zone is proposed to restrict the routine sounding of locomotive horns 24-hours a day.

The City of Billings plans to implement a quiet zone at each crossing, based on a Diagnostic Team review held March 25, 2008 are:

27th Street: Install MUTCD approved “*No Train Horn*” signs. Install new Four Quadrant Automatic Flashing Light Signals with Cantilever Assemblies, Vehicular and Pedestrian Gate Arms, Vehicle Detection, and Constant Warning Time.

28th Street: Install MUTCD approved “*No Train Horn*” signs. Install new Four Quadrant Automatic Flashing Light Signals with Cantilever Assemblies, Vehicular and Pedestrian Gate Arms, Vehicle Detection, and Constant Warning Time.

29th Street: Install MUTCD approved “*No Train Horn*” signs. Install new Four Quadrant Automatic Flashing Light Signals with Cantilever Assemblies, Vehicular and Pedestrian Gate Arms, Vehicle Detection and Constant Warning Time.

Name and title of person who will act as point of contact during the quiet zone development process:

City of Billings Point of Contact:

Erin S. Claunch, PE

Public Works Department

510 N. Broadway -- 4th Floor

Billings, MT 59101

Phone: 406.657.8242

Cell: 406.698.7758

claunch@ci.billings.mt.us

See the attached list of each party receiving this notification.

ACTION REQUIRED

Please consider this notice as the beginning date of the required 60-day comment period in the Quiet Zone process. The 60-day comment period for this Quiet Zone will end on July 14, 2008.

Respectfully submitted,

Ron Tussing

Mayor of Billings, MT

Notice for Intent to Establish a Railroad Quiet Zone Written Notice Recipients

1. Railroads operating over the grade crossings:

Steve Werner
Montana Rail Link
P. O. Box 16390
101 International Way
Missoula, MT 59808
Phone: 406-523-1551
swerner@mtrail.com

Mr. Lyn Hartley
Director Public Projects System
BNSF Railway
4515 Kansas Ave
Kansas City, KS 66106

2. State agency responsible for highway and road safety, and State agency responsible for grade crossing safety:

John Althof
Railroad/Highway Safety Section Supervisor
Montana Department of Transportation
2701 Prospect Avenue
P. O. Box 201001
Helena, MT 59620
Phone: 406-444-7247
jalthof@state.mt.us

3. Federal Railroad Administration

Associate Administrator for Safety
Federal Railroad Administration
Office of Safety, RRS-23
1120 Vermont Avenue, NW
Washington, DC 20590

Darryl Morrow
Grade Crossing Manager
Federal Railroad Administration
P. O. Box 2342
Vancouver, WA 98668
Business & FAX Phone: 360-253-7508
darryl.morrow@dot.gov

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Annexation Petition #08-07: 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, Robert Medvec, is requesting annexation of a property legally described as Tract 1 of Certificate of Survey 2350, located in Section 9, Township 1S, Range 26E into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the northeast corner of King Avenue East and Calhoun Lane. The petitioner is requesting annexation in order to obtain city water and sewer services for redevelopment of the property. The subject property has two residences on it with Residential-9600 (R-96) zoning. A concurrent zone change application from R-96 to Entryway General Commercial (EGC) is being considered for the property. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for May 27, 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 two sides by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next five (5) years.

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

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for May 27, 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: Robert Medvec

Purpose of annexation: To obtain City Services

Property included: Tract 1, Certificate of Survey 2350

Location: Northeast corner of King Avenue East and Calhoun Lane

Total area: 4.765 acres

Current zoning: Residential-9,600

Current land use: Residential

Future zoning: Zone change application to EGC in review

Future land use: Unknown

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

3. The Petition should be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, 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

(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
See attached	D01589	4513 King Ave E	Residential	Robert M. Medvec	4513 King Ave E	259-2277

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

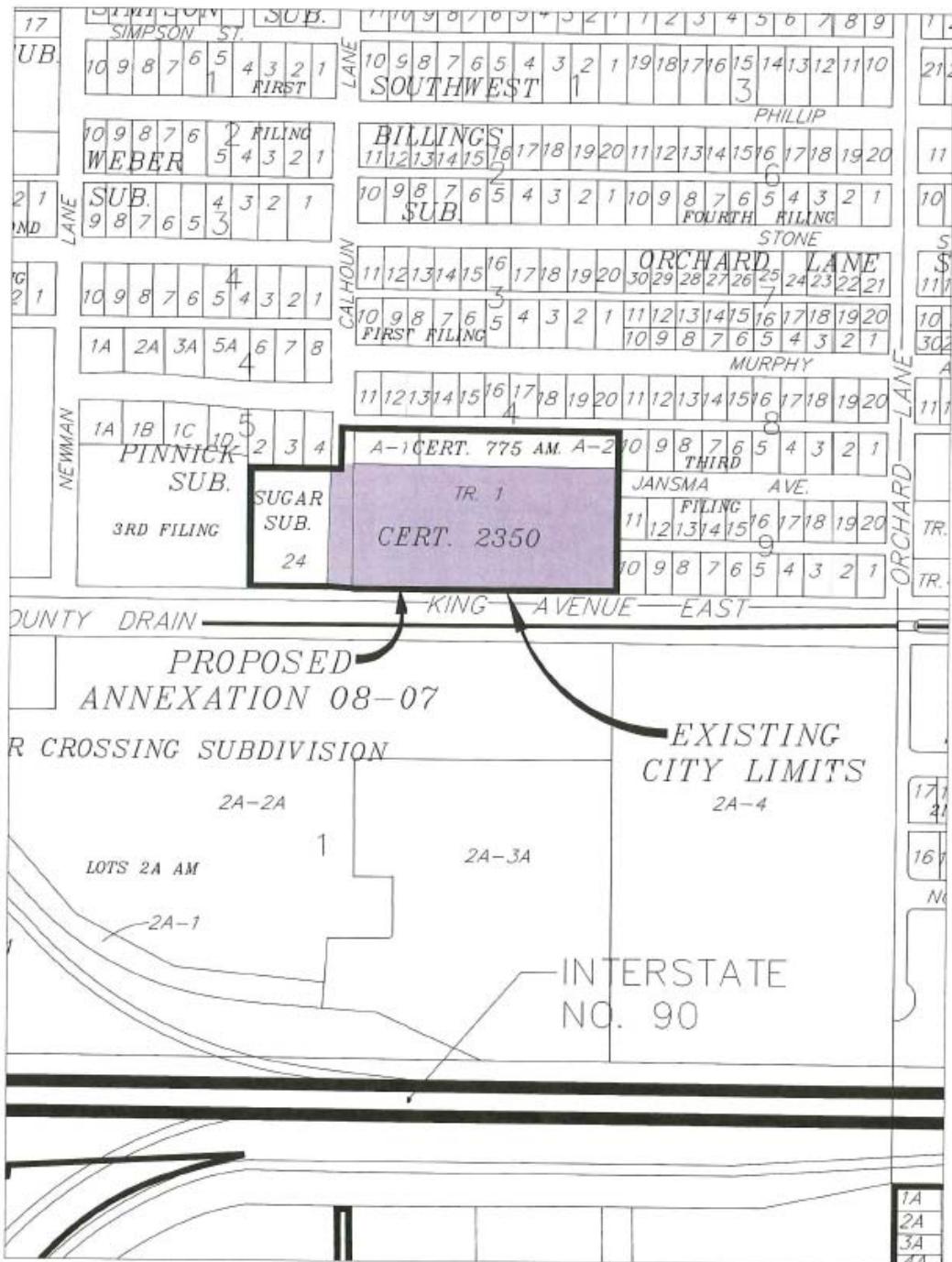
Date Submitted: _____ Received By: _____ Petition Number: _____

Petition Number:

Revised 6/99

ATTACHMENT C
Annexation Map

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Right-of-Way Easement for Parcel #44, Tract 1B, Certificate of Survey No. 2121 Amended With Lake Elmo Limited Partnership

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. Currently, four parcels remain to be acquired. Parcel #40 (Bloomenrader), Parcels #60-61 (Heather Heights Condominiums), and Parcel #44 (Lake Elmo Limited Partnership). This memo represents Parcel #44 of the parcels to be acquired (there are some numbered parcels within the project limits from which right-of-way does not need to be acquired). The appraisal for this easement made a conclusion of value for the easement, any appurtenant features, and the construction permit at a value of \$12,900. A perpetual easement for right-of-way purposes has the same value as a fee simple acquisition. A copy of the right-of-way agreement; easement; appraisal; tax documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$12,900.00. The cost of this easement is equal to the sum of the appraised value of the easement, any appurtenant features, and the construction permit. Funding is available for this easement from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #44, Tract 1B, Certificate of Survey No. 2121 Amended with Lake Elmo Limited Partnership in the amount of \$12,900.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement and Right-of-Way Easement (5 pages)

Approved By: City Administrator City Attorney

INTRODUCTION

Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow (typically 60 feet wide) to allow these necessary street improvements. The street improvements are anticipated to include full-depth street reconstruction, curb & gutter, sidewalks, a multi-use trail, accessibility ramps, crosswalks, and storm drain improvements. This right-of-way acquisition project will provide a new right-of-way width of 70 feet along Lake Elmo Drive. It will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street.

PROCEDURAL HISTORY

Completed Items

- January 9, 2006 – Award of Contract for Professional Services for Right-of-Way Acquisition to Right-of-Way Acquisition Group, LLC
- January 23, 2006 – Award of Contract for Professional Services for Land Surveying services related to right-of-way acquisition to Engineering, Inc.
- February 27, 2006 – Council selection of proposed improvements street section
- March 10, 2006 – Public meeting with adjoining property owners
- June 2006 – Initial design completed using the chosen street section
- November 2006 – Appraisals completed on parcels to be acquired
- December 2006 – Right-of-way negotiations began with property owners

Future Items

- June 2008 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

BACKGROUND

Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The five-phases and their improvement status are as follows:

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in 2008.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show

approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

The right-of-way width of 70 feet was chosen as a width that would accommodate the necessary improvements with the minimum intrusion onto existing features. A wider right-of-way width (e.g., 76 feet or 80 feet) would almost assuredly require the purchase of several entire parcels due to the proximity of the wider right-of-way to existing houses.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #44, Tract 1B, Certificate of Survey No. 2121 Amended with Lake Elmo Limited Partnership in the amount of \$12,900.00, and authorize the Mayor to execute these documents.

ATTACHMENT

Right-of-Way Agreement and Right-of-Way Easement (5 pages)

CITY OF BILLINGS

(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

<u>Lake Elmo Road</u>	<u>Hilltop Road</u>	<u>to Wicks Lane</u>	Work Order: 04-33	<u>Yellowstone</u>		
DESIGNATION			Project No. 05153	<u>COUNTY</u>		
Parcel No.		Parcel Description		Section		
44		Tract 1B, COS 2121 Amended		22	Township	Range
				1N	26E	

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

LAKE ELMO LIMITED PARTNERSHIP
710 NW 14TH AVENUE, SECOND FLOOR
PORTLAND, OR 98027
(208) 569-3481

1. 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 stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute an easement and other documents required by the City for all real property agreed to be conveyed by this agreement.
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

3,889 square feet by easement	\$7,778.00
Improvements (curbing, asphalt, sod)	\$2,989.00
3. OTHER COMPENSATION:

1,521 square feet Temporary Construction Permit	\$ 304.00
Administrative payment for administration and oversight fee to compensate for the time and work needed to obtain a partial release.	\$1,800.00
4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$12,900.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$12,900.00, to be made payable to WACHOVIA SECURITIES and LAKE ELMO LIMITED PARTNERSHIP and mailed to 375 PARK AVENUE - 7TH FLOOR, NEW YORK, NY 10152
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Easement, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:
Reconfigure and repair sprinkler system, if any, affected by project.

Grantors understand and agree that upon completion of the construction of this item located upon the Grantors' land, they shall be considered the sole property of the Grantors, and the maintenance and repair of said property shall be the responsibility of the Grantors.

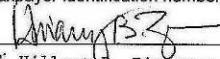
Initials KB / / /

(Continued from Previous Page)

10. Grantor hereby acknowledges the receipt of a copy of the City of Billings' liability insurance policy.

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 City of Billings and that failing to comply may subject us to civil and criminal penalties. We certify that the number(s) below is/are our **correct** taxpayer identification number(s).

	March 28, 2008	94-3255782
Signature: Hillary B. Zimmerman, Vice President of MUDCO 4, Inc., Member of MBS GP 114, L.L.C., General Partner of Lake Elmo Limited Partnership	(Date)	Tax ID No.
Signature:	(Date)	Tax ID No.

Signature:	(Date)	Tax ID No.
------------	--------	------------

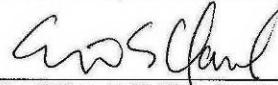
RECOMMENDED FOR APPROVAL:

	4-1-08
Ronald E. Olson, Olson Land Services	(Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings	(Date)
-------------------------	--------

ATTEST:

	4/18/08
City of Billings, Public Works Department	(Date)
City Clerk	(Date)

LER-044.200 Lake Elmo Partnership

RETURN TO
City Clerk
City of Billings
P.O. Box 1178
Billings, MT 59103

RIGHT-OF-WAY EASEMENT

THIS INDENTURE, made and entered into this 18th day of March, 2008, by and between the following:

LAKE ELMO LIMITED PARTNERSHIP
710 NW 14TH AVENUE, SECOND FLOOR
PORTLAND, OR 98027

hereinafter referred to as **GRANTOR** and

CITY OF BILLINGS, a Municipal Corporation
City Hall – 210 North 27th Street
PO Box 1178
Billings, Montana 59103-1178,
hereinafter referred to as **GRANTEE**

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged;

WITNESSETH THAT GRANTOR does hereby grant, sell, and convey unto the **GRANTEE**, for the benefit of the public, a perpetual easement and right-of-way to construct, reconstruct, maintain, operate, repair and improve streets, storm drainage, street lights, sidewalks, accessibility ramps, multi-use path, traffic signals, necessary fixtures and appurtenances, and public and private utilities that normally occupying public rights-of-way over, across, under, and through the real property within the boundaries of the easement area as described herein.

A tract of land situated in Tract 1B, Certificate of Survey No. 2121 Amended, (being a portion of Parcel No. 44 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project) Yellowstone County, Montana, said tract being delineated by the shaded area on Exhibit A attached hereto and made a part hereof and being specifically described as follows:

Beginning at a point on the east right-of-way line of Lake Elmo Drive, said point of beginning being the northwest corner of Tract 1B, C. of S. NO. 2121 AMENDED; thence from said point of beginning N. 89°39'19" E. a distance of 15.00 feet; thence S. 00°47'51" E. a distance of 259.27 feet; thence S89°38'21" W. a distance of 15.00 feet; thence N.00°47'51" W. a distance of 259.27 feet to the point of beginning, containing 3889 square feet.

Together with a temporary construction permit over the property consisting of 1521 square feet and delineated by the hatched area on Exhibit A attached hereto and made a part hereof. Said temporary construction permit will be valid for the period of time including the construction of improvements described in the Right-of-Way Agreement with the City of Billings in favor of Grantor and the applicable one-year construction warranty period provided to the City by its contractor (the "Permit Period").

The City of Billings (the "City") agrees to indemnify and hold harmless Grantor in connection with any claims resulting from City's actions with respect to the permit area or entry upon Grantor's land and to provide Grantor with a copy of its liability insurance policy.

TO HAVE AND TO HOLD unto **GRANTEE** and to its successors and assigns forever.

IN WITNESS WHEREOF, the **GRANTOR** warrants that they have good right to convey, the above-described interests in the real estate described and have hereunto set their hand.

Project No. : W.O. 04-33

Parcel No. 44

Designation : LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

TO HAVE AND TO HOLD all of the above-described property unto the Grantee(s), and its successors and assigns forever.

IN WITNESS WHEREOF



March 28, 2008

Date

Hillary B. Zimmerman, Vice President of
MUDCO 4, Inc., Member of MBS GP 114, L.L.C.,
General Partner of Lake Elmo Limited Partnership

State of Missouri)

County of St. Louis City)

This instrument was acknowledged before me on March 28, 2008

(date)

by Hillary B. Zimmerman

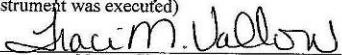
(name of person(s))

as Vice President

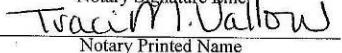
(type of authority, e.g., officer, trustee, partner, etc.)

of MUDCO 4, Inc., Member of MBS GP 114 L.L.C., General Partner

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



Notary Signature Line



Notary Printed Name

Notary Public for State of Missouri

Residing at St. Louis City

My Commission Expires: Feb. 1, 2009

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

THIS PERPETUAL EASEMENT is hereby accepted pursuant to Billings City Council approval on _____, 2007. The Mayor and City Council of the City of Billings acknowledges receipt of this perpetual easement and hereby accepts the property interest conveyed through this instrument.

CITY OF BILLINGS,
a Montana Municipal Corporation

By: _____
MAYOR

ATTEST:

City Clerk _____

STATE OF MONTANA)

:ss

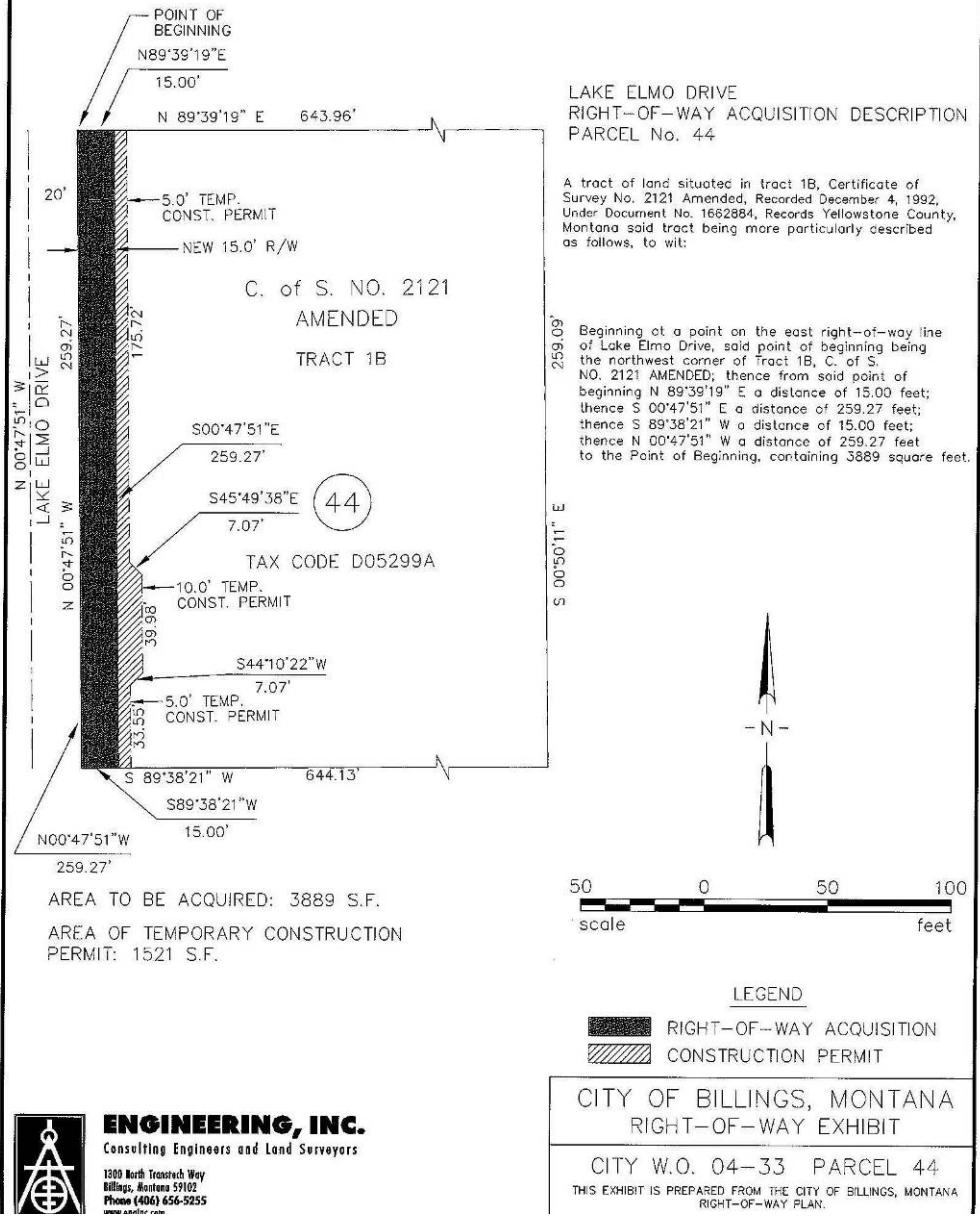
COUNTY OF _____)

On this _____ day of _____, 2007, before me, _____
a Notary Public in and for the State of Montana, personally appeared known to me to be _____
and acknowledged to me that they executed the
foregoing instrument.

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

Notary Public for the State of _____
Residing at _____
My Commission Expires _____

EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN TRACT 1B,
CERTIFICATE OF SURVEY NO. 2121 AMENDED,
YELLOWSTONE COUNTY, MONTANA



K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Central Heights PTA Community Fun Run

DEPARTMENT: Public Works/Engineering

PRESENTED BY: *Dave Murchord*, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT:

The Central Heights PTA request temporary street closures as outlined in the attached event route map for Saturday, May 31, 2008, from 8:30 am to 10:30 am, for the Community Fun Run.

Recommended conditions of approval include that the Central Heights PTA:

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 by the Central Heights PTA.

RECOMMENDATION

Staff recommends that Council approval the temporary closure of the streets noted on map.

Approved By: City Administrator City Attorney

ATTACHMENTS

- A. Letter from Central Heights PTA Coordinator
- B. Right of Way Special Activity Permit
- C. Course map
- D. Certificate of insurance

SW 4.24.08



Central Heights Elementary School

Mrs. Karen Ziegler, Principal

120 Lexington Dr.
Billings, MT 59102

Phone (406) 655-3121
Fax (406) 656-0878

Kristopher Cummings
120 Lexington Drive
Billings, MT 59102
406-655-3121
cummingsk@billings.k12.mt.us

Department of Parks, Recreation and Public Lands
390 North 23rd Street
Billings, MT 59101

To Whom it May Concern:

On behalf of the Central Heights Elementary PTA I am requesting a Right-Of-Way Special Activity Permit for a *Community Fun Run*, in and around Central Heights Elementary, located at 120 Lexington Drive, Billings, Montana. The race will be held on Saturday May 31st 2008 and will assemble at 8:30 am, commence at 9:00 am and disband at 10:30 am. Road guard attendants will be stationed at 22 different street intersections along the race route (see attached map). The closures will be removed as the last runners pass through each station, allowing traffic to begin safely passing through the intersections. All road guard attendants will be relieved at 10:30 am Saturday, May 31st 2008. The attached brochure and map detail exact locations of road closures, race route, and an event description. Thank you for your consideration.

Sincerely,

Kristopher Cummings

Attached: Right-Of-Way Special Activity Permit Checklist, Map with detailed barricades, Event Brochure, Completed Right-Of-Way Special Activity Permit application, and certificate of insurance form.



**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

Submit this application with a cover letter to: Director of Parks, Recreation and Public Lands, 390 North 23rd Street, Billings, MT 59101 for any events that are not in the Downtown Central Business District. Events in the Central Business District are to be submitted to: Downtown Billings Association, 2815 2nd Avenue North, Billings, MT 59101. Application should be made at least 60 days in advance of the date of proposed event.

PERSON MAKING APPLICATION

Kristopher Cummings

ORGANIZATION MAKING APPLICATION

Central Heights PTA

PHONE *406-655-3121*

ADDRESS *120 Lexington*

Billings

MT

59102

City

STATE

ZIP

APPROXIMATE TIME EVENT WILL:

Assemble *8:30 am*

Start *9:00 am*

Disband *10:30 am*

DATE OF EVENT *5/31/2008*

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

*Community 5K Fun Run to promote healthy schools
& exercise*

EVENT ROUTE DESIRED: (Please attach map.)

*Surrounding neighborhood of Central Heights Elementary - South of
Central, East of 24th North of Monroe & West of 19th.
(See attached map.)*

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 individual claim and \$1,500,000 per occurrence, and (2) the City of Billings named on the Certificate of Insurance as an additional insured.

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.

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.

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.

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

La

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Financial Donation by Lyle Johnson and Bill Rains.
DEPARTMENT: Park, Recreation, and Public Lands
PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: Lyle Johnson and Bill Rains are well known local artists who have created bronze sculptures to be donated to the City of Billings and placed in the entry plaza during the grand opening of Dehler Park the end of June of this year. Mr. Johnson has created a memorial of Ed Bayne and Mr. Rains has created a memorial of Dave McNally, both notable personalities of Billings baseball. To properly display and secure these sculptures both artists have provided funding for concrete bases. Mr. Johnson has donated \$10,748.00 and Mr. Rains has donated \$5,818.00, proportional costs for the sizes of their respective sculpture bases. The total donation from the two artists is \$16,566.00.

ALTERNATIVES ANALYZED:

- Accept the financial donation from Mr. Johnson and Mr. Rains or,
- Decline the donation.

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

RECOMMENDATION: Staff recommends that Council accept the donations from Mr. Johnson and Mr. Rains.

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

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

Lb

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Change Order #9 to Contract for Dehler Park

DEPARTMENT: Parks, Recreation, and Public Lands Department (PRPL)

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: Sculptures of Ed Bayne and Dave McNally, two notable people associated with Billings baseball, will be presented and donated to the City of Billings by the Sculptors, Lyle Johnson and Bill Rains. These sculptures will be placed in the front entry plaza at Dehler Park. To properly display and secure the sculptures, concrete bases will need to be constructed. The Sculptors, Mr. Johnson and Mr. Rains have provided the necessary funds to construct the sculpture bases.

FINANCIAL IMPACT: The financial impact will be a net *increase* to the project of \$16,566.00 (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 donations from the Sculptors, Lyle Johnson and Bill Rains.

ALTERNATIVES ANALIZED:

- Accept Change Order No. Nine (9) to fund the construction of 2 sculpture bases or,
- Reject the change order.

RECOMMENDATION: Staff recommends accepting Change Order No. Nine (9) to fund the above items.

Approved By: City Administrator City Attorney

Attachment A: Change Order No. Nine (9) (2 pages)

CHANGE ORDER

No. Nine (9)

PROJECT: Billings Baseball
And Multi-Use Stadium **DATE OF ISSUANCE:** May 13, 2008

OWNER: City of Billings
(Name & Address) 510 N. Broadway, 4th 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 construct 2 sculpture bases in the front entry plaza at Dehler Park as designed by CTA Architects Engineers.

Attachments: Exhibit A: Letter from Langlas and Associates (April 3, 2008) and cost breakout for each Sculptor provided by CTA Architects Engineers.

CHANGE IN CONTRACT PRICE:

Original Contract Price

\$ 11,459,800.00

CHANGE IN CONTRACT TIME:

Original Contract Time

June 30, 2008
days or date

Previous Change Orders:

- No. 1 \$(279,358.00)
- No. 2 \$33,655.00
- No. 3 \$(21,860.00)
- No. 4 \$84,950.00
- No. 5 \$13,069.00
- No. 6 \$4,242.00
- No. 7 \$7,072.00
- No. 8 \$12,385.00

Net Change from previous Change

Orders

None
days

Contract Price prior to this Change Order

\$ 11,313,955.00

Contract Time prior to this Change Order

June 30, 2008
days or date

Net *increase* of this Change Order

\$ 16,566.00

Net Increase (decrease) of this Change Order

None
Days

Contract Price with approved Change Order

\$ 11,330,521.00

Contract Time with approved Change Order

June 30, 2008
days or date

RECOMMENDED:

By _____
Architect

APPROVED:

By _____
Owner

APPROVED:

By _____
Contractor



2270 Grant Road
Billings, Montana 59102

-- General Contractors --

www.langlas.com

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

April 3, 2008

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

RE: Billings Stadium – Sculpture Bases

Mike Radke,

The following is the costs for Proposal Request #8.

The cost to add the two colored concrete bases at the SW Entry is \$16,566.00. This includes the additional lights for the sculptures.

Div 01 General conditions	
Supervision	700.00
Div 02 Earthwork	
Engineered fill	\$1,500.00
Div 03 Concrete	
Form material	754.00
Form Labor	3,636.00
Concrete colored material	2,910.00
Pouring/Finishing labor	1,200.00
Concrete sealer	150.00
Div 05 Steel	
Reinforcing bar	655.00
Reinforcing bar labor	610.00
Div 16 Electrical	
Add lights	3,858.00
Credit back	
166 Sq Ft of plaza concrete	(913.00)
Over head and profit 10%	1,506.00
Total Change order proposal	\$16,566.00

Please let me know by April 10, 2008 if the above is approved. If we do not have a response by April 7th we will proceed per the SW Entry plans.

Regards,



Brad Sinclair
Project Manager

Change Order Request

7300 — Billings Baseball & Multi-use Stadium

COR Subject: Statue Well Lighting

To Brad Sinclair
Langlas & Associates Inc.
2270 Grant Rd
Billings, MT 59102
406-656-0629
406-656-1088 (FAX)

COR Number: 14
COR Revision Number: 0
COR Date: 4/3/2008
Work Type: Price / Do Not Proceed
Other Reference No: Well Lights

Return To Bill Nolte
CEI
2675 Overland Avenue, Suite
E
Billings, Montana 59102-7448
(406) 656-4365
(406) 656-4534 (FAX)

This COR is valid for 30 Days.

Summary

Total COR: \$3,858.42

Comments / Time Extension Request

Reservation of Rights

This COR does not include any amount for impacts such as interference, disruptions, rescheduling, changes in the sequence of work, delays and/or associated acceleration. We expressly reserve the right to submit our request for any of these items.

Signed By:



Dated: 4/3/2008

Bill Nolte
Project Manager

Sculpture Base Costs.xls

Project: Billings Baseball Stadium
 Contractor: Langlas & Associates, Inc.
 Area: SW Entry Plaza Sculpture Bases



		Item Description	Cost
Sculpture Base Costs	Div. 1	General Conditions	\$700.00
	Div. 2	Earthwork	\$1,500.00
	Div. 3	Concrete	\$754.00
		Form Material	\$3,636.00
		Concrete colored material	\$2,910.00
		Pouring/Finishing Labor	\$1,200.00
		Concrete Sealer	\$150.00
	Div. 5	Steel	\$655.00
		Reinforcing Bar	\$610.00
	Div. 16	Electrical	\$3,858.00
		Credit back	\$913.00
		Overhead & Profit	10%
		Construction Total	\$16,566.00

Bill Raines' Sculpture Base

6'-2" x 12'-4" = 76 sf (45.78% of total)

\$5,818.00 Bill Raines' responsibility

Lyle Johnson's Sculpture Base

9'-0" x 10'-0" = 90 sf (54.22% of total)
 Additional lighting

\$6,890.00
 \$3,858.00

\$10,748.00 Lyle Johnson's responsibility

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

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, May 12, 2008

TITLE: Acceptance and Recognition of Anonymous Donation for Trauma First Aid Kits and Training for Police Officers

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On April 16, 2008, the Billings Police Department received an anonymous donation in the amount of \$2,613.00 for trauma kits for police vehicles and training for the officers. We now come before City Council for authorization to accept this generous donation. The anonymous donor has specified that they do not want to be acknowledged for this donation.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: This donation has been deposited into the Police Operations donation fund and designated for trauma kits for the police vehicles and trauma training for the officers.

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this anonymous donation to the Billings Police Operations Fund.

Approved By: City Administrator ____ City Attorney ____

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

N

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Donation Acceptance on behalf of the Mayor's Committee on Homelessness' Project Homeless Connect and the Billings Area Resource Network

DEPARTMENT: Planning & Community Services Department

PRESENTED BY: Candi Beaudry, Planning & Community Services Director, and Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The Community Development Division is requesting approval to accept donations from the Yellowstone County Homeless Board on behalf of the Mayor's Committee on Homelessness' Project Homeless Connect (\$2,500) and the Billings Area Resource Network (\$640.79). Members of the Yellowstone County Homeless Project Board decided to disband and support the Mayor's Committee on Homelessness' overall efforts in Billings.

The Mayor's Committee on Homelessness was approved through resolution by the City Council on April 24, 2006. Twenty members were appointed by the Mayor and City Council and the Committee has been meeting since June 2006. The Billings Area Resource Network (BARN) has been established to support provider networking and collaboration, and has over 33 members who represent homeless service providers and other resources in the community.

The Community Development Division would administer both accounts. The Billings Area Resource Network funding would be administered on a pass-through basis, requiring a majority vote of the members for distribution. The funding for the BARN funding has been designated for "use towards the common goal of ending homelessness in Billings". Funding for Project Homeless Connect has been designated for use "towards the event", which may include printing costs, food, volunteer t-shirts, ice, and items not donated for the event.

ALTERNATIVES ANALYZED: Alternatives analyzed include either accepting the donations or not accepting the donations. If unable to accept the donations, the Mayor's Committee on Homelessness would not be able to receive funding which would facilitate their efforts toward creating and implementing a ten-year plan to impact chronic homelessness with partnering organizations.

FINANCIAL IMPACT: The City is not required to match these donations.

RECOMMENDATION

Staff recommends that the City Council accept these donations on behalf of the Mayor's Committee on Homelessness' Project Homeless Connect and the Billings Area Resource Network.

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

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

O

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Acceptance and Recognition of Donation to the Billings Animal Shelter
DEPARTMENT: Police Department, Animal Shelter Division
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On March 31, 2008, the Billings Animal Shelter received a \$500.00 donation from William E. Coburn of Boulder, CO. Mr. Coburn's donation was made in honor of Jayne Winegardner who passed away March 17, 2008. We now come before City Council for authorization to accept and deposit this generous donation into the City of Billings, general donation account. A letter sent requesting designation on how Mr. Coburn would like the funds used was returned as undeliverable because Mr. Coburn is temporarily away. We will attempt contact again in a few months and should Mr. Coburn designate other than the General Donation Fund, we will forward this information to Council.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: This donation to the General Donation Account will be used where ever it may be needed to benefit our community's animals.

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this generous donation to the Billings Animal Shelter General Donation Account.

Approved By: City Administrator City Attorney

Attachment

A – Copy of check received/copy of CR deposit slip
B – Copy of envelope returned



**CITY OF BILLINGS
POLICE DEPARTMENT
ANIMAL CONTROL DIVISION
P.O. BOX 1178
BILLINGS, MONTANA 59103**

**RETURN SERVICE
REQUESTED**

PRESORTED
FIRST CLASS



William E. Coburn
7380 Windsor Drive
Boulder, Colorado 80301

T 802 NEE 1 C07C 00 04/02/08
COBURN RETURN TO SENDER
TEMPORARILY AWAY
RETURN TO SENDER

1 GLUPEM 5910301173

**CITY OF BILLINGS
DEPOSIT SLIP/RECEIPT**

CR N° 21827

DEPOSIT SLIP/RECEIPT	
FROM (DEPT-DIV)	Police Dept.
PREPARED BY	Y. A.
BATCH TYPE: <u>15</u>	
DATE <u>3-31-08</u>	

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

(Back to Consent Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Donation of spare parking meters to Business Improvement District's Spare Change for Real Change Program

DEPARTMENT: Administrative Services – Parking Division

PRESENTED BY: Chris Mallow, Parking Supervisor

PROBLEM/ISSUE STATEMENT:

Parking Division Staff received a memo from Lisa Harmon, Executive Director of Downtown Billings Alliance, on behalf of the Mayor's Committee on Homelessness asking for the donation of twelve mechanical parking meters for their alternative giving program Spare Change for Real Change. All donations of City of Billings property must have City Council approval.

ALTERNATIVES ANALYZED:

- Accept Staff recommendation and donate twelve mechanical meter mechanisms and housing to the Business Improvement District for their Spare Change for Real Change Program.
- Reject Staff recommendation.

FINANCIAL IMPACT:

The donation of this equipment will have no financial impact as the meters have no salvage value.

RECOMMENDATION

Staff recommends that Council donate twelve mechanical meters to the Business Improvement District for the use in their Spare Change for Real Change Program.

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

ATTACHMENTS

A. Letter from The Mayor's Committee on Homelessness.

INTRODUCTION

Parking Division Staff received a memo from Lisa Harmon, Executive Director of Downtown Billings Alliance, on behalf of the Mayor's Committee on Homelessness asking for the donation of twelve mechanical parking meters for their alternative giving program Spare Change for Real Change. The meters will be placed in and around buildings in the downtown area where people can drop some coins in as donations for the Spare Change for Real Change Program.

PROCEDURAL HISTORY

Lisa Harmon presented her plan for these donated meters to the Mayor's Committee on Homelessness. The Mayor's Committee on Homelessness is in favor of this donation to the Spare Change for Real Change program.

BACKGROUND

Lisa submitted a memo that states: "The Business Improvement District came before the Mayor's Committee on Homelessness last April to share information about their giving program, Spare Change for Real Change. Spare Change for Real Change is an alternative to giving money to panhandlers and instead directing spare change to social agencies that provide fundamental resources like food and clothing to people in need. To that end, the Business Improvement District has asked for a donation of 12 (outdated) parking meters from the City of Billings that could be incorporated into their giving program. The refurbished and redesigned parking meters would be placed at various areas throughout downtown". These meters will be redesigned with the Spare Change for Real Change design affixed to the meter housing. These meters will be placed away from other on-street meters in order to reduce confusion. A similar program was created in Denver, Colorado, and has had great success in soliciting donations from passer-bys.

Parking Staff has a surplus of mechanical parking meter mechanisms since we made the transition to all digital meters in 2006. This request would also include twelve meter housings in addition to the meter mechanisms. These housings are still being used by the Parking Division but there is a sufficient surplus of these housings that a donation of twelve will not hinder repair and replacement tasks of on-street meters.

Collection and delivery of donated monies would be handled by Parking Division Staff to ensure the security of all City-owned parking meters, as all meters are keyed the same. This service would be done at no-cost to the Business Improvement District.

ALTERNATIVES ANALYSIS

- Accept Staff recommendation and donate twelve mechanical meter mechanisms and housings to the BID and Mayors Committee on Homelessness for the Spare Change for Real Change Program.
- Reject Staff recommendation.

RECOMMENDATION

Staff recommends that Council donate twelve mechanical meters to the Business Improvement District for the use in their Spare Change for Real Change Program.

ATTACHMENTS

A. Letter from The Mayor's Committee on Homelessness.



February 4, 2008

Chris Mallow
Parking Supervisor
210 North 27th Street
Billings, MT 59101

Dear Chris,

The Business Improvement District came before the Mayor's Committee on Homelessness last April to share information about their giving program, Spare Change for Real Change. **Spare Change for Real Change** is an alternative to giving money to panhandlers and instead directing spare change to social agencies that provide fundamental resources like food and clothing to people in need. To that end, the Business Improvement District has asked for a donation of 12 (outdated) parking meters from the City of Billings that could be incorporated into their giving program. The refurbished and redesigned parking meters would be placed at various areas throughout downtown. They are a creative way for everyone, even if they only have a nickel, to help others in need *and* recycling older meters as donation collection sites are an innovative use of retired equipment.

The Mayor's Committee on Homelessness is in favor of this donation to Spare Change for Real Change.

Sincerely,

The Mayor's Committee on Homelessness
City of Billings

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday May 12, 2008

TITLE: Grant Application Submittal for the Fair Housing Initiatives Program
U.S. Department of Housing and Urban Development (HUD)

DEPARTMENT: Planning & Community Services Department

PRESENTED BY: Candi Beaudry, Planning & Community Services Director, and
Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: As a recipient of CDBG and HOME funds, the City of Billings is required to affirmatively further fair housing in our community. HUD has recently released its 2008 Fiscal Year - Notice of Funding Availability (NOFA) which provides an opportunity for organizations to apply for federal funds to facilitate HUD's long-term strategic goal for equal opportunity in housing. Last year, the City was awarded \$99,923 in HUD Fair Housing Initiatives Program (FHIP) funding which provided funding for education and outreach activities.

In response to Council direction to fund fair housing activities through a competitive allocation process, staff issued a Request for Proposals (RFP) to identify partners for this year's FHIP application. Partnering organizations for this year's application include homeWORD, Yellowstone County Council on Aging, Community Housing Resource Board, Interfaith Hospitality Network, and the Billings Partners for American Indian Homeownership.

The City will be applying for the maximum award of \$100,000. The anticipated program period will be the 12 month period starting January 1, 2009. The grant application is expected to be due in May 2008 and would fund educational and outreach activities in the Billings community.

ALTERNATIVES ANALYZED: If unable to pursue this grant, the above named partners will need to limit their fair housing educational opportunities for the upcoming fiscal year.

FINANCIAL IMPACT: City Council approval would allow the City of Billings to assist in grant preparation and administration of funded activities.

RECOMMENDATION

Staff recommends that the City Council authorize the submission of the FHIP grant and authorize City staff to negotiate and finalize the grant if awarded.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Second Reading of Ordinance for the South Billings Boulevard Urban Renewal District Area

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Lora Mattox, AICP, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: On April 28, 2008, City Council on first reading approved an ordinance that repeals Ordinance 07-5441 and creates the South Billings Boulevard Urban Renewal District Area. The final step is for Council to adopt the ordinance on second reading.

At the April 28, 2008, City Council meeting, a public hearing was held to receive comments from the public in regards to the creation of the district. Comments included concerns about the effectiveness of Tax Increment Finance Districts, the use of eminent domain and the right of the city to declare blight. The City Council on an 11-0 vote approved the Ordinance creating the South Billings Boulevard Urban Renewal District Area on first reading at the April 28, 2008 council meeting.

ALTERNATIVES ANALYZED: Creating this district is discretionary. The City Council may:

- reject the ordinance
- modify the proposed boundary
- adopt the ordinance with the proposed boundary

FINANCIAL IMPACT: The financial impact is unknown. However, the current taxable value in the proposed TIFD is approximately \$6,444,737 and is stagnant. The purpose of an urban renewal and tax increment district is for the public to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur, thus there is no "loss" of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value.

RECOMMENDATION

Staff recommends that City Council adopt the Ordinance creating the South Billings Boulevard Urban Renewal District Area on second reading.

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

ATTACHMENTS

A. Ordinance and Exhibits

ORDINANCE NO. 08 _____

AN ORDINANCE REPEALING ORDINANCE 07-5441 AND
RELATING TO THE CREATION OF THE SOUTH BILLINGS
BOULEVARD URBAN RENEWAL AREA; AND ADOPTING AN
URBAN RENEWAL PLAN, INCLUDING A TAX INCREMENT
PROVISION.

Recitals:

WHEREAS, this City Council held a public hearing and approved Ordinance 07-5441 creating The South Billings Boulevard Urban Renewal District Area on first reading on November 26, 2007, and on second reading on December 10, 2007.

WHEREAS, at the March 10, 2008, City Council meeting, the council adopted Resolution 08-18687 that corrected the legal description included in Resolution 07-18627 that declared blight, stated the intent to create an urban renewal area and set a date of a public hearing;

WHEREAS, it was determined that the notice advertising the public hearing held on November 26, 2007, was published only once in a newspaper of general circulation and pursuant to 7-1-4127, MCA, required two publications;

WHEREAS, this City Council repealed Resolution 07-18627 and adopted Resolution 08-18697 on April 14, 2008, declaring blight, stating the intent to create an urban renewal area and setting a date of a public hearing for April 28, 2008;

WHEREAS, a notice advertising the public hearing to be held on April 28, 2008 was published in the Billings Times on April 10 and April 24, 2008 pursuant to 7-1-4127, MCA;

WHEREAS, the South Billings Boulevard Urban Renewal Plan was reviewed and approved by the Yellowstone County Planning Board, as evidenced by the Board meeting minutes of October 23, 2007, and on March 25, 2008 and April 22, 2008, reaffirmed the approval and submitted a letter of affirmation to the City Council;

WHEREAS, this City Council on April 28, 2008, conducted a public hearing on a proposal to establish a new urban renewal area on specified property (as hereinafter defined, the "Property") to be designated "The South Billings Boulevard Urban Renewal Area", and to adopt an urban renewal plan, as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act");

WHEREAS, the Property is depicted on the attached Exhibit A and legally described on the attached Exhibit B (each of which is hereby incorporated herein and made a part hereof);

WHEREAS, opportunities have been presented to the City that make it desirable for the City to consider an urban renewal project within the District consisting of the acquisition of certain vacant or blighted properties, and making the properties so improved available for private redevelopment, as well as constructing and rehabilitating public infrastructure, including but not limited to water and wastewater lines, curbs, gutters, sidewalks and streets in accordance with the Act;

WHEREAS, an urban renewal plan entitled the South Billings Boulevard Urban Renewal Plan is attached hereto as Exhibit C (which is hereby incorporated herein and made a part hereof) (the

“Plan”). The Plan contains a tax increment provision and will govern the operation and administration of the District;

WHEREAS, this Ordinance repeals Ordinance 07-5441, adopted on first reading on November 26, 2007 and on second reading on December 10, 2007;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Billings, Montana, as follows:

1. Findings. This Council hereby finds, determines and declares, based on the comments received at the public hearing and other studies and information available to this Council, that:

- a. A workable and feasible plan exists for making available adequate housing for persons who may be displaced by the urban renewal project;
- b. The urban renewal plan conforms to the 2003 City-County Growth Policy or parts thereof of the City for the municipality as a whole;
- c. The urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and
- d. A sound and adequate financial program exists for the financing of said project.

2. Plan Adoption. The Plan is hereby adopted and approved in all respects, including without limitation, the segregation and application of tax increments as provided in Sections 7-15-4282 through 7-15-4293 of the Act as provided therein.

3. Effective Date. This Ordinance shall be in full force and effect from and after the date that is 30 calendar days after the date set forth below.

4. Accrued Costs. This Ordinance allows for reimbursement of any cost accrued relating to projects identified in the South Billings Boulevard Urban Renewal Plan prior to the final adoption of the Ordinance establishing the South Billings Boulevard Urban Renewal District with Tax Increment Financing funds generated by the district.

PASSED by the City Council on first reading April 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading May 12, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

EXHIBIT A
MAP OF URBAN RENEWAL AREA

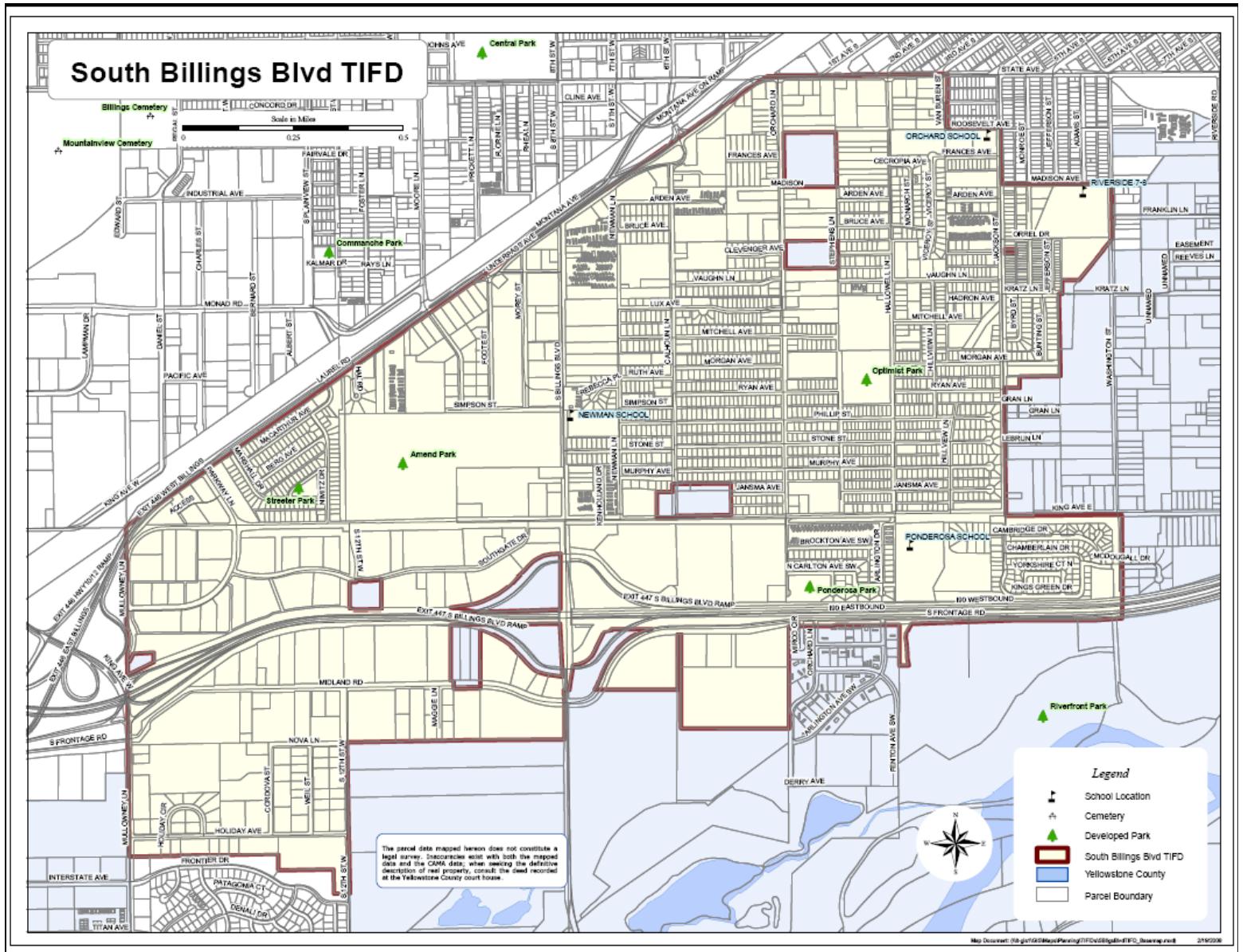


EXHIBIT B
LEGAL DESCRIPTION OF URBAN RENEWAL AREA

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 Mullowney Lane, extending north along the centerline of Mullowney 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.

EXHIBIT C
SOUTH BILLINGS BOULEVARD URBAN RENEWAL PLAN
(Available upon request)

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

S

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, May 12, 2008

TITLE: Second Reading of an Ordinance Expanding Ward III:
Annexation #08-01

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On April 14, 2008, the City Council approved the annexation of an approximate 114-acre parcel legally described as Tracts 1A through 5A of Certificate of Survey 2063 Amended. The request for annexation was submitted by Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, property owners. Upon annexation, the property must be added to one of the City's election wards. The Council approved the first reading of the ordinance to add the property to Ward III at its meeting on April 28, 2008. The second reading of the ordinance will be conducted at this meeting.

FINANCIAL IMPACT: There are no direct financial impacts if this ordinance is approved.

RECOMMENDATION

Staff recommends that the City Council approve the 2nd reading of this ordinance that adds property to City Ward III.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD III PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. **AMENDMENT.** Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to the following designated Ward the following described real property:

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 1A, 2A, 3A, 4A, & 5A, Certificate of Survey 2063, Amended, Recorded April 7, 2008, under Document No. 3460596, Records of Yellowstone County.
Including all adjacent right-of-way of King Avenue West.

Containing 114.669 gross acres, and 114.298 net acres.

(# 08-01) See Exhibit "A" Attached

2. **CERTIFICATION.** Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. **REPEALER.** All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 28th day of April, 2008.

PASSED by the City Council on the second reading this 12th day of May, 2008.

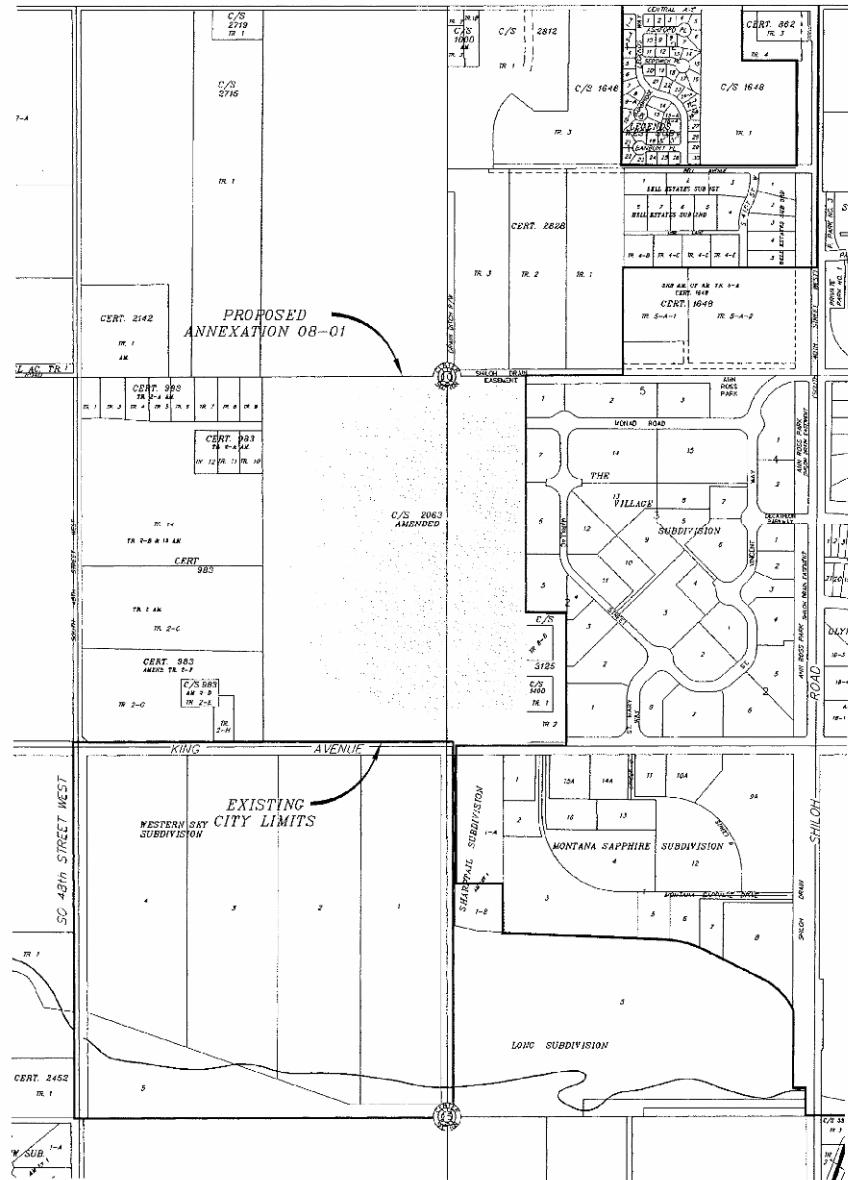
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

EXHIBIT A



(Back to Consent Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 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 \$748,694.62 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 11, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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

T₂

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 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 \$2,095,622.67 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 18, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

May 12, 2008

SUBJECT: Payment of Claims

DEPARTMENT: Municipal Court

PRESENTED BY: Scott Dobbs, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$245,980.24 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 1, 2008, to January 31, 2008, is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

May 12, 2008

SUBJECT: Payment of Claims

DEPARTMENT: Municipal Court

PRESENTED BY: Scott Dobbs, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$180,565.08 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 1, 2008, to February 29, 2008, is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

May 12, 2008

SUBJECT: Payment of Claims

DEPARTMENT: Municipal Court

PRESENTED BY: Scott Dobbs, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$194,044.90 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 1, 2008, to March 31, 2008, is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

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, May 12, 2008

TITLE: SID 1379 King Avenue West – Change Order Approval Limit

DEPARTMENT: Public Works - Engineering

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

PROBLEM/ISSUE STATEMENT: Under Section 13-502 of the City Code, the City Administrator has the authority to approve change orders in the amount of: 10% of the original contract amount, \$500,000.00, or the original budgeted contingency, whichever is less. The original budgeted contingency for this project was 10% and is the limiting factor when determining the City Administrator maximum change order authority. As the original contract amount for this project is \$4,971,752.50, the City Administrator's change order authority for this project is \$497,175.25. At the April 28th City Council meeting, Council approved Change Order #8 in the amount of \$336,315.25 for work necessary to complete underground improvements associated with a lift station within Shiloh Crossing Subdivision. With this, the City Administrators change order authorization has been exceeded. Staff is requesting that Council increase the City Administrators change order authority by \$50,000 above what has already been approved with Change Orders 1-8.

Although it is now necessary to complete the underground improvements for the lift station under this project, its inclusion within this project was unforeseen and staff is requesting that Council grant the City Administrator extra change order authority as this project has an aggressive construction schedule and decisions and approvals for change orders often need to happen the same day that problems are identified. Without the change order for the underground improvements for the lift station, this project has had change orders totaling \$357,140.86 or 7.18% of the original contract amount. Of that, \$266,842.90 came from the discovery and mitigation of an unsuitable clay soil layer. Excluding these two major change orders items of \$366,315.25 for the underground improvements for the lift station and the \$266,842.90 for the clay layer mitigation, this project has only had change orders totaling \$90,297.96, or 1.82% of the original contract amount.

FINANCIAL IMPACT: Funding for possible change order work will come from project funds and not from additional assessments to property owners under the SID. The total amount of Change Orders 1 through 8 results in an increase to the original contract price of \$693,456.11 or

13.95%. If Council approves increasing the City Administrator change order authority by \$50,000, the original contract price would be \$743,456.11 or 14.95% above the original contract amount.

RECOMMENDATION

Staff recommends that Council increase the City Administrators change order authority to an amount of \$50,000 above what has already been approved with Change Orders 1-8.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Programs and the FY2008-2009 Annual Action Plan

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Brenda Beckett, Community Development Manager
Candi Beaudry, Planning and Community Services Director

PROBLEM/ISSUE STATEMENT: The City Council previously held a public hearing on the allocation of the City of Billings FY2008-2009 CDBG and HOME funding and the fourth year Consolidated Plan Annual Action Plan for FY2008-2009 on Monday, April 28, 2008. Council action is now scheduled for May 12.

ALTERNATIVES ANALYZED: The Community Development Board reviewed funding priorities during their meetings for six consecutive months from June to November 2007 and presented findings to the City Council on November 19, 2007. Research topics included the history of project funding and housing trends from the City of Billings, current national CDBG funding trends and polling the public service grantees. Although the City Council did not offer a directive to the Community Development Board regarding funding priorities, the Board is now requesting policy priorities from the City Council for FY2009-2010.

Allocation recommendations conform to pre-determined spending caps on several categories including: CDBG and HOME Administration (20% and 10% of new funding prospectively); Public Service Caps (up to 15% of new CDBG funding); and Community Housing Development Organizations (15% of HOME allocation). Changes within funding caps are allowed within certain categories. Affordable Housing, Neighborhood Projects and Economic Development funding amounts can be exchanged. A change in the Public Services category should result in an equal change in the same category. Changes made which do not comply with federal spending caps would place the City's entitlement for federal funds at risk.

FINANCIAL IMPACT: The public hearing resulted in additional public input on the use of CDBG & HOME resources in Billings. In FY2008-2009, the City has \$701,191 in new CDBG funding and \$483,959 in HOME funding. Program income and funding remaining from

completed projects brings the totals available for allocation for this fiscal year to \$853,771 for CDBG and \$629,205 for the HOME program. Federal revenues received for the CDBG and HOME programs are provided through the U.S. Department of Housing and Urban Development. The Community Development Board recommendations are attached and comply with funding limitations.

RECOMMENDATION

Staff recommends that the City Council approve the allocation of CDBG and HOME funds as proposed by the Community Development Board for FY2008-2009 and the FY2008-2009 Annual Action Plan as the fourth year of the Consolidated Plan for FY2005-2009.

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

ATTACHMENTS

- A. FY2008-2009 Annual Action Plan (10)
- B. CD Board Budget Recommendation (2)
- C. CDBG / HOME Programs FY2008-2009 Project Summaries (6)
- D. Task Force Priorities (4)
- E. FY2008-2009 Final Revenue (1)
- F. History of Agencies Funded (8)

INTRODUCTION

The Community Development Board has made recommendations to City Council on the allocation of CDBG and HOME funding for FY2008-2009. On April 28, the City Council held a public hearing to provide public input on the recommendations and the allocation of CDBG and HOME resources in the community. Additional background on the Community Development Board's recommendation was provided to the City Council prior to the public hearing during a work session on April 21, 2008.

Also for consideration is the FY2008-2009 Annual Action Plan representing the fourth year of planning for the FY2005-2009 Consolidated Plan. The purpose of the Consolidated Plan is to identify the housing and community development needs of low-income households in Billings and develop strategies for addressing those needs in a comprehensive, coordinated fashion utilizing available federal and non-federal resources. The Annual Action Plan for FY2008-2009 will serve as the planning tool for the City's CDBG and HOME Programs.

The Consolidated Plan is required for participation by the City of Billings in the U.S. Department of Housing and Urban Development (HUD) CDBG and HOME Programs and also for homeless programs funded under the McKinney Act and the Housing for Persons with AIDS (HOPWA) Program. The City of Billings does not receive McKinney funds or HOPWA funds, therefore the City's Consolidated Plan is focused on CDBG and HOME activities.

The Consolidated Plan combines planning and application requirements for the CDBG and HOME Programs. Consolidation of the submission requirements for the CDBG and HOME programs allows program planning and citizen participation to take place in a comprehensive context covering both programs. A separate Consolidated Plan is prepared by the City of Great Falls, the City of Missoula, and the State of Montana for urban and rural areas of Montana outside of Billings, Great Falls, and Missoula.

The City Council is asked to consider the input that is received and make a final decision on the FY2008-2009 CDBG and HOME budgets and FY2008-2009 Annual Action Plan on Monday, May 12, 2008.

PROCEDURAL HISTORY

The City of Billings has been receiving CDBG funds since the mid-1970s and HOME funds since the early 1990s. These funds are provided by the federal government and are primarily targeted in Billings to address the affordable housing and neighborhood revitalization needs of the community. The FY2008-2009 budget represents the fourth year Action Plan to implement the City's 5-Year Consolidated Plan. The Consolidated Plan identifies strategies for the use of housing and community development resources in the community.

In allocating CDBG and HOME resources, the City of Billings goes through an extensive process to gather public input on the use of the funds. This year's applications were available at the beginning of December and due at the end of January 2008. Task force input was requested in February and March. The Community Development Board held budget hearings on the use of the CDBG and HOME resources on March 20 and 21 and prepared recommendations on March

31 and May 6. A copy of the priorities of the task forces, as received during this process, is included in Attachment D.

The City Council public hearing is required by the Federal government and is part of the 30-day public comment period on the program beginning April 4 and extending to May 9. The City Council is scheduled to act on the CDBG and HOME programs on May 12. An application will then be submitted to HUD for its review and the program year will begin July 1, 2008.

BACKGROUND

The public hearing held on April 28 on the FY2008-2009 CDBG / HOME budget and the 2008-2009 Annual Action Plan is part of the public input process for the use of these funds in the community. Each year the City of Billings requests application for the use of these funds for housing and community development activities. These applications are then forwarded to the Community Development Board, which prepares its recommendation for the City Council consideration.

The City is required to provide no more than 20% of its CDBG funding for administration, fair housing and planning type activities (\$156,950) and **must** provide 15% (\$72,594) of its annual HOME allocation for activities carried out by nonprofit housing development organizations or CHDOs (Community Housing Development Organizations). The City is required to provide no more than 10% of HOME funding for administration activities (\$62,921). The City can allocate up to 15% of CDBG resources (\$118,081) to nonprofit organizations or other projects classified as public service activities, ranging from daycare to crime prevention activities.

The City received 18 applications for housing and neighborhood activities and 18 applications for public service funding. Project summaries for activities proposed this year are included as Attachment C. CDBG and HOME resources represent the main federal commitment to communities to address the need to preserve the existing supply of affordable housing and promote the development of new affordable housing. Few other federal, state or local resources are available to address these housing needs.

Comments of the speakers at the public hearings may relate to the significant decrease in funding. Last year funding available for public services totaled \$136,111. This year's available funding is \$118,081. The total request for funding in public services was \$206,507 for FY2008-2009.

ALTERNATIVES ANALYZED

The allocation of funding is restricted by the eligibility requirements for CDBG and HOME funding. Projects are focused on activities that promote new affordable housing or preserving the existing supply of affordable housing and those neighborhoods where the affordable housing stock is located. The applications for housing and neighborhood activities are consistent with this focus. The Community Development Board reviewed the proposed projects and analyzed various alternatives for funding.

STAKEHOLDERS

Stakeholders for the CDBG and HOME programs include:

1. Applicants for funding - The City receives applications from a variety of nonprofit organizations which apply for public service funding or for housing funding, such as, Living Independently for Today and Tomorrow and Yellowstone County Council on Aging. A summary of the applicants is included as Attachment C and the complete applicants are available online:
<http://www.ci.billings.mt.us/Living/cdd/applications.php>
2. Neighborhood Task Forces – The task forces are consulted regarding neighborhood needs and solutions to those needs utilizing both CDBG and HOME resources. Task forces are asked to comment on or prioritize the applications. These priorities have been provided in Attachment D for your review.
3. The Community Development Board, as an advisory body to the City Council, provides detailed oversight to both the CDBG and HOME programs throughout the year and has gone through an extensive process to prepare its recommendations for the City Council consideration. Additional information of the Community Development Board's recommendation was provided to the City Council during the April 21 Work Session.

CONSISTENCY WITH ADOPTED POLICIES OR PLAN

Projects proposed for consideration are consistent with the goals and objectives of the adopted FY2005-2009 Consolidated Plan for the use of CDBG & HOME resources in Billings. Five primary strategies are proposed in the FY2005-FY2009 Consolidated Plan to meet the diverse needs of Billings' lower-income households. These needs have been primarily identified through the 2005 Billings Housing Needs Assessment completed for the City of Billings by Montana State University-Billings Center for Applied Economic Research. This needs assessment was undertaken utilizing focus groups, individual interviews, a community survey, and an examination of census and housing market data.

This work and input from neighborhood groups and community partners resulted in the identification of the following four characteristics of the community that the City of Billings will attempt to address with housing and community development activities: (1) increasing housing cost compared to income and its effect on low income renters and homeowners in achieving safe, decent & affordable housing; (2) an aging population and the associated increase in the percentage of the population with disabilities; (3) a slight decrease in the price of rental housing and short term concern over the number of multi-family units; and (4) the age and condition of the community's affordable housing stock, particularly in the older neighborhoods surrounding the City's Central Business District.

The following five strategies are proposed by the City of Billings in its FY2005-2009 Consolidated Plan to address Billings' housing and community development needs.

Strategy #1

Promote the preservation of the existing supply of affordable housing in the community by:

- Providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes;
- Providing affordable financing to encourage rehabilitation of multi-family units affordable to lower income residents in the community; and,
- Reducing the loss of existing standard housing units affordable to lower income households due to redevelopment activities.

Strategy #2

Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located by:

- Upgrading the housing stock in older lower income neighborhoods;
- Providing incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods;
- Supporting activities that provide amenities and address infrastructure needs of older lower income neighborhoods; and,
- Supporting efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities.

Strategy #3

Promote new affordable housing opportunities by:

- Encouraging the development of new affordable single, multi family, and special needs housing in the community through private developers and non-profits; and,
- Promoting homeownership.

Strategy #4

Work as an active partner with non-profits, neighborhood groups, and others to address housing, community, and neighborhood needs by:

- Encouraging housing and community development organizations to work together to build strong community structures to better address needs and respond to opportunities; and,
- Supporting activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes.

Strategy #5

Improve the economic conditions of lower income households in the community by:

- Supporting efforts of community organizations to address the human service needs of lower income residents of the community in general and our lower income neighborhoods in particular; and
- Supporting the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.

Proposed goals and objectives for each of these strategies for FY2008-2009 are identified in the Annual Action Plan included as Attachment A. The complete Draft FY 2005-2009 Consolidated Plan including the 2005 MSU-B Housing Needs Assessment is available for review at <http://www.ci.billings.mt.us/Online/PDF/Living/cdd/reports/2005%20Housing%20Needs%20Analysis.pdf>.

**Each application is available for review on line at:
<http://www.ci.billings.mt.us/Living/cdd/applications.php>

RECOMMENDATION

Staff recommends that the City Council approve the allocation of CDBG and HOME funds as proposed by the Community Development Board for FY2008-2009 and the FY2008-2009 Annual Action Plan as the fourth year of the Consolidated Plan for FY2005-2009.

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

ATTACHMENTS

- FY2008-2009 Annual Action Plan (10)
- CD Board Budget Recommendation (2)
- CDBG / HOME Programs FY2008-2009 Project Summaries (6)
- Task Force Priorities (4)
- FY2008-2009 Final Revenue (1)
- History of Agencies Funded (8)

City of Billings, Montana

ANNUAL ACTION PLAN FY 2008-2009 CDBG / HOME Programs

EXECUTIVE SUMMARY

This is the City of Billings' fourth year Action Plan of a 5-year strategic plan that identifies activities it will undertake in 2008-2009 to address priority needs in the community. The draft Annual Action Plan is open for public comment extending from April 4 through May 9, 2008. A public hearing will be held on April 28, 2008 during the Billings City Council meeting to accept public comments on the Annual Action Plan and Community Development Board recommendations for funding. The Action Plan for FY 2008-2009 serves as the budget for the City's FY 2008-2009 Community Development Block Grant (CDBG) Program and HOME Investment Partnerships Program (HOME). Projects proposed for this year are found in Appendix A and funded projects can be found in Appendix G.

The Consolidated Plan is required for participation by the City of Billings in the U.S. Department of Housing and Urban Development (HUD) CDBG and HOME Programs and also for homeless programs funded under the McKinney-Vento Homeless Assistance Act and the Housing Opportunities for Persons with AIDS (HOPWA) Program. The City of Billings does not receive McKinney funds or HOPWA funds. Focused on CDBG and HOME activities, the Consolidated Plan combines the planning and application requirements for the CDBG and HOME Programs. Consolidation of the submission requirements for the CDBG and HOME Programs allows program planning and citizen participation to take place in a comprehensive context covering both programs. A separate Consolidated Plan is prepared by the City of Great Falls, the City of Missoula, and the State of Montana for non-entitlement areas of the state.

The CDBG and HOME programs covered by the Consolidated Plan have three basic goals:

1. To provide decent housing which includes maintaining the affordable housing stock in the community, increasing the availability of permanent housing that is affordable to lower-income households without discrimination, increasing support of housing which enables persons with special needs to live independently, and to assist homeless persons to obtain affordable housing.
2. To provide a suitable living environment which includes improving the safety and livability of neighborhoods, increasing access to quality facilities and services, reducing the isolation of income groups within areas by deconcentrating housing opportunities and revitalizing deteriorating neighborhoods, restoring and preserving natural and physical features of special value for historic, architectural, or aesthetic reasons, and conserving energy resources.

3. To expand economic opportunities including creating jobs accessible to lower-income individuals, providing access to credit for community development activities which promote long-term economic and social viability and empowering lower-income persons in federally assisted and public housing to achieve self-sufficiency.

Activities under these programs must primarily benefit low and moderate-income persons. The strategies described in the City of Billings' Consolidated Plan outlines a specific course of action for the community's housing and community development activities. The plan builds on local assets to meet the needs of the community and sets forth goals, objectives, and performance measures to assure progress in achieving the strategies described in the plan.

The structure and content of this plan are based on specific requirements of the U.S. Department of Housing and Urban Development for the preparation of the Consolidated Plan. Many terms used in this document are specific to the Consolidated Plan process and HUD programs, and the reader may consult the Community Development Office for assistance.

Available Funding, Expenditure Limits and Match Requirements

CDBG administration and planning activities are budgeted at \$156,950, which is 20% of our new CDBG allocation (\$701,191) and program income (\$83,561). Reprogrammed funding (cancelled or completed projects) includes \$69,019 that has also been added to this year's budget for allocation. One hundred percent of available funding will be used to benefit low to moderate-income households.

The amount of funding available for Public Service Activities is \$118,081. This amount represents 15% of prior year income (15% of \$86,018 is \$12,903) and the new CDBG allocation (15% of \$701,191 is \$105,179), and no additional reprogrammed funding from Public Services from prior years. Declining federal resources limit the City's ability to provide funding for Public Service activities (see Appendix A).

HOME administration activities are budgeted at \$62,921, which includes 10% of new HOME revenue (10% of \$483,959 is \$48,396) and program income (10% of \$145,246 is \$14,525).

The City of Billings meets HOME matching requirements through low-interest financing available for First Time Homebuyer Loans issued through the Montana Board of Housing (MBOH) and matching funds provided for other affordable housing projects undertaken with HOME funds, such as private contributions and other local bank financing. MBOH contributed \$5.3 million in set-aside financing during FY2007-2008.

Past Performance

The City of Billings received comments from the U.S. Department of Housing and Urban Development regarding Comprehensive Annual Performance Evaluation Report (CAPER) in

January. The overall evaluation concluded the City of Billings CDBG and HOME programs are making strides in providing affordable housing and addressing community needs.

FFY2005-2009 CONSOLIDATED PLAN SUMMARY

The FFY2005-2009 Consolidated Plan followed a plan development process which included the development of the 2005 Billings Housing Needs Assessment completed by Montana State University-Billings, input from neighborhood groups, and public hearings on housing and community development needs. The plan was adopted by the Billings City Council on May 9, 2005.

The purpose of the Consolidated Plan is to identify the housing and community development needs of low-income households in Billings and develop strategies for addressing those needs in a comprehensive, coordinated fashion utilizing available federal and nonfederal resources. Five primary strategies are proposed in the FY2005-FY2009 Consolidated Plan to meet the diverse needs of Billings' lower-income households. These needs have been primarily identified through the 2005 Billings Housing Needs Assessment. This needs assessment was undertaken utilizing focus groups, individual interviews, a community survey, and an examination of census and housing market data. This work and input from neighborhood groups and community partners resulted in the identification of the following four characteristics of the community that the City of Billings will attempt to address with housing and community development activities:

1. Increasing housing cost compared to income and its effect on low-income renters and homeowners in achieving safe, decent and affordable housing;
2. An aging population and the associated increase in the percentage of the population with disabilities;
3. A slight decrease in the price of rental housing and short-term concern over the number of multi-family units scheduled to be constructed in 2005; and
4. The age and condition of the community's affordable housing stock, particularly in the older neighborhoods surrounding the City's Central Business District.

Addressing these community characteristics requires the continuation of existing partnerships and developing new partnerships between public, private and non-profit sectors of the community.

FFY 2005-2009 STRATEGIC PLAN

The following five strategies are proposed by the City of Billings in its FY2005-2009 Consolidated Plan to address Billings' housing and community development needs.

Strategy #1

Promote the preservation of the existing supply of affordable housing in the community, by:

- Providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes;
- Providing affordable financing to encourage rehabilitation of multi-family units affordable to lower income residents in the community; and,
- Reducing the loss of existing standard housing units affordable to lower income households due to redevelopment activities.

Strategy #2

Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located, by:

- Preserving the housing stock in older lower income neighborhoods;
- Providing incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods;
- Supporting activities that provide amenities and address infrastructure needs of older lower income neighborhoods; and,
- Supporting efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities.

Strategy #3

Promote new affordable housing opportunities, by:

- Encouraging the development of new affordable single, multi-family, and special needs housing in the community through private developers and non-profits; and,
- Promoting homeownership.

Strategy #4

Work as an active partner with non-profits, neighborhood groups, and others to address housing, community, and neighborhood needs, by:

- Encouraging housing and community development organizations to work together to build strong community structures to better address needs and to respond to opportunities; and,
- Supporting activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes.

Strategy #5

Improve the economic conditions of lower income households in the community, by:

- Supporting efforts of community organizations to address the human service needs of lower income residents of the community in general and our lower income neighborhoods in particular; and

- Supporting the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.

The complete FY2005-2009 Consolidated Plan can be viewed online:

<http://www.ci.billings.mt.us/Online/PDF/Living/cdd/reports/5%20Year%20Consolidated%20Plan%20FY2005-2009.pdf>

FFY 2008-2009 ANNUAL PLAN		
Strategy #1 - Promote the preservation of the existing supply of affordable housing in the community.		
Objective	Implementation Plan	2008-2009 Goals
Provide affordable financing to lower income homeowners to perform needed repairs.	Complete substantial rehabilitation ¹ work through the Housing Rehabilitation Loan Program.	12 homes
	Complete minor rehabilitation work through the Minor Home Repair Program.	15 homes
	Provide funding for single purpose rehabilitation projects targeted to elderly and special needs lower income homeowners. Providing funding to organizations increases the total leveraged funding available for repair programs.	Assist with repairs for the elderly and disabled by working with non-profit organizations such as: LIFTT (7 ramps), YCCOA (50 repairs), and Rebuilding Together (4 homes).
	Pursue grant and private funding to support activities that increase resources available for housing rehabilitation activities.	Staff support & coordination to Rebuilding Together and other organizations performing rehabilitation.
Provide affordable financing to rehabilitate rental units affordable to lower income residents.	Complete substantial rehabilitation work to rental units for occupancy by lower income, elderly and special needs households through the Rental Rehabilitation Program.	5 rental units
Reduce the loss of existing standard housing units affordable to lower income households due to redevelopment activities.	Continue to work with organizations involved with redevelopment activities to promote the preservation of the existing supply of affordable housing and to mitigate the effects of demolition or conversion when it does occur.	Continue working with the Affordable Housing Task Force to continue work on housing guidelines ² .
Strategy #2 - Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.		
Objective	Implementation Plan	2008-2009 Goals

¹ For the purposes of this plan, substandard condition of housing is defined by the City of Billings as properties requiring more than \$20,000 in funding to complete all required code related improvements to the property. Substandard condition but suitable for rehab would be those properties where \$20,000 invested would address all safety hazard conditions related items associated with the house within primary systems ranging from electrical, plumbing, heating, roofing, and foundation repairs.

² Housing is being lost due to redevelopment activities separate from CDBG and HOME activities. This work group has been established to study housing needs including the loss of housing units due to demolition or redevelopment activities and to develop local housing guidelines acceptable to the community. This initiative will increase local awareness of the negative cumulative effect resulting in the loss of affordable housing units. Local guidelines will be developed which balance the expansion needs of our community with affordable housing.

Preserve the housing stock in older lower income neighborhoods.	See also implementation plan for strategy #1.	-
	Support house painting program for lower income homeowners.	5 homes
	Support Tree Program to remove and replace diseased or dangerous trees for lower income homeowners.	12 trees through public service activities
	Support activities that help preserve historic properties.	Support annual YHPB work plan.
Provide incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods.	See also implementation plan for strategy #3.	-
Support activities that provide amenities and address the infrastructure needs of older lower income neighborhoods.	Support planned neighborhood improvements included in City's Capital Improvement Plan.	Implement City's FY2008-2009 CIP and projects funded through CDBG.
	Provide Special Assessment Grants for lower income households to help pay for SID's resulting from the City's public improvement projects.	30 homeowners
	Encourage the redevelopment of the South 27 th Street Corridor.	Complete 1 new redevelopment project.
	Encourage the implementation of the Heritage Trail Bike Plan in lower income areas in conjunction with the Healthy Communities "Built Environment" initiative.	Plan and seek funding for needed improvements in low-income neighborhoods.
Support efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities.	Promote historic preservation activities in a coordinated manner through Historic Preservation Organizations.	Support annual YHPB work plan.
	Support Neighborhood Planning efforts and provide on-going support for monthly task force meetings.	Complete Neighborhood Plans.
		Staff support for newsletter monthly mailings.
		Facilitate task force initiatives as requested.

Strategy #3 - Promote new affordable housing opportunities.

Objective	Implementation Plan	2008-2009 Goals
Encourage the development of new affordable single family, and multi family, special needs housing in the community through	Provide funding through the CDBG / HOME, and other Affordable Housing Funds to encourage the development of new affordable housing in the community emphasizing new / converted:	20 units

private developers and non-profits.	<ul style="list-style-type: none"> • Elderly and Disabled housing • Special needs housing • Housing in lower income neighborhoods (Strategy #2) • Housing for very low and extremely low-income renters 	
Promote homeownership.	Provide funding to Community Development Housing Development Organizations (CHDOs) to undertake activities to meet priority affordable housing needs.	10 units
	Complete Phase III of the Kings Green Affordable Housing Project.	15 units Begin Phase III of Kings Green, utilize the Affordable Housing Task Force to make recommendations regarding infrastructure development post Phase III.
	Work to address loss of mobile / manufactured housing affordable to lower income households.	
	Work with Affordable Housing Task Force to identify and address barriers to affordable housing and to encourage infill development.	Utilize the Affordable Housing Task Force to study & make recommendations for housing options.
	Support activities of the Housing Authority of Billings (HAB) and other assisted housing providers to meet the needs of very low-income households.	Support implementation of HAB's 5-Year Plan.
	Provide funding for support services to address the needs of the homeless, elderly, and special needs populations.	Provide staff support for the Mayor's Committee on Homelessness.
	Assist lower income households achieve home ownership through the City's First Time Homebuyer program in partnership with Montana Board of Housing (MBOH).	50 homebuyers & \$4 million in set aside financing.
	Participate with Montana Homeownership Network to increase First Time Homebuyer opportunities in the City leveraging resources available through Fannie Mae, MBOH etc.	20 homebuyers
	Support homebuyer education in partnership with Montana Homeownership Network.	150 households

	<p>Support Billings Partners for American Indian Homeownership effort to increase homeownership rates for American Indians and other minorities in the community.</p> <p>Support the Hispanic Development Outreach Committee to increase homeownership rates for Hispanic Americans and other minorities in the community.</p>	<p>Implementation of partnership goals to increase the homeownership rate for American Indians in Billings.</p> <p>Provide staff support, increase economic opportunities and homeownership for Hispanic Americans in Billings.</p>
Strategy #4 - Work as an active partner with non-profits, neighborhood groups, and others to address housing & community development needs.		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2008-2009 Goals</i>
Encourage housing & community and development organizations to work together to build strong community structures to better address needs and respond to opportunities.	<p>Sponsor the Affordable Housing Task Force, which brings together organizations such as the Housing Authority of Billings, Habitat for Humanity, HRDC, Big Sky EDA, homeWORD, realtors and lenders to address affordable housing issues of common concerns.</p> <p>Sponsor the Adjacent Neighborhood Committee, which brings together the City's neighborhood task forces and Downtown Billings Partnership.</p> <p>Support the activities of the Billings American Indian Homeownership Partnership which brings together approximately 20 organizations to increase the homeownership rate for American Indians.</p> <p>Support Neighborhood Task Forces to identify and address neighborhood needs.</p>	<p>Complete work on the new strategic plan and implement the plan through subcommittees.</p> <p>Host bi-monthly meetings and provide staff support for task force initiatives.</p> <p>Implementation of partnership goal to increase the homeownership rate for American Indians in Billings.</p> <p>Complete neighborhood plans & support distribution of monthly newsletters.</p>
Support activities and organizations promoting fair housing and increase awareness of the rights and responsibilities of protected classes.	<p>Undertake fair housing activities in a coordinated manner with organizations with an interest in promoting fair housing.</p>	<p>Implement existing FY2003-2007 Fair Housing Plan through the FY 2008-2009 Fair Housing Action Plan.</p> <p>Apply for Fair Housing Initiatives Program (FHIP) funding through HUD in 2008 for calendar year 2009.</p>

	Complete new Analysis of Impediments to Fair Housing Choice for the Billings community in 2007 and develop new Fair Housing Plan for FY2008-2012 ³ .	Develop new fair housing plan in 2008 based on results of the Analysis of Impediments to Fair Housing Choice.
Strategy #5 - Improve the economic conditions of lower income households in the community.		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2008-2009 Goals</i>
Support efforts of community organizations to address the human service needs of lower income residents of the community in general and lower income neighborhoods.	Utilize up to 15% of CDBG funding for public service activities to improve the economic conditions of lower income households.	Continue to implement performance measures to determine impact of assisted activities.
Support the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.	Provide technical assistance to lower income households interested in starting or expanding an existing business.	Provide technical assistance to 100 lower income households. Implement performance measures to determine impact of assisted activities.

³ The City of Billings follows a separate five-year cycle for fair housing planning. The last Analysis of Impediments to Fair Housing Choice was completed in 2002, resulting in the 2003-2007 Fair Housing Plan and a new Analysis of Impediments was completed in December 2008.

CD BOARD RECOMMENDATIONS

FY 2008-2009

	CDBG/HOME GRANT HISTORY	2007-2008 Award	2008-2009	Staff Recommendations		CD Board Recommendation	
			Requested	CDBG	HOME	CDBG	HOME
Admin / Planning Affordable Housing Activities	HN-1 CDBG Administration	\$168,592	\$175,000	\$156,950	-	\$156,950	-
	HN-2 HOME Administration	\$67,489	\$60,000	-	\$62,921	-	\$62,921
	HN-3 Housing Rehabilitation Loan Program	\$287,207	\$300,000	\$300,000	-	\$300,000	-
	HN-4 Minor Home Repair Program	\$60,000	\$60,000	\$60,000	-	\$60,000	-
	HN-5 HOME/CDBG Affordable Housing Support	\$300,000	\$400,000	\$0	\$200,000		\$200,000
	HN-6 First Time Home Buyer Program	\$341,329	\$350,000	\$0	\$238,690		\$283,690
	HN-7 Set-Aside for CHDOs - must be 15% of HOME funds	\$75,126	\$75,000	-	\$72,594	-	\$72,594
	HN-8 Living Independently for Today & Tomorrow	\$12,500	\$12,500	\$12,500	-	\$12,500	-
	HN-9 Yellowstone County Council on Aging - MHR Program	\$5,000	\$5,000	\$5,000	-	\$5,000	-
	HN-10 Rebuilding Together	\$10,000	\$10,000	\$10,000	-	\$10,000	-
	HN-12 Housing Authority - Lake Elmo Infrastructure Phase I	\$0	\$200,000	\$83,944	-	\$83,944	-
	HN-13 Housing Authority - Section 8 Deposit Assistance	\$0	\$5,000	-	\$5,000	-	\$10,000
	HN-14 HRDC - Affordable Housing Project	\$0	\$75,000	-	\$50,000	-	\$0
	HN-15 Property Management	\$8,000	\$5,000	\$5,000	-	\$5,000	-
	HN-16 Special Assessment Grants	\$47,500	\$50,000	\$44,796	-	\$44,796	-
	HN-17 Young Families Early Head Start - Building Addition	\$50,000	\$75,000	\$50,000	-	\$52,500	-
Econ Dev	HN-18 Big Sky Economic Development Authority	\$7,500	\$10,000	\$7,500	-	\$5,000	-
		\$1,470,243	\$1,867,500	\$735,690	\$629,205	\$735,690	\$629,205

Available CDBG funding for Affordable Housing Projects:

HN-12	Housing Authority - Lake Elmo Infrastructure Phase I	07-08 Funding: \$116,056	\$116,056
-------	--	---------------------------------	------------------

PUBLIC SERVICE ACTIVITIES

FY 2008-2009

PUBLIC SERVICE ACTIVITIES	CDBG GRANT HISTORY		2007-2008 Award	Amount Requested	Recommendation
	Grant ID	Organization			
PS-1	Big Sky Prevention of Elder Abuse		\$7,425	\$12,000	\$10,890
PS-2	Big Sky Senior Helping Hands Program		\$15,675	\$20,000	\$13,613
PS-3	Community Housing Resource Board		\$6,600	\$13,630	\$5,990
PS-4	Easter Seals - Play & Language for Autistic Youngsters		\$0	\$8,750	\$4,538
PS-5	Friendship House - Summer Enrichment		\$8,250	\$15,000	\$10,890
PS-6	homeWORD - Homebuyer Education		\$2,063 <i>Fin.Fitness</i>	\$9,000	\$5,445
PS-7	HRDC - Growth Thru Art		\$6,600	\$15,000	\$5,990
PS-8	HRDC - Harmony House		\$4,125 <i>IDAs</i>	\$15,000	\$7,260
PS-9	Scottish Rite Clinic - Scholarship Program		\$0	\$12,000	\$4,538
PS-10	Southgate Cop Shop		\$4,125	\$6,000	\$1,815
PS-11	Task Force Enhancement Fund		\$4,125	\$5,000	\$1,815
PS-12	Tree Trimming, Planting & Removal		\$3,300	\$15,000	\$4,538
PS-13	Tumbleweed - Street Outreach Program		\$0	\$10,000	\$4,538
PS-14	Yellowstone County Council on Aging - Resource Center		\$1,650	\$2,000	\$1,815
PS-15	Yellowstone Health Partnership - Med Assistance Program		\$7,425	\$9,000	\$8,168
PS-16	Young Families Early Head Start		\$7,425	\$27,077	\$18,360
PS-17	YWCA of Billings Children's Services		\$2,050	\$2,050	\$1,860
PS-18	YWCA Gateway House		\$6,600	\$10,000	\$5,990
				\$206,507	\$118,049

COMMUNITY DEVELOPMENT APPLICANTS
PUBLIC SERVICE ACTIVITIES - PROJECT SUMMARIES
FY 2008-2009

PS - 1	<i>Big Sky Prevention of Elder Abuse – Social Work</i> Funds are requested to help pay the salary of the Elder Support Social Worker who works with elders and disabled adults to prevent abuse and remediate effects of abuse by resorting economic stability to clients and helping them continue to live safely and independently at home.	\$12,000
PS - 2	<i>Big Sky Senior Helping Hands Program</i> Funds are requested for in-home staff salaries providing in-home services to very low-income, vulnerable elders in the Billings community. Services include homemaking, shopping, transportation, socialization, assistance with personal care and hygiene, medication management, health monitoring and health care.	\$20,000
PS - 3	<i>Community Housing Resource Board</i> Funds are requested to support the project director position, printing of brochures and fact sheets, office supplies, telephone, and internet/website support.	\$13,630
PS - 4	<i>Easter Seals – Play and Language for Autistic Youngsters</i> Funds are requested for scholarship dollars to offer fee relief to low-income families. The program currently serves 9 children and charges \$3,500 annually for treatment per child, which helps with operating costs.	\$8,750
PS - 5	<i>Friendship House - Summer Enrichment Program</i> Funds are requested for personnel and administrative costs associated with the Summer Enrichment Program (SEP). SEP is a comprehensive program that addresses the multi-needs of youth ages 4 - 12 and provides basic human service needs.	\$15,000
PS - 6	<i>homeWORD – Homebuyer Education</i> Funds will support the salary of the homebuyer education instructor and the direct expenses involved with providing the classes.	\$9,000
PS - 7	<i>HRDC - Growth Thru Art</i> Funds are requested to fund personnel and art supplies allowing the organization to continue to provide ongoing studio experiences, workshops, presentations and exhibitions, and opportunities to celebrate artists' personal growth through artistic expression for adults with disabilities.	\$15,000
PS - 8	<i>HRDC – Harmony House</i> Funds are requested for personnel, travel (local), supplies (household and cleaning supplies, food, etc.) and administrative costs to support the transitional living program for homeless pregnant or parenting young women and empowering them to be the best parents possible to their babies.	\$15,000
PS - 9	<i>Scottish Rite Clinic – Scholarship Program</i> Funds are requested to pay for therapeutic service expenses and operating expenses needed to provide direct service and child specific therapeutic equipment expenses.	\$12,000

PS - 10	<i>Southgate Cop Shop</i> Funding is requested to assist with rent, utilities and insurance for this neighborhood cop shop.	\$6,000
PS - 11	<i>Task Force Enhancement Fund</i> Funding is requested to provide support to neighborhood task forces for their newsletter mailings, officer insurance, leadership training, and organizational development.	\$5,000
PS - 12	<i>Tree Trimming, Planting, & Removal Program</i> Funding is requested to remove diseased or dangerous trees and to plant new trees for low-income households throughout the City of Billings.	\$15,000
PS - 13	<i>Tumbleweed - Street Outreach Program</i> Funds are requested for direct cost for van expenses and food costs equally while providing food, clothing, hygiene products, Tumbleweed information and community resources to runaway, homeless, at-risk and street youth between the ages of 10 to 21 years of age.	\$10,000
PS - 14	<i>Yellowstone County Council on Aging - Resource Center</i> Funds are requested for staff salaries to manage the Resource Center. This program assists the elderly, adults with physical disabilities in identification of needs, accessing services, completing program assistance applications, and advocacy.	\$2,000
PS - 15	<i>Yellowstone Health Partnership - Medication Assistance Program</i> Funds are requested for salaries of staff for the Medication Assistance Program (MAP) at the Deering Clinic site.	\$9,000
PS - 16	<i>Young Families Early Head Start - Child Care for High School Parents</i> Funding is requested to support salaries and benefits for staff who provide comprehensive child care and development services to infants and toddlers whose parents are teenagers, completing their high school education.	\$27,077
PS - 17	<i>YWCA - Children's Services</i> Funding is requested to provide partial scholarships to low and moderate income families accessing YWCA Children's Services programs for affordable and quality care / educational experiences. The programs include preschool, child care, and after-school care.	\$2,050
PS - 18	<i>YWCA - Gateway House Domestic Violence & Sexual Assault Services</i> Funding is requested to support general operating expenses of the program, which includes utilities, phones, taxes, supplies, security, building repairs, and accountant contracted services. Gateway services include housing, support, education, and advocacy for victims of domestic violence and sexual assault.	\$10,000

**COMMUNITY DEVELOPMENT APPLICANTS
HOUSING & NEIGHBORHOOD ACTIVITIES**

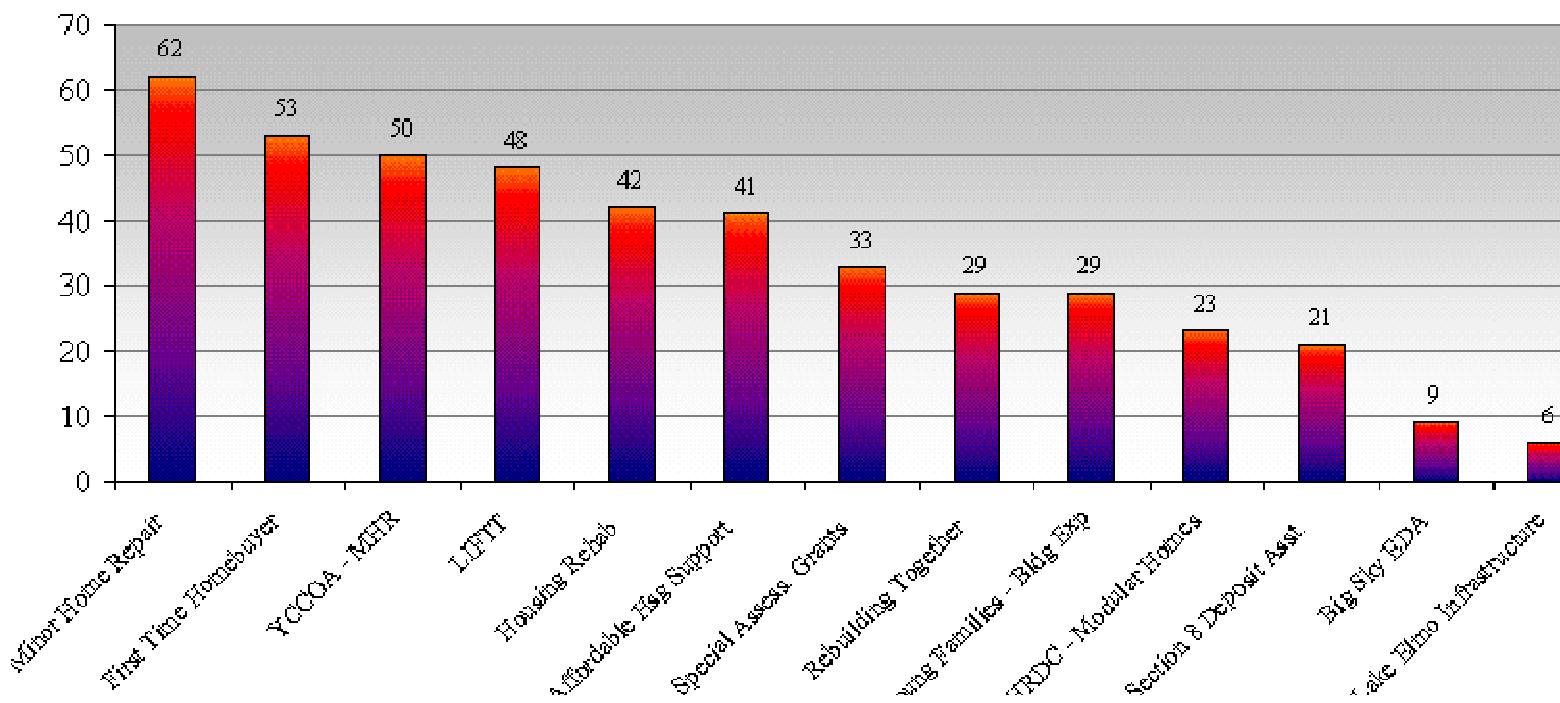
FY 2008-2009

<i>ADMINISTRATION / PLANNING / FAIR HOUSING ACTIVITIES</i>		
HN - 1	<i>CDBG Administration</i> Funds are requested for general administration expenditures for CDBG Program including office space, salaries and benefits for various staff positions. CDBG also provides the resources for administration for other grant programs related to Community Development received by the City.	\$175,000
HN - 2	<i>HOME Administration</i> Funds are requested for general HOME administration expenditures for HOME Program.	\$60,000
<i>AFFORDABLE HOUSING ACTIVITIES</i>		
HN - 3	<i>Housing Rehabilitation Loan Program</i> Funds are requested to rehabilitate up to 15 homes throughout the City of Billings. The program is intended to provide affordable financing to low / moderate income applicants to provide substantial improvements that help preserve the City's affordable housing stock and revitalize older neighborhoods. Funds will be used to partially fund the CD Grants Coordinator position.	\$300,000
HN - 4	<i>Minor Home Repair Program</i> Funds are requested to assist approximately 15 low-income homeowners with emergency repairs related to basic systems or accessibility for a physically disabled occupant. The program is available for mobile / manufactured mobile homes and for owner / occupied homes that are not appropriate for the Housing Rehabilitation Loan Program.	\$60,000
HN - 5	<i>HOME / CDBG Affordable Housing Support Program</i> Funds are requested to encourage the development of affordable housing for lower-income households in the City of Billings. Applicants for this program can be for-profit developers or non-profit agencies.	\$400,000
HN - 6	<i>HOME First Time Home Buyer Program</i> Funds are requested to assist approximately 40 low-income families in the purchase of their first home. The program is designed to provide financial assistance to help qualify for traditional housing financial programs to purchase a home. Funds will be used to provide down payment assistance, closing costs, and minor repairs and for related project administration expense.	\$350,000
HN - 7	<i>HOME Set-Aside Community Development Organizations (CHDO)</i> As a recipient of HOME funds, the City of Billings must provide at least 15% of its funding for CHDO activities. This funding is requested for CHDOs to develop affordable housing in the community.	\$75,000
HN - 8	<i>Living Independently for Today and Tomorrow (LIFTT)</i>	\$12,500

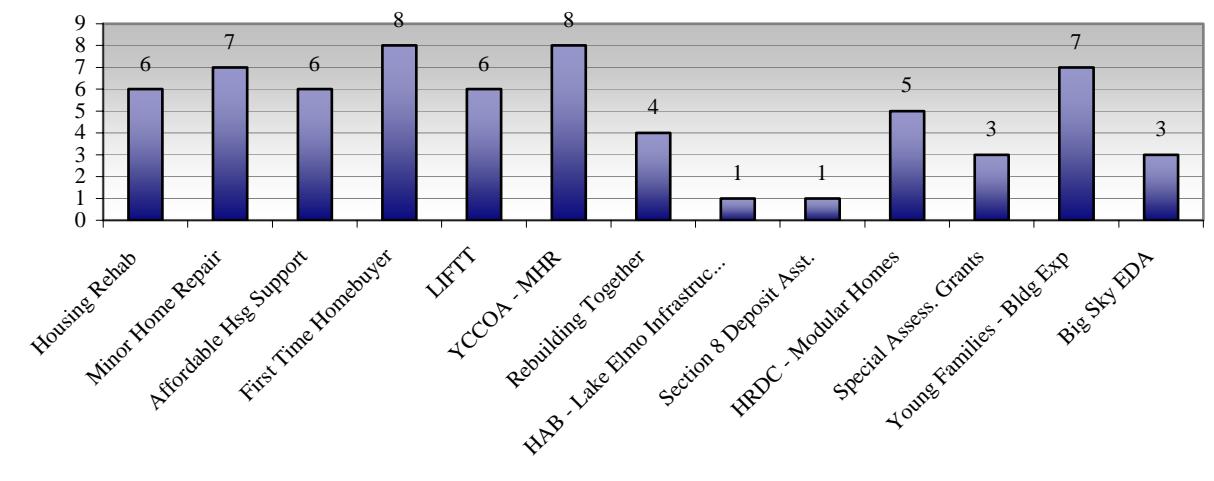
	Funds are requested to construct or provide maintenance work on ramps for low-income persons with disabilities to access their homes. Approximately six households will be assisted.	
HN - 9	<p><i>Yellowstone County Council on Aging – Minor Home Repair Program</i></p> <p>Funds are requested for this Minor Home Repair program which assists low-income persons over the age of 60 with safety-related repairs. Approximately 30 homes will be assisted.</p>	\$5,000
HN - 10	<p><i>Rebuilding Together – Home Rehabilitation</i></p> <p>Funds are requested for building materials and construction costs to assist up to five low-income households. Volunteers paint, clean, weatherize, and do carpentry, plumbing, roofing, and electrical work.</p>	\$10,000
HN - 12	<p><i>Housing Authority – Lake Elmo Infrastructure Phase I</i></p> <p>Funding is requested to assist the Housing Authority in infrastructure development for an affordable housing project. All residents in the project will be either very low or low income. The site is located along Lake Elmo road and will be developed with multi-family and single family units.</p>	\$200,000
HN - 13	<p><i>Housing Authority – Section 8 Deposit Assistance</i></p> <p>Funding is requested for tenant-based rental assistance for security deposits for Section 8 participants. The program is anticipated to assist 50 very low income families secure housing in Billings.</p>	\$5,000
HN - 14	<p><i>HRDC – Affordable Housing Project</i></p> <p>Funds are requested to assist HRDC in an affordable housing project which includes buying two land parcels in the City of Billings limits and maintaining a 99-year lease on the land. This will allow a homeowner to purchase a modular unit to be placed on the land and only incur costs for the housing unit, thus lowering the purchase price and mortgage payments for homeownership.</p>	\$75,000
<i>NEIGHBORHOOD PROJECTS</i>		
HN - 15	<p><i>Property Management</i></p> <p>Funds are requested to pay existing SIDs and maintain weeds and snow on property previously acquired through the CDBG program. These properties are primarily located along South 27th Street which were purchased specifically for re-development.</p>	\$5,000
HN - 16	<p><i>Special Assessment Grants</i></p> <p>Funds are requested to provide grant funds to lower-income households impacted by Special Improvement District assessments for public improvements such as curb, gutter, and sidewalk projects in lower income areas.</p>	\$50,000
HN - 17	<p><i>Young Families Early Head Start – Building Addition</i></p> <p>Funds are requested to pay for necessary expansion in a facility which will be used for day care services for teenagers attending high school with children.</p>	\$75,000
<i>ECONOMIC DEVELOPMENT</i>		
HN - 18	<p><i>Big Sky Economic Development Authority (BSEDA) – Small Business Development Center</i></p> <p>Funds would be used to supplement the operational expense of the program and provide training materials free of charge to clients attending pre-business workshops.</p>	\$10,000

CDBG / HOME FY 2008-2009

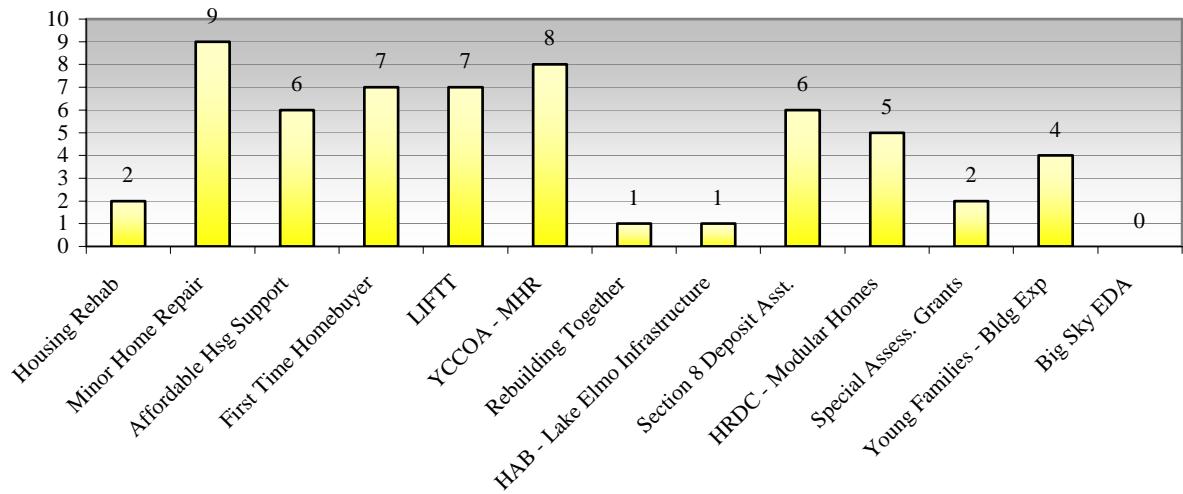
All Task Forces - Combined (91 Respondents)



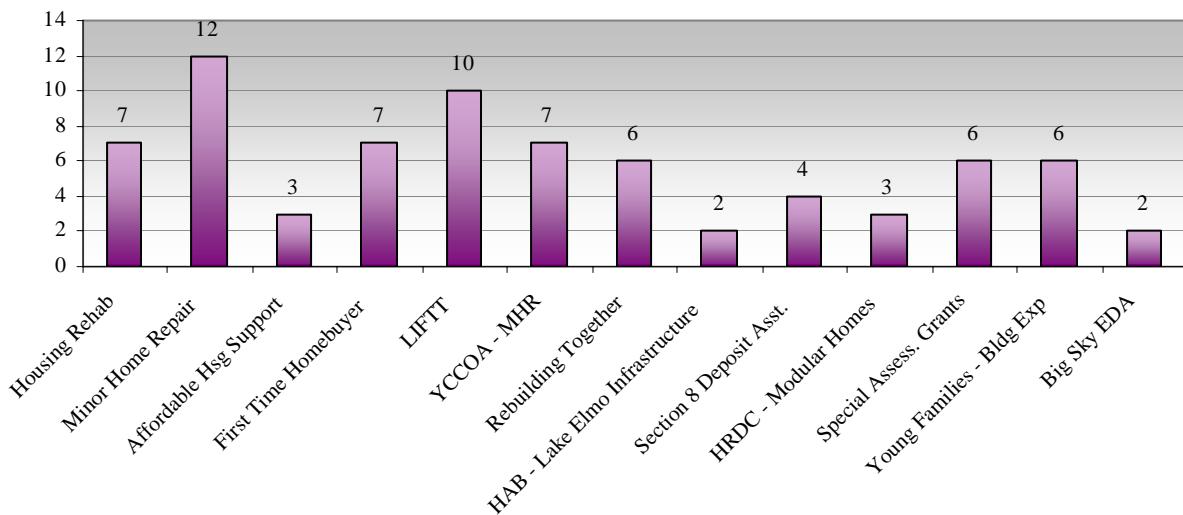
Central - Terry Priorities - 13 Respondents



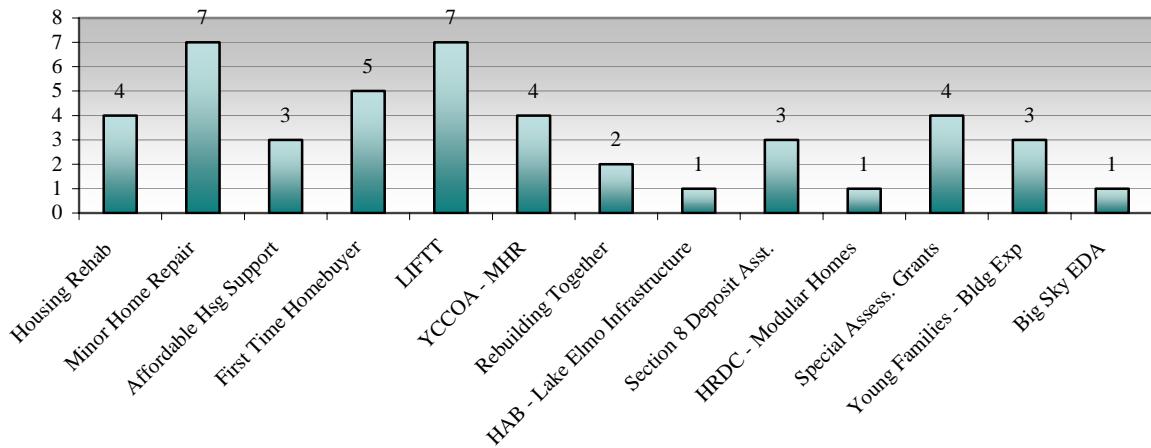
North Park Priorities - 12 Respondents



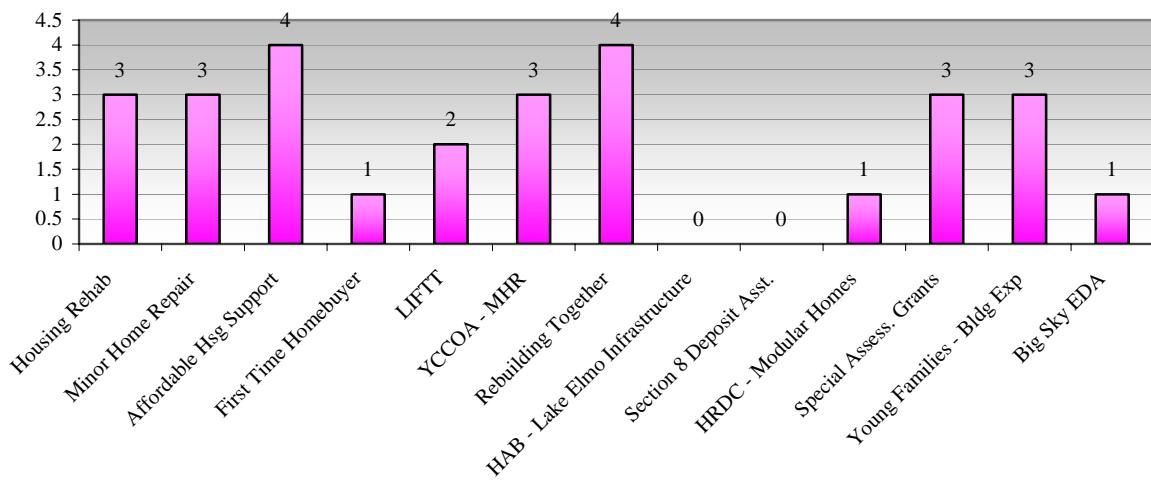
West End Priorities - 15 Respondents



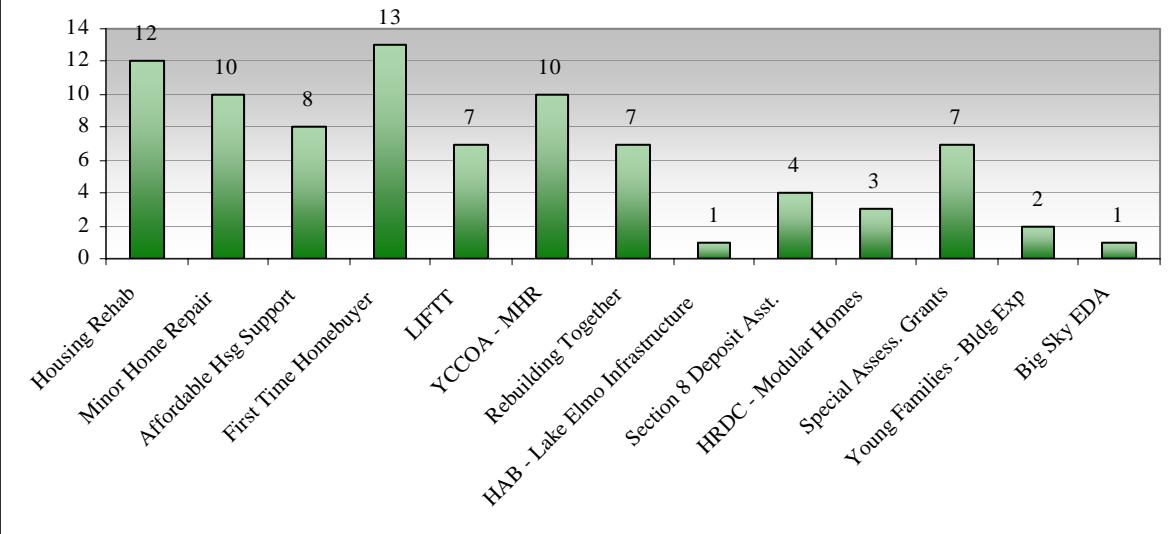
Heights Priorities - 9 Respondents



North Elevation Priorities - 6 Respondents



South Side Priorities - 17 Respondents



COMMUNITY DEVELOPMENT DIVISION

Final Revenue FY 2008-2009

24-Mar-08

CDBG REVENUE

HUD CDBG Grant	\$701,191	Annual Allocation
Loan Principal	\$13,241	Parkview Convalescent
Loan Interest	\$8,289	Parkview Convalescent
CDBG Reprogrammed* Funds	\$69,019	See detail below
Transportation Grants		
Housing Rehab Loans Repayment	\$22,932	At 75% year lapsed
Prior Year Program Income - Rehab	\$38,878	Program income over est. (Rehab Loans & Interest)
Rental Rehab Loan Repayment	\$0	At 50% year lapsed
Rehab Interest	\$221	At 50% year lapsed

CDBG Revenue Total: **\$853,771**

20% Cap on CDBG Administration: **\$156,950** Includes only new revenue, not reprogrammed*

PUBLIC SERVICE FUNDING

15% of CDBG Allocation (\$701,191)	\$105,179
15% of previous year program income (\$86,018)	\$12,903

PUBLIC SERVICE TOTAL: **\$118,081**

CDBG Revenue Total: **\$853,771**

Reduced by Public Services Total: **\$118,081**

Total Available for Housing & Neighborhood: **\$735,690**

HOME REVENUE

HUD HOME Grant	\$483,959
FTHB Loans Repayment	\$86,152 At 75% year lapsed
Prior Year Program Income - FTHB	\$59,094
<i>HOME Reprogrammed*</i>	

HOME Revenue Total: **\$629,205**

10% Cap on HOME Administration: **\$62,921** Includes only new revenue, not reprogrammed*

15% Mandatory CHDO Allocation: **\$72,594** Includes 15% of new allocation, not reprogrammed*

Total Available for HOME Activities: **\$556,611**

HN / Admin Reprogrammed Total: **\$69,019** Cancelled or completed projects

Total Available in CDBG & HOME: **\$1,482,976**

**HISTORY OF AGENCIES FUNDED THROUGH CDBG
HOUSING & NEIGHBORHOOD ACTIVITIES - Current Applicants**

HN - 8 Living Independently for Today and Tomorrow				
1996	LIFTT DIRECT ASSISTANCE PROGRAM	Handicap Asst	1,469	
1998	LIFTT RAMP PROJECT	Rehab - Single Unit Resid	10,000	
1999	LIFTT RAMP PROJECT	Rehab - Single Unit Resid	10,000	
2001	HOME MODIFICATIONS FOR THE DISABLED	Rehab - Single Unit Resid	15,000	
2002	RAMP PROJECT	Rehab - Single Unit Resid	15,000	
2003	HOME MODIFICATIONS FOR THE DISABLED	Rehab - Single Unit Resid	15,000	
2004	LIFTT-RAMPS	Rehab - Single Unit Resid	10,000	
2005	LIVING INDEPENDENTLY - HANDICAP RAM	Rehab - Single Unit Resid	10,000	
2006	LIFTT HANDICAP RAMPS	Rehab - Single Unit Resid	10,000	
2007	LIFTT HANDICAP RAMPS	Rehab - Single Unit Resid	12,500	
		TOTAL FUNDING:	\$108,969	

HN - 9 & PS 14 Yellowstone County Council on Aging				
1995	MINOR HOME REPAIRS - YCCOA	Rehab - Single Unit Resid	4,852	
1996	COUNCIL ON AGING MINOR HOME REPAIR	Rehab - Single Unit Resid	10,000	
1999	YCCOA MINOR HOME REPAIR PROGRAM	Rehab - Single Unit Resid	4,999	
2001	MINOR HOME REPAIRS - YCCOA	Rehab - Single Unit Resid	5,000	
2002	MINOR HOME REPAIRS FOR THE ELDERLY	Rehab - Single Unit Resid	5,000	
2003	MINOR HOME REPAIRS - YCCOA	Rehab - Single Unit Resid	5,000	
2004	COUNCIL ON AGING MINOR HOME REPAIRS	Rehab - Single Unit Resid	5,000	
2005	YEL. COUNCIL ON AGING - MINOR HOME	Rehab - Single Unit Resid	5,000	
2006	YCCOA - MINOR HOME REPAIR PROGRAM	Rehab - Single Unit Resid	5,000	
2006	YELLOWSTONE CO. ON AGING - RESOURCE CTR	Senior Svs	2,000	
2007	YCCOA - MINOR HOME REPAIR PROGRAM	Rehab - Single Unit Resid	5,000	
2007	YELLOWSTONE CO. ON AGING - RESOURCE CTR	Senior Svs	1,650	
		TOTAL FUNDING:	\$58,501	

HN - 10 Rebuilding Together				
2004	REBUILDING TOGETHER PROGRAM	Rehab - Single Unit Resid	5,000	
2005	REBUILDING TOGETHER	Rehab - Single Unit Resid	5,000	
2006	REBUILDING TOGETHER	Rehab - Single Unit Resid	10,000	
2007	REBUILDING TOGETHER	Rehab - Single Unit Resid	10,000	
		TOTAL FUNDING:	\$30,000	

HN - 18 Big Sky Economic Development Authority				
1993	TRADEPORT SMALL BUSINESS DEVELOP	Econ Dev Technical Asst	140	
1997	TECHNICAL ASSISTANCE	Econ Dev Technical Asst	15,000	
1998	SMALL BUSINESS DEVELOPMENT CENTER	Econ Dev Technical Asst	15,000	
1999	SMALL BUSINESS DEVELOPMENT CENTER	Econ Dev Technical Asst	15,000	
2000	TECHNICAL ASSISTANCE	Econ Dev Technical Asst	10,000	
2001	TECHNICAL ASSISTANCE	Micro-Enterprise Asst	10,000	
2002	TECHNICAL ASSISTANCE PROGRAM	Econ Dev Technical Asst	10,000	
2003	TECHNICAL ASSISTANCE	Econ Dev Technical Asst	8,260	
2004	SMALL BUSINESS DEVELOPMENT CENTER	Econ Dev Technical Asst	9,012	
2005	BIG SKY ECONOMIC DEVELOPMENT CORP.	Econ Dev Technical Asst	7,500	
2006	BIG SKY ECONOMIC DEVELOPMENT AUTHOR	Econ Dev Technical Asst	7,500	
2007	BIG SKY ECONOMIC DEVELOPMENT AUTHOR	Econ Dev Technical Asst	7,500	
		TOTAL FUNDING:	\$114,912	

PUBLIC SERVICE ACTIVITIES - Current Applicants

PS - 1	Prevention of Elder Abuse			
1997	BCPEA	Senior Svs	6,000	
1998	BLGS CHAPTER PREV. OF ELDER ABUSE	Senior Svs	7,000	
1999	PREVENTION ELDER ABUSE	Senior Svs	6,500	
2000	BLGS. CHAPTER PREV. OF ELDER ABUSE	Senior Svs	6,000	
2001	PREVENTION OF ELDER ABUSE	Senior Svs	6,000	
2002	PREVENTION OF ELDER ABUSE	Senior Svs	5,667	
2003	ELDER ABUSE PREVENTION	Senior Svs	9,500	
2004	PREVENTION OF ELDER ABUSE	Senior Svs	9,500	
2005	BILLINGS PREVENTION OF ELDER ABUSE	Senior Svs	9,025	
2006	BIG SKY PREVENTION OF ELDER ABUSE	Senior Svs	9,000	
2007	BIG SKY PREVENTION OF ELDER ABUSE	Senior Svs	7,425	
		TOTAL FUNDING:	\$81,617	

PS - 2	Senior Helping Hands			
1997	SENIOR HELPING HANDS PROGRAM	Senior Svs	13,500	
1998	SENIOR HELPING HANDS	Senior Svs	15,000	
1999	SENIOR HELPING HANDS PROGRAM	Senior Svs	15,000	
2000	SENIOR HELPING HANDS	Senior Svs	15,000	
2001	HOMEMAKER SERVICES	Senior Svs	15,000	
2002	HOME CARE SERVICES - SR HELP HANDS	Senior Svs	14,667	
2003	HOMEMAKER SERVICES	Senior Svs	18,000	
2004	HOMEMAKER SERVICES	Senior Svs	20,000	
2005	SENIOR HELPING HANDS PROGRAM	Senior Svs	19,000	
2006	BIG SKY SENIOR HELPING HANDS PROGRAM	Senior Svs	19,000	
2007	BIG SKY SENIOR HELPING HANDS PROGRAM	Senior Svs	15,675	
		TOTAL FUNDING:	\$179,842	

PS - 3	Community Housing Resource Board			
1996	COMMUNITY HOUSING RESOURCE BOARD	Fair Housing	2,170	
1997	BILLINGS COMMUNITY HOUSING RESOURCE	Fair Housing	15,000	
1998	COMMUNITY HOUSING RESOURCE BOARD	Fair Housing	15,000	
1999	COMMUNITY HOUSING RESOURCE BOARD	Fair Housing	15,000	
2000	BILLINGS CHRB	Fair Housing	15,000	
2001	FAIR HOUSING EDUCATION & OUTREACH	Fair Housing	15,000	
2001	FAIR HOUSING ANALYSIS	Fair Housing	14,995	
2002	COMMUNITY HOUSING RESOURCE BOARD	Fair Housing	15,000	
2003	BILLINGS COMMUNITY HOUSING RESOURCE	Fair Housing	15,000	
2004	COMMUNITY HOUSING RESOURCE BOARD	Fair Housing	15,000	
2005	BILLINGS COMMUNITY HOUSING RESOURCE	Fair Housing	13,000	
2007	COMMUNITY HOUSING RESOURCE BOARD	Fair Housing	6,600	
		TOTAL FUNDING:	\$156,765	

PUBLIC SERVICE ACTIVITIES, Continued

PS - 5 Friendship House				
1996	SUMMER ENRICHMENT DAY CARE PROGRAM	Childcare	55	
1997	SUMMER ENRICHMENT DAY CARE PROGRAM	Childcare	9,000	
1997	YOUTH LIFE SKILLS PROGRAM - Friendship House	Employment Training	4,000	
1998	FRIENDSHIP HOUSE SUMMER DAY CARE	Childcare	9,000	
1998	FRIENDSHIP HOUSE LIFE SKILLS	Employment Training	7,000	
1999	FRIENDSHIP HOUSE SUMMER ENRICHMENT	Childcare	9,000	
1999	FRIENDSHIP HOUSE YOUTH LIFE SKILLS	Employment Training	7,000	
2000	FRIENDSHIP HOUSE SUMMER ENRICHMENT	Childcare	9,000	
2000	FRIENDSHIP HOUSE YOUTH LIFE SKILLS	Employment Training	7,000	
2001	SUMMER ENRICHMENT DAY CARE PROGRAM	Childcare	5,151	
2001	YOUTH SUMMER ACTIVITY PROGRAM - Friendship	Employment Training	7,000	
2005	FRIENDSHIP HOUSE - SUMMER ENRICHMENT	Childcare	12,000	
2006	FRIENDSHIP HOUSE - SUMMER ENRICHMENT	Childcare	10,000	
2006	FRIENDSHIP HOUSE - COMMUNITY TECH CENTER	Public Facilities Imp	15,000	
2007	FRIENDSHIP HOUSE - SUMMER ENRICHMENT	Childcare	8,250	
TOTAL FUNDING:				\$118,456

PS - 6 homeWORD				
2007	HOMEWORLD FINANCIAL FITNESS	Public Services General	2,063	
TOTAL FUNDING:				\$2,063

PS - 7 & 8, HN - 14 HRDC Programs				
1997	GROWTH THRU ART	Handicap Asst	10,290	
1998	HRDC GROWTH THRU ART	Handicap Asst	10,000	
1999	HRDC GROWTH THRU ART	Handicap Asst	10,000	
2000	HRDC GROWTH THRU ART	Handicap Asst	10,000	
2001	ART INSTRUCTION	Handicap Asst	10,000	
2001	HRDC HOUSING COUNSELING	Public Services General	10,000	
2002	GROWTH THRU ART	Handicap Asst	9,667	
2002	HRDC HOUSING COUNSELING PROGRAM	Public Services General	4,667	
2003	ART INSTRUCTION	Handicap Asst	10,000	
2004	GROWTH THRU ART	Handicap Asst	10,000	
2005	HRDC - GROWTH THRU ART	Handicap Asst	11,771	
2006	HRDC - GROWTH THRU ART	Handicap Asst	10,000	
2007	HRDC - FAMILIES SAVING FOR TOMORROW	Public Services General	4,123	
2007	HRDC - GROWTH THRU ART	Handicap Asst	6,600	
TOTAL FUNDING:				\$127,118

PS - 10 Southgate Cop Shop				
1999	SOUTH GATE COP SHOP	Crime Awareness	3,000	
2000	SOUTH GATE COP SHOP	Crime Awareness	3,000	
2001	NEIGHBORHOOD COP SHOP	Crime Awareness	4,500	
2002	SOUTH GATE COP SHOP	Crime Awareness	4,167	
2003	SOUTH GATE COP SHOP	Crime Awareness	6,000	
2004	SOUTH GATE COP SHOP	Crime Awareness	6,000	
2007	SOUTHGATE COP SHOP	Crime Awareness	4,125	
TOTAL FUNDING:				\$30,792

PUBLIC SERVICE ACTIVITIES, Continued

PS - 13	Tumbleweed, Inc.			
1996	TUMBLEWEEDS RUNAWAY PROGRAM	Youth Services	3,911	
1997	TUMBLEWEEDS RUNAWAY PROGRAM	Youth Services	15,500	
1998	TUMBLEWEEDS RUNAWAY PROGRAM	Youth Services	13,887	
1999	TUMBLEWEEDS RUNAWAY PROGRAM	Youth Services	16,000	
2000	TUMBLEWEEDS RUNAWAY PROGRAM	Youth Services	16,000	
2001	RUNAWAY SERVICES	Youth Services	16,000	
2002	TUMBLEWEED RUNAWAY PROGRAM	Youth Services	16,000	
2003	TUMBLEWEEDS RUNAWAY PROGRAM	Youth Services	15,050	
2004	TUMBLEWEEDS RUNAWAY PROGRAM	Youth Services	15,050	
2005	TUMBLEWEED RUNAWAY PROGRAM, INC.	Youth Services	12,500	
2006	TUMBLEWEED RUNAWAY PROGRAM, INC.	Youth Services	10,700	
		TOTAL FUNDING:	\$150,598	

PS - 15	Medication Assistance			
1997	BILLINGS HEALTH PLANNING COALITION	Health Services	7,500	
1998	BILLINGS HEALTH PLANNING COALITION	Health Services	5,000	
1999	MEDICATION ASSISTANCE PROGRAM	Health Services	6,500	
2000	BILLINGS HEALTH PLANNING COALITION	Health Services	5,000	
2001	MEDICATION ASSISTANCE PROGRAM	Health Services	5,000	
2002	MEDICATION ASSISTANCE PROGRAM	Health Services	2,666	
2003	MEDICATION ASSISTANCE PROGRAM	Health Services	9,500	
2004	MEDICATION ASSISTANCE PROGRAM	Health Services	9,500	
2005	BILLINGS HEALTHY COMMUNITY COALITION	Health Services	9,500	
2006	YELLOWSTONE HEALTH - MEDICATION	Health Services	9,000	
2007	YELLOWSTONE HEALTH - MEDICATION	Health Services	7,425	
		TOTAL FUNDING:	\$76,591	

PS - 16, HN - 17	Young Families Early Head Start			
1996	YOUNG FAMILIES PROGRAM	Childcare	10,632	
1998	YOUNG FAMILIES PROGRAM	Childcare	10,500	
1999	YOUNG FAMILIES PROGRAM	Childcare	10,000	
2000	YOUNG FAMILIES PROGRAM	Childcare	8,000	
2001	YOUNG FAMILIES PROGRAM	Childcare	8,500	
2002	YOUNG FAMILIES PROGRAM	Childcare	7,117	
2003	YOUNG FAMILIES PROGRAM	Childcare	10,000	
2004	YOUNG FAMILIES PROGRAM	Childcare	11,000	
2005	YOUNG FAMILIES EARLY HEAD START	Childcare	10,000	
2006	YOUNG FAMILIES EARLY HEAD START	Childcare	9,000	
2007	YOUNG FAMILIES EARLY HEAD START - Building	Public Facilities Imp	50,000	
2007	YOUNG FAMILIES EARLY HEAD START	Childcare	7,425	
		TOTAL FUNDING:	\$152,174	

PUBLIC SERVICE ACTIVITIES, Continued

PS - 17 & 18 YWCA			
1997	YWCA WOMEN'S SERVICES	Battered Spouse	12,000
1997	YWCA CHILDREN SERVICES	Childcare	2,250
1998	YWCA CHILDREN SERVICES	Childcare	2,700
1998	YWCA WOMEN'S SERVICES	Battered Spouse	15,000
1999	YWCA CHILDREN SERVICES	Childcare	2,700
1999	YWCA'S WOMEN'S SERVICES	Battered Spouse	14,000
2000	YWCA CHILDREN SERVICES	Childcare	2,250
2000	YWCA WOMEN'S SERVICES	Battered Spouse	10,000
2001	WOMEN'S SERVICES	Battered Spouse	10,000
2001	CHILDREN SERVICES - YWCA	Childcare	1,742
2002	WOMEN SERVICES	Battered Spouse	4,666
2002	CHILDREN SERVICES - YWCA	Childcare	1,667
2003	YWCA WOMEN'S SERVICES	Battered Spouse	10,000
2003	YWCA - DAY CARE SCHOLARSHIPS	Childcare	2,000
2004	YWCA GATEWAY HOUSE	Battered Spouse	8,000
2004	YWCA CHILDREN SERVICES	Childcare	2,100
2005	YWCA CHILDREN'S SERVICES	Childcare	2,100
2005	YWCA GATEWAY HOUSE	Battered Spouse	8,000
2006	YWCA - CHILDREN'S SERVICES	Childcare	2,100
2006	YWCA - GATEWAY HOUSE	Battered Spouse	8,000
2007	YWCA - CHILDREN'S SERVICES	Childcare	2,050
2007	YWCA - GATEWAY HOUSE	Battered Spouse	6,600
TOTAL FUNDING:		\$129,925	

AGENCIES NOT REQUESTING CDBG FUNDING - FY2008-2009

Billings Food Bank			
1997	BILLINGS FOOD BANK	Public Services General	6,000
1998	BILLINGS FOOD BANK	Public Services General	12,000
1999	BILLINGS FOOD BANK	Public Services General	10,000
2000	BILLINGS FOOD BANK	Public Services General	10,000
2001	BILLINGS FOOD BANK	Public Services General	8,000
2002	BILLINGS FOOD BANK	Public Services General	6,667
2003	BILLINGS FOOD BANK	Public Services General	16,000
2004	BILLINGS FOOD BANK	Public Services General	10,000
2005	BILLINGS FOOD BANK	Public Services General	10,000
2006	BILLINGS FOOD BANK	Public Services General	8,500
TOTAL FUNDING:			\$97,167

Family Service, Inc.			
1992	FAMILY SERVICES	Subsistence Payments	3,616
1998	FAMILY SERVICES	Subsistence Payments	15,000
1999	FAMILY SERVICES	Subsistence Payments	11,745
2000	FAMILY SERVICES	Subsistence Payments	11,000
2001	RENTAL AND MORTGAGE ASSISTANCE	Subsistence Payments	12,000
2002	HOUSING ASSISTANCE PROGRAM	Subsistence Payments	16,666
2003	HOUSING ASSISTANCE PROGRAM	Subsistence Payments	17,000
2004	FAMILY SERVICE	Subsistence Payments	20,000
2004	MORTGAGE AND RENT ASSISTANCE PROGRAM	Subsistence Payments	5,000
2005	FAMILY SERVICE, INC.	Subsistence Payments	20,000
2006	FAMILY SERVICE, INC.	Subsistence Payments	19,000
2007	FAMILY SERVICE, INC.	Subsistence Payments	20,625
TOTAL FUNDING:			\$171,652

Parents Let's Unite for Kids			
2002	PARENTS LETS UNITE FOR KIDS	Handicap Asst	2,167
2003	PARENTS LET'S UNITE FOR KIDS	Handicap Asst	2,500
2004	PARENTS LET'S UNITE FOR KIDS	Handicap Asst	2,500
2005	PARENTS LET'S UNITE FOR KIDS	Handicap Asst	2,500
2006	PARENTS LET'S UNITE FOR KIDS	Handicap Asst	2,500
TOTAL FUNDING:			\$12,167

Para-Transit			
1996	SPECIAL TRANSPORTATION INC.	Handicap Asst	3,581
1997	COMMUNITY PARA TRANSIT	Handicap Asst	5,000
TOTAL FUNDING:			\$8,581

Big Brothers / Big Sisters			
1997	BIG BROTHERS AND SISTERS	Youth Services	4,095
1998	BIG BROTHERS AND SISTERS	Youth Services	5,000
2000	BIG BROTHERS AND SISTERS	Youth Services	3,500
2001	BIG BROTHERS & SISTERS	Youth Services	2,000
2007	BIG BROTHERS BIG SISTERS	Youth Services	8,250
TOTAL FUNDING:			\$22,845

Boys & Girls Club			
2000	BOYS & GIRLS CLUB	Youth Services	3,000
2001	BOYS AND GIRLS CLUB	Youth Services	4,500
2002	Boys / Girls Club - YOUTH RECREATION PROGRAM	Youth Services	3,667
2003	BOYS & GIRLS CLUB	Youth Services	4,000
2004	BOYS AND GIRLS CLUB	Youth Services	4,000
2005	BOYS & GIRLS CLUB - BAIR CLUBHOUSE	Youth Services	5,000
2006	BOYS & GIRLS CLUB - BAIR FAMILY CLUB	Youth Services	4,000
2007	BOYS & GIRLS CLUB	Youth Services	3,300
TOTAL FUNDING:			\$31,467

Optimist Youth Sports			
1998	OPTIMIST YOUTH SPORTS CLUB	Youth Services	2,500
1999	OPTIMIST YOUTH SPORTS CLUB	Youth Services	4,000
2000	OPTIMIST YOUTH SPORTS CLUB	Youth Services	2,208
TOTAL FUNDING:			\$8,708

Crime Prevention / Code Enforcement / Graffiti			
1997	COMMUNITY CRIME PREVENTION COUNCIL	Crime Awareness	8,000
1997	NEIGHBORHOOD POLICE CONTACT OFFICER	Crime Awareness	980
1997	CODE ENFORCEMENT FUND	Code Enforcement	4,886
2001	GRAFFITI REMOVAL PROGRAM	Public Services General	1,171
1993	GRAFFITI REMOVAL PROJECT	Public Services General	1,385
2002	NEIGHBORHOOD POLICING	Public Services General	18,419
1997	POLICE GRAFFITI REMOVAL PROGRAM	Public Services General	5,090
TOTAL FUNDING:			\$39,931

Moss Mansion			
1994	MOSS MANSION	Non-Resid Historic Pres	3,713
1995	MOSS MANSION	Non-Resid Historic Pres	7,188
1997	MOSS MANSION	Non-Resid Historic Pres	6,232
1997	MOSS MANSION	Non-Resid Historic Pres	233
1999	MOSS MANSION	Rehab - Publically Owned	6,405
1998	MOSS MANSION	Removal Architectural Barriers	10,000
2001	MOSS MANSION FURNACE REPAIRS	Public Facilities Improvements	5,000
TOTAL FUNDING:			\$38,771

Temporary Teens			
1999	TEMPORARY TEENS INC	Employment Training	2,000
2000	TEMPORARY TEENS INC	Employment Training	3,500
2001	TEMPORARY TEENS	Employment Training	3,500
2002	TEMPORARY TEENS	Employment Training	3,166
2003	TEMPORARY TEENS	Employment Training	2,000
2004	TEMPORARY TEENS PROGRAM	Employment Training	2,350
TOTAL FUNDING:			\$16,516

Various Child Care Services			
2001	KIDS AFTER SCHOOL ACTIVITIES PROGRAM	Childcare	9,000
2001	SUMMER DAY CARE PROGRAM	Childcare	3,000
2002	KIDS AFTER SCHOOL PROGRAM	Childcare	7,667
2002	SUMMER DAY CARE PROGRAM	Childcare	11,717
2002	KIDS SUMMER DAY CARE PROGRAM	Childcare	2,667
2003	SUMMER DAY CARE PROGRAM	Childcare	9,000
2004	SUMMER DAY CARE PROGRAM	Childcare	10,000
1997	COMMUNITY AFTER SCHOOL PROGRAM	Childcare	4,675
1998	COMMUNITY AFTER SCHOOL PROGRAM	Childcare	5,263
1999	COMMUNITY AFTER SCHOOL PROGRAM	Childcare	6,305
2000	COMMUNITY AFTER SCHOOL PROGRAM	Childcare	9,000
1999	COMMUNITY DAY CARE AND ENRICHMENT C	Childcare	6,000
1998	COMMUNITY DAY CARE AND ENRICHMENT	Childcare	5,000
TOTAL FUNDING:			\$89,294

Misc.			
1997	CITY RECREATION PROGRAM PASSES	Youth Services	5,000
1999	AMERICAN RED CROSS	Public Services General	2,364
1999	CASA SANDSTONE INTERMEDIATE PROGRAM	Childcare	1,521
1999	CONSUMER CREDIT COUNSELING	Public Services General	1,761
1999	YELLOWSTONE AIDS PROJECT	Public Services General	7,000
2000	BLGS. BOARD OF COOPERATIVE HOUSING	Substance Abuse	4,438
2000	IN CARE NETWORK	Youth Services	2,000
2000	SAGE TOWER COMMUNITY NETWORK	Senior Svs	1,960
2000	FAMILY TREE CENTER	Public Services General	3,250
2001	VISION SEEKERS AFTER SCHOOL PROGRAM	Youth Services	9,000
2005	INTERFAITH HOSPITALITY NETWORK	Public Services General	5,000
2006	CENTRAL TERRY TASK FORCE - PCE EDUC	Public Services General	1,000
2007	FOREVER FAMILIES RESOURCE CENTER	Abuse / Neglected Children	8,250
2007	ST VINCENT DE PAUL	Public Services General	8,250
TOTAL FUNDING:			\$60,794

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Public Hearing and Contract to Real Estate Dynamics, Inc.
King's Green Phase III Housing Construction

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, Planning and Community Services Department
Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The Community Development Division received a proposal from Real Estate Dynamics, Inc. (RED) in response to a Request for Proposals (RFP) issued by the Division for Phase III of King's Green Subdivision. Only one response was received. They are proposing to build 14 homes similar to those built in Phase I and Phase II. RED anticipates building 6 two-bedroom homes, 6 three-bedroom homes, and 2 four-bedroom homes. RED is proposing 100% of the total 14 homes will be affordable for households below 80% of Area Median Income. The Community Development Board reviewed the RFP and voted to approve the Development Agreement with RED on March 31, 2008.

ALTERNATIVES ANALYZED: (1) To approve the Development Agreement with Real Estate Dynamics, Inc.; (2) To not approve the Development Agreement with Real Estate Dynamics, Inc.

FINANCIAL IMPACT:

CDBG and HOME funds are provided by the United States of Housing and Urban Development to the City for affordable housing projects. HOME funds in the amount of \$350,000 were allocated for the infrastructure in this project and construction is underway. Other sources of funds RED is proposing to complete the project include acquiring a construction loan through First Interstate Bank. Homebuyers using City of Billings First Time Home Buyers program funds are eligible to use the MBOH 5.5% set-aside for their primary mortgage.

RECOMMENDATION

Staff recommends that Council approve a Housing Development Agreement with Real Estate Dynamics, Inc. for King's Green, Phase III. This agreement will be to build 14 houses of various bedroom sizes on City owned land in the King's Green Subdivision.

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

ATTACHMENTS

A Real Estate Dynamics, Inc.'s response to RFP (10 pages)

INTRODUCTION

The City of Billings conducted a Housing Needs Analysis in December 2004. The combination of 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 housing.

Affordable single family homes for purchase were perceived as the highest need, with 44.4% of respondents selecting this type of housing. The Housing Needs Analysis also has data on housing costs, which is collected from newspaper classified advertisements. The average sales price of a home in 2003 was \$147,959; the median price was \$130,020. The average sales price of a single family home in 2007 was \$201,513; the median price was \$179,900. These are well above the estimated sales price of the homes in this proposal.

In addition to mailing surveys, interviews were conducted with individuals in Billings who are knowledgeable about the housing market. These included builders, realtors, property managers, public housing authorities, human resource development councils, and social service agencies serving the elderly, disabled, special needs, low-income and other at-risk populations. Interviewees were first asked about the greatest unmet housing need in Billings related to homeownership. 80% indicated that affordable single-family homes for purchase were the greatest need, especially for low and middle income households. Many indicated that there were not any quality homes available for purchase under \$100,000, and few under \$120,000. Concern about income levels compared to housing costs was frequently mentioned.

The barriers to building new affordable housing were the increasing cost of construction and materials, and the increasing cost of infrastructure. Other barriers to homeownership were the lack of down payment assistance and a lack of knowledge regarding the home buying process and available assistance.

PROCEDURAL HISTORY

- *February 1995* - Yellowstone County donated 14.5 acres of tax-deed property to the City of Billings. This land was donated by the County on the condition that it was used for the creation of affordable housing.
- *June 12, 1995* - A public hearing was held by the City Council on the proposed sale of the land. Many neighbors expressed concern over the development of the property. In response, the City Council placed four criteria on the development of the land to assure a quality development that would compliment the existing neighborhood. These criteria included:
 1. Property is to be used solely for affordable housing projects;
 2. Access must be provided to the adjacent park property;
 3. The development must mitigate negative impacts on the surrounding neighborhood; and
 4. All conditions will be enforced by a Development Agreement.

- *June 1995* - The City Council received a request for zone change. The project required a zone change from R5000 to R6000 which was opposed by the neighbors and the zone change was denied by the City Council.
- *August 1995* - City staff issued a Request for Proposals (RFP) for the use of the land from area developers, builders and non-profit organizations with proposals due on October 13, 1995.
- *October 1995* - Staff receives a proposal from Yellowstone Construction. Chuck Platt and Jerry Neumann were partners in Yellowstone Construction. The partnership is now dissolved and the new proposal was from Chuck Platt and Tim Hudson of Diamond Realtors and Laughlin Construction.
- *December 1995* - Public Hearing held on selection of developer. Yellowstone Construction's proposal accepted by City Council to build 68 homes.
- *May 1996* - The major plat was accepted by City Council.
- *August 1996* - Development agreement was approved and signed by Mayor Tooley.
- *January 1997* - City received preliminary contract for infrastructure cost of Phase I & II.
- *May 1997* - City quit-claimed first two lots to Yellowstone Construction to begin first phase.
- *June 1997 to June 2000* - City experienced flooding problems in the area causing the footings of the first two homes to flood halting project. City received letter from Chuck Platt and Jerry Neumann stating that project at present is not feasible as currently designed. They expressed interest in finding a solution stating that storm drain concerns must be addressed for the project and the existing neighbors for a successful project. The City hired an engineer to evaluate solutions to storm drain problems in the area. Yellowstone Construction quit-claimed the parcels back to City. City staff met with the developer and Southwest Corridor Task Force chairman to discuss preliminary storm drain report. Twenty-seven different alternatives were explored and narrowed down to two alternatives for final analysis by the engineer. City received a grant of \$300,000 to combine with other local resources to provide a storm water-retention facility for the area. Retention facility reviewed and closed out by State CDBG.
- *December 2001* - New RFP was issued with due date on January 18, 2002.
- *January 18, 2002* - One proposal was submitted by Diamond Realtors and Laughlin Construction.
- *March 2002* - Neighborhood meeting was held to discuss project and obtain feedback from people attending. Flood mitigation performed at site questioned as to its intended success.
- *March 2002* - Community Development Staff met with Public Works staff to discuss concerns.
- *April 2002* - Second neighborhood meeting held so that City Engineer could address storm drain concerns.

- *June 2002* - Third meeting was held to discuss housing plans and to obtain feedback. No concerns were expressed regarding housing but Task Force still concerned about storm drain issues.
- *August 2002* - Developer, City staff and Task Force Chairman meet at Kings Green site to discuss concerns and possible resolutions.
- *August 22, 2002* - Resolutions to further mitigate fears discussed and received support from task force to proceed.
- *September 3, 2002* - CD Board recommends approval of the project and entering into new development agreement.
- *October 2002* - Staff, developer and Engineering, Inc. staff worked on revising plat and submitting for approval.
- *December 2002* - Revised plat submitted.
- *December 2003* - Housing Development Agreement signed with Real Estate Dynamics, Inc.
- *December 2004* - Final home in King's Green, Phase I is purchased.
- *June 2005* - RFP Phase II King's Green.
- *August 2005* - Staff Recommendation to CD Board for Phase II King's Green.
- *November 2007* - Final home in King's Green, Phase II is purchased.
- *February 2008* - RFP for Phase III King's Green.
- *March 2008* - Staff Recommendation to CD Board for Phase III King's Green.

BACKGROUND

This project shows a strong partnership and commitment in achieving affordable housing opportunities for the City of Billings. The developer has been involved with this project since inception and is very familiar with all of the history and challenges associated with the project. The Developer has also contributed a significant amount of time in working with staff and the Southwest Corridor Task Force to assure that the existing neighborhood has had an ample opportunity for input and participation in the proposed project.

Staff evaluation of the Selection Criteria of the RFP is presented below.

1. Quality of Response to the RFP and meeting the project goal: A total of 20 points was awarded to Real Estate Dynamics for these criteria:

- a. Maximum quality for the most affordable price.

Quality and price are similar to Phase I and Phase II, 2 bedroom, 1bath, 3 and 4 bedrooms, 1.75 bath for estimated sales price of \$108,600 to \$139,800 (without the cost of land and infrastructure).

- b. Proposed site design/architectural design/landscape plan and other amenities.

Plans are to change the orientation of the houses, as well as offer differing garage choices in order to fit the lot size and create an illusion of differing houses.

- c. Demonstration that the key parameters referenced in the RFP have been considered.

All the items in the Proposal Content part of the RFP have been clearly answered in the response.

- d. Compatibility with the surrounding neighborhood, including neighborhood acceptance and support for the proposed design.

As the project concept is basically the same as Phase I and Phase II, and both phases have been accepted and supported by the neighborhood, this is adequate.

2. Developer Experience: A total of 10 points was awarded RED:

- a. Previous successful experience with federally or state funded affordable housing projects.

Real Estate Dynamics has experience with Phase I and Phase II, which included HOME Program funding for the infrastructure as well as First Time Home Buyers assistance through the City.

- b. Success of comparable developments, as evidenced by the following: Economic success (success in attracting buyers or tenants, financing, etc.), and quality of past projects including architectural/site/ design/landscape/amenities.

King's Green, Phase I and Phase II have been extremely successful. All houses were sold within 6 months of being built, and some of the last houses were sold before they were built. As was mentioned before, changing orientation of the houses on the lot gives the illusion of many differing floor plans.

- c. Ability to deliver products as initially represented, on time and within budget.

Phase I and Phase II were on time and within budget.

- d. Clear lines of responsibility within the developer's organization, and between the developer's organization and any other joint venture participants, that the City can rely upon to be responsive and effective.

The lines of responsibility between the three partners are clearly drawn and identified in the application. Past experience with this joint venture has been effective.

- e. Overall architectural and landscape design quality of previous projects.

The overall architectural and landscape design is similar to Phase I and Phase II, which is successful.

2. Management/ Marketing Experience A total of 10 points was awarded RED

- a) Management success in comparable developments.

Real Estate Dynamics, Inc managed and marketed Phase I and Phase II with great success.

- b) Experience in developing and marketing mixed income housing.

Phase I and Phase II were marketed and homes sold with great success.

- c) Success in marketing and sales of developed units.

Phase I and Phase II were marketed and homes sold with great success.

- d) Evidence of commitment to outreach to low and moderate income buyers.

RED is proposing 14 of the 14 homes be sold to low to moderate income buyers. 15 of 15 homes built in Phase II were sold to low to moderate income buyers and 9 of the 10 homes built in Phase I were sold to low to moderate income buyers; although the Development Agreement only specified 8 needed to be.

- e) Affirmative marketing knowledge and experience.

Two of the partners of Real Estate Dynamics are realtors who are familiar with and knowledgeable of affirmative marketing. Their plans are to continue to market on the MLS, highway and site signs and through the printed media. The project is also included for informational purposes only, in the Homebuyer Education class offered monthly by homeWORD, the City of Billings and Beartooth RC & D.

HOME Requirements Review

The HOME 25% match requirement will be met through the mortgages secured by the purchasers of the houses. HOME requires at least 51% of the units be target to 80% or less AMI;

RECOMMENDATION

Staff recommends that Council approve a Housing Development Agreement with Real Estate Dynamics, Inc. for King's Green, Phase III. This agreement will be to build 14 houses of various bedroom sizes on City owned land in the King's Green Subdivision.

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

ATTACHMENTS

A Real Estate Dynamics, Inc.'s response to RFP (10 pages)

After recording, please return to:

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

HOUSING DEVELOPMENT AND CONSTRUCTION AGREEMENT
Kings Green Subdivision, 2nd & 3rd Filing
Phase III

HOME Investment Partnerships Program

between

City of Billings
A Montana Municipal Corporation
whose address is
P.O. Box 1178 Billings, Montana 59103
the "City"

and

Real Estate Dynamics, Inc.
A For-Profit Sub S Corporation
whose address is
145 Grand Avenue, Billings, MT 59101
the "Builder / Selling Agent (BSA)"

DATE: _____

WHEREAS, the BSA desires to work with the City and build affordable housing on City-owned property in the City of Billings, Yellowstone County, Montana commonly known as Kings Green Subdivision, 2nd & 3rd Filing; legal description as follows:

Lots 31 through 37, inclusive, in Block 3, Second Filing; Lots 38A and 40A through 44A, inclusive, in Block 3, Third Filing; and Lots 5A-1 through 6A through 8A, inclusive in Block 6, Third Filing, all in Kings Green Subdivision, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana.

WHEREAS, the City has concurrently entered into a HOME Contract with the United States Department of Housing and Urban Development (HUD) whereby the City will receive and administer HOME moneys to provide financing, in part, for infrastructure development for project to be undertaken by the BSA;

WHEREAS, the City desires to develop the land for affordable housing, and the City desires to use HOME funds for site improvements, engineering fees and related development costs for affordable housing;

WHEREAS, the BSA is desirous of obtaining access to City-owned and developed land and is willing to assume obligations to the City under the HOME Contract on the terms and conditions, as provided herein; and

WHEREAS, the City has selected Real Estate Dynamics, Inc. as the BSA for the Project.

WITNESSETH THAT the BSA and the City mutually agree as follows:

PURPOSE

The purpose of this written Agreement is to ensure compliance with 24 CFR 92.504, which provides for the funding of approved project activities by the City through its HOME Investment Partnerships Program (HOME) written agreement with HUD; and to achieve the purposes of Title II of the Cranston-Gonzalez National Affordable Housing Act, Title II, Public Law 101-625, approved November 1990, 104 Stat. 4079, 42 U.S.C. 12701-12839, as amended.

B. DOCUMENTS INCORPORATED INTO THIS AGREEMENT BY REFERENCE BUT NOT ATTACHED HERETO

The BSA agrees to comply with all appropriate federal, state, and local laws applicable to activities undertaken through this agreement, including: All program requirements which regulate and restrict the use of the funds under the HOME Investment Partnerships Program 24 CFR Part 92 and the regulations issued there under, now or hereafter, including but not limited to 24 CFR, and the regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of federal funds for this program; BSA's project application statements as identified in the response to the Request for Proposals as received in the Community Development Division on March 14, 2008; Uniform Relocation Act; and Section 104 (d) and all amendments to these laws which govern the use of HOME funds. Incorporated by reference is Title VI of the Civil Rights Act of 1964, Executive Order 11246, Section 3, Federal Labor Standards set forth in 24 CFR 570-605 and the Americans with Disabilities Act.

C. ACCEPTANCE OF HOME PROGRAM REQUIREMENTS

1. The BSA will comply with all applicable parts and requirements of the National Affordable Housing Act of 1990 (as amended), as now in effect or as they may be amended during the term of this Agreement; applicable state and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.
2. The BSA agrees to the following:

- a. **Project Schedule**

The construction of infrastructure is expected to be completed in May 2008 by the City. Housing construction will be completed by BSA including weather dependent items within two (2) years from the date this current agreement; unless an extension is granted by the City.

- b. **Project Budget**

The infrastructure project budget has been estimated and approved for \$350,000. Projected construction costs for the range of houses to be constructed are on file with the BSA and City.

3. The BSA agrees that all contracts entered into by the BSA for the completion of the activities described in Section H (SCOPE OF ACTIVITIES AND PROJECT RESTRICTIONS) of this Agreement will contain provisions requiring contractors to comply with all applicable HOME requirements. These contract provisions are to be included in all subcontracts.
4. The BSA expressly agrees to comply with federal statutes and regulations governing the HOME program.
5. **Initial Home Buyer's Period of Affordability:** The BSA agrees that all homes constructed under this Agreement will initially be sold to a low to moderate income homebuyer under the terms of the Deed Restriction Agreement. The Deed Restriction Agreement requires the initial home buyer to sell the home to another HOME income eligible buyer during the HOME required period of affordability. For purposes of this Agreement, the period of affordability is **ten (10) years** as required by HOME regulations for per-unit subsidies from \$15,000 to \$40,000.

D. SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and attachments hereto which may require continued performance or compliance beyond the termination date of this Agreement shall survive such termination date and shall be enforceable by City as provided herein in the event of such failure to perform or comply by the BSA or its subcontractors.

E. PERSONNEL

The BSA represents that it has, or shall secure, at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder shall be performed by the BSA, or under his/her supervision, and all personnel engaged in the work shall be fully qualified and shall be eligible under the law to perform such services.

Where the State or local public jurisdictions require licensure for the provision of services provided hereunder, the BSA and any subcontractors shall be properly licensed. The BSA will provide at the time of this Agreement; proof of performance and payment bonds; Commercial General Liability Insurance in the amount of \$1.5 Million per occurrence and workers compensation insurance carried by any sub-contractor who contracts directly with the BSA for the construction services related to this agreement. Other professional services subcontracted for by the BSA will provide proof of insurance as required by Montana Law.

F. EFFECTIVE DATE AND TIME OF PERFORMANCE

The Project shall commence as soon as practicable after the execution of this Agreement and shall be undertaken and performed in accordance with the schedule set forth in this Agreement between the City and the BSA. The BSA agrees that time is of the essence in the performance of its obligations under this Agreement, and that completion of the Project shall occur no later than the termination date or the date set for the in Section C(2a) PROJECT SCHEDULE; of this Agreement.

G. TERMINATION DATE

This Agreement shall terminate no later than 24 months after the date upon which it was executed, plus authorized extensions as set forth in the Agreement between the City and the BSA.

H. SCOPE OF ACTIVITIES AND PROJECT RESTRICTIONS

1. The major components of the project include the construction of a total of 14 units of affordable owner-occupied, single-family, housing units for low-income households to be located in Kings Green Subdivision, 2nd & 3rd Filing, Phase III. The City will provide the BSA with access to city-owned land located in the Kings Green Subdivision, 2nd & 3rd Filings to construct 14 single-family dwelling units of affordable to low and moderate-income households in this third phase.

It is the City's overall goal is to construct a total of 49 units in the Kings Green Subdivision, which will be undertaken in phases and according to the standards and specifications as described in the Subdivision Improvement Plan (SIP). The City will utilize HOME Investment Partnership Program funds for infrastructure improvements associated with the construction work for Phases I through IV of the project as they become available and committed to the phases.

HOME funding for additional infrastructure work for future phases of the project are subject to the continued availability of HOME funding and the allocation of those funds to the project by the Billings City Council. The units to be constructed in the development will comply with affordability restrictions and design standards as specified herein. All of the units will initially be sold to low and moderate-income households as defined by HOME Program regulations and verified through documentation provided by individuals purchasing the properties.

If any of the homes are sold within the ten (10) year affordability period following the initial sale, the City and BSA will work with the homeowner to facilitate resale to a low / moderate income household to ensure the ten (10) year affordability period is met.

2. Low-Income Benefit

All of the homes constructed will initially be sold to a household who qualifies as a low or moderate-income family as defined by HOME Program regulations. Low and moderate-income households are defined as those households whose income is equal to or less than 80% of the current area median income for their particular family size. The City will provide the BSA with the current income guidelines upon request.

3. Contract Administration

All infrastructure improvements undertaken with the use of HOME funds will be completed by the City under a public contract that will comply with HOME Program regulations for construction contracts.

The BSA will be responsible for administration of all home building contracts and related work associated with this construction for the project. Construction contracts entered into between the BSA and contractors, sub-contractors and suppliers will be considered private contracts but must also be undertaken in compliance with City, state and federal regulations for construction contracts.

4. Property Standards

Upon completion of each individual home, the new home will, at a minimum, meet the International Residential Code, all adopted local and state building codes and standards, as well as Section 8 Housing Quality Standards. Homes will be constructed according to the BSA's response to the Request for Proposals received at the Community Development Division on March 14, 2008. All representations made in the BSA's response to the Request for Proposals will be considered part of this Agreement.

The BSA agrees to provide the City with detailed information for each home to be constructed prior to the initiation of the construction of each home. The City will verify estimated costs and construction standards for compliance with the HOME Program affordability provisions.

5. Per Unit Subsidy

All HOME funds provided for infrastructure improvements will be enforced through RESALE restrictions imposed upon initial home buyer (and subsequent homebuyers throughout the period of affordability) according to the terms and conditions of the Deed Restriction Agreement. The initial property owners may apply for and may receive assistance under the City of Billings First Time Home Buyer Program separate from this Agreement.

6. Time of Performance

This Agreement shall cover 14 dwelling units in Phase III as identified herein and be effective upon full and proper execution. The Agreement shall expire upon completion but not later than two (2) years from the date of execution. The time of performance may be extended by a modification to this Agreement, subject to mutual written agreement by the BSA and the City. To initiate this process, a request in writing for an extension of project time and performance shall be submitted to the City's Community Development Division by the BSA three (3) months prior to agreement completion term. It shall include full justification for the extension requested.

7. Method of Payment

All infrastructure work paid for through the HOME Program was carried out under a public contract between the City of Billings and a private contractor. No HOME funds will be paid to the BSA for such infrastructure work.

8. Control of Land

Each individual building lot will remain in the name and control of the City until the point in time that the BSA is ready to initiate construction of a home on the property.

At that time, a Warranty Deed will be provided by the City to the BSA enforcing the terms and conditions of this agreement, and the BSA must initiate construction on the site within 30 days and complete within 180 days after initiation of construction.

The BSA will execute a Quit Claim Deed concurrently for said lot, to return ownership to the City, should construction not take place in a timely manner. This Quit Claim Deed will be held in escrow at American Title until final transfer of ownership to the new homebuyer.

Each individual lot will be sold by the City to the BSA with a Warranty Deed for Valuable Consideration. The BSA will not sell undeveloped lots to a third party or allow the construction of a home on a lot by a third party without the written permission of the City and only in accordance with the terms of this Agreement.

The BSA, upon construction of a home on the property and the subsequent sale of the individual developed property (lot) to a home buyer, shall include all covenants, deeds and restrictions enforced in the Warranty Deed, which run with the land and are in effect and enforceable through the date of re-assignment of the Warranty Deed by sale to the initial home buyer to assure the property remains affordable and HOME resale restrictions are assured for the period of affordability.

9. Cost Verification, Project Costs and Profit Level

PROJECT EXPENSES shall be defined as follows: Building permit fees, house plan expenses, site preparation, excavation, backfill & grading, decking, foundation material and labor, waterproofing and fill, concrete work, lumber, framing, roofing, HVAC, siding, plumbing, electrical, insulation, ceilings and drywall, garage doors, painting, finish carpentry and hardware, cabinets, vanities, countertops, electrical fixtures, sewer and water excavation, mirrors and medicine cabinets, appliances, floor covering & underlayment, gutters, landscaping, temporary utility costs, interest expense, closing costs, cleaning costs, insurance, warranty, FHA inspection fees and a normal industry overhead expense allocation and other items directly related to the construction of the home as allowed for in the project.

PROFIT LEVEL shall be defined as follows: Profit as defined by sales proceeds less project expenses.

The BSA agrees to provide the City with verification of all project expenses and profit level related to the construction of each home as may be requested by the City. The City will allow a maximum profit level of 15% which includes marketing and selling fees.

A project budget estimating project expenses will be provided by the BSA to the City prior to the start of construction on each home. The City will verify project expenses and profit level based on detailed documentation of project expenses provided by the BSA when construction is completed. The budget must be pre-approved by the City prior to initiation of construction on each home.

10. Sales Price

All properties sold by the BSA to homebuyers must be sold at an appraised value that does not exceed 95% of FHA's 203(b) Mortgage Limits. The appraised value also includes the value of the contribution of land and infrastructure improvements to the property. Furthermore, to prevent construction of homes below the standard of homes in the existing Kings Green Development, the appraised value of the properties cannot be less than 70% of the FHA 203(b) Mortgage Limits as modified from time to time. The City will provide the BSA with notice of future modifications upon request.

The sales price of the property cannot exceed the project expenses plus a satisfactory profit level which maintains housing affordability. Such affordability will be maintained by the agreed covenant to sell all of the homes to households who qualify as low or moderate-income as defined by HOME Program regulations.

The value of the land and infrastructure improvements will be included in the sales price of the home for appraisal purposes. As all households will qualify as a low or moderate-income family as defined by HOME regulations, a Deed Restriction Credit will be given to the eligible buyer and will not be included as part of the homebuyer's principal part of the mortgage loan to assure the affordability of the homes.

In the event a home is not sold within 90 days after construction, the BSA may choose to reduce the sales price and reduce or eliminate the profit level (in consultation with the City) to or below the project expenses as certified to the City by the BSA. In such an event, the City would subsidize the purchase of the home by a lower-income household up to the amount of the certified project expenses as defined by the selling price and the BSA will forego gaining any profit level on the sale of the home.

11. Square Footage, Cost Estimate, and House Plans

The BSA agrees to assure that the housing constructed in the Kings Green Subdivision is compatible with the existing homes in Phases I and II of the Kings Green Subdivision and the minimum square footage of each home to be constructed will not be less than 900 square feet per level.

The BSA will provide the City general specifications, cost estimates and house plans for each home constructed under the terms of this Agreement prior to initiation of construction to assure quality and affordability. These specifications and plans may be modified upon written approval of the City. The City will provide the BSA with written approval of each home prior to initiation of construction.

12. Multi-Year Commitment

The BSA and City agree that the commitment of future resources to this project for future Phases is subject to the allocation of those resources from the federal government and specifically allocated by the City to this particular project. A new Request for Proposals for housing construction and marketing will be advertised for future phases. In the absence of these funds, the City agrees to work diligently to secure funding through alternative programs or construct homes without the HOME subsidy. The City, however, cannot guarantee any future funding.

13. Property Taxes & Property Management

Each individual lot will be returned to the tax roll at the point of time that the property is transferred to the BSA to initiate construction. The BSA also agrees to maintain all property deeded to the BSA by the City under the terms of this Agreement according to the Billings, Montana City Code, including but not limited to weed control, snow removal and related property management provisions.

I. LIAISON AND NOTICE

_____ is the City's liaison with the BSA.

_____ is the BSA's liaison with the City.

Notice will be sufficient if given in writing and mailed to the parties' liaison at the addresses described above.

J. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any subcontractor pursuant to this Agreement are to be the property of the City and BSA. The City and BSA each have the nonexclusive and unrestricted authority to release, publish or otherwise use in whole or in part, information relating to it. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written permission from the City and BSA.

K. ACCESS TO RECORDS

The BSA will supply to the City copies of all current records, including, but not limited to: contracts; approved invoices and lien releases; project budgets; cash flow statements; annual audits; and any and all financial records which impact the performance of the BSA under the terms of this written agreement.

The BSA may, at the City's discretion, be considered in breach of this agreement by failing to provide any and all requested documentation in a timely manner. Failure to provide timely access to records is grounds for termination of this Agreement.

The BSA and City 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 and the Comptroller General. These records will be kept in the BSA's office at 145 Grand Avenue, Billings, Montana. The City will keep its pertinent records at the Community Development Office, 510 North Broadway, Billings, Montana.

Project Records Required:

1. Documentation that the project meets applicable property standards for HOME new construction activities;
2. Documentation that the appraised value of each new home conforms to HOME Program requirements;
3. For each household purchasing a HOME assisted unit - a copy of the homebuyer application, income verification, terms & conditions and recapture provisions.
4. An approved Affirmative Marketing Plan which complies with 24 CFR 92.351; and
5. Immediate written notification of any pending legal action which names the BSA and the real property assets covered under this agreement.

The records described above must be retained for a period of five years after project closeout. The records demonstrating compliance with project requirements that apply for the period of affordability must be retained for at least five years after the required period of affordability. If any litigation, claim negotiation, audit or other action has been commenced before the expiration of the regular five year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

Access to the records described above and all other documentation relating to the program is governed by all applicable state and federal laws as they pertain to disclosure of information to the public and to the individual's right of privacy.

L. PROGRESS REPORTING

The BSA will promptly submit status reports on project progress at the request of, and in the format prescribed by, the City.

M. AVOIDANCE OF CONFLICT OF INTEREST

The BSA will comply with the provisions of 24 CFR § 92.356; and with § 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.

No officer, employee, or agent of the City or immediate relative (spouse, parent, sibling, child) shall be an investor, officer, employee or agent of the BSA or City or receive any compensation from the City during the term of this Agreement.

N. MODIFICATION AND ASSIGNABILITY OF AGREEMENT

This Agreement 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 Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement. This Agreement does not imply any continuing commitment by the City of Billings beyond the termination date noted herein.

The City & BSA accept responsibility for adherence to the terms of this Agreement by contractor, subcontractor or sub-recipient entities and by its agents, if any, to which it delegates authority to carry out portions hereof. For the purposes of this Agreement, legal actions pending (or in process) are considered a pending modification of the written agreement and require a written notice to the City as soon as the written agreement becomes part or party to a legal civil or criminal action.

O. CONSTRUCTION AND VENUE

This Agreement 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 of the Thirteenth Judicial District in and for the County of Yellowstone, State of Montana.

P. INDEMNIFICATION

The BSA waives any 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 any way connected with or incidental to the BSA's or any contractor, subcontractor or sub-recipient's performance of this Agreement.

Further, the BSA will indemnify, hold harmless, and defend the City against any and all claims, demands, damages, costs, expenses, or liability arising out of the BSA or any contractor, subcontractor or sub-recipient's performance of this Agreement. In the event that the City is named as a co-defendant in any action relating to activities to be performed by the BSA or City or

sub-recipient under this Agreement, the BSA will immediately notify the City of such fact in writing.

Q. TERMINATION OF AGREEMENT

Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 60 days before the effective date of such termination. It is the intent of the parties that these remedies be exercised in a manner appropriate in light of the noncompliance issue and to the end that this project shall continue to provide housing for the target population of low-income households.

Termination for Cause: If, through any cause, the BSA shall fail to fulfill in a timely and proper manner their obligations under this Agreement, or if the BSA shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the BSA of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.

It is understood that the BSA and City representatives shall enter into negotiations in an attempt to reach a solution mutually acceptable to both parties within ten (10) days of notification of termination, if the City shall so request in writing. If no agreement is reached by the City and BSA then the matter will be referred to HUD for resolution. In any event, the City may terminate the agreement to fund an activity without cause or recourse from the BSA, its agents or subcontractors.

Notwithstanding the above, the BSA shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of contract by the BSA, and the City may withhold any payment to the BSA for the purpose of setoff until such time as the exact amount of damages due to the City from the BSA is determined.

Return of Material: In event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the BSA under this Agreement, shall, at the option of the City, become the City's property, and City shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Remedies: Where either party violates or breaches contract terms, the other party, in its discretion, may, in addition to terminating this Agreement, institute such administrative, contractual, legal or equitable remedies available as may be appropriate. In such event, the party found in violation of the Agreement shall pay the other party's costs and reasonable attorney's fees incurred thereby.

R. UNIFORM RELOCATION ACT

The BSA will assure that the units are sold to homeowners who intend to use the property as their primary residence and that the units will not be rented prior to the initial sale of the property to a homeowner. In the event the BSA breaches this Agreement and rents the property, the BSA will be subject to compliance with the federal Uniform Relocation Act, be solely responsible for the cost to comply with those requirements, and be subject to termination of this Agreement.

S. COMPLIANCE WITH LAWS

1. **Median Income Level:** The BSA agrees that 100% of the units to be constructed will be occupied by low and moderate-income households. Low and moderate-income households are defined as those households whose income is equal to or less than 80% of the current area median income for their particular family size.
2. **Political Activities:** None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activities or to further the election or defeat of any candidate for public office.
3. **Insurance Coverage:** The BSA 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 BSA or City or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - a. Commercial General Liability in an amount not less than \$1.5 million per occurrence for injuries, including accidental death to any one person;
 - b. Builder's Risk Insurance in an amount not less than the completed value of the whole property, or \$1.5 million, whichever is greater;
 - c. The City shall be listed as an additional insured on the policy during the entire period of affordability (10 years) for the total HOME investment amount of \$350,000.

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 BSA 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.

4. **Construction Contracts:** The BSA agrees to deny participation in construction contracts by ineligible, debarred or suspended persons or entities at 24CFR Part 24. The BSA will provide the City with the names of contractors and subcontractors prior to entering into contracts. The City, within five (5) working days, will provide the BSA a written notice if the contractors are ineligible.
5. **Lead-Based Paint:** The BSA agrees that any construction of residential structures with assistance provided under this agreement shall be subject to HUD Lead-Based Paint Regulations at 24CFR 570.608, and 24CFR Part 35 which results in the prohibition of the use of lead-based paint for this project.

6. **Environmental Review:** The BSA will carry out each activity in compliance with all federal laws and regulations described in 24 CFR, Part 92, subpart H, except that the BSA does not assume the City's responsibility for the environmental review which will be completed by the City prior to the beginning of construction.
7. **Religious Organization:** The BSA will follow the provisions governing the restriction on the use of HOME funds by religious organizations, as contained in 24 CFR 92.257.
8. **Drug-Free Work Place:** The BSA certifies that it will provide a drug-free work place.
9. **Fixed or Floating Units:** All of the units in this agreement are HOME assisted units and are fixed units.
10. **Davis-Bacon Wage Rates:** The Davis-Bacon Act is triggered in projects with twelve (12) or more HOME assisted units. The City will monitor Davis-Bacon wages and the BSA will accommodate requests for site-monitoring and certified payrolls.
11. **Equal Opportunity Provisions:** During the performance of this contract, the BSA agrees to not discriminate against any applicant, employee, contractor or sub-contractor due to race, color, religion, sex, national origin or creed. The BSA will state in advertisements that all qualified applicants will receive consideration without regard to race, color, religion, sex, national origin or creed.

T. GRANT CONTROLS

Notwithstanding any provision herein to the contrary, the performance and administration of this Agreement shall be subject to the applicable provisions of the City's HOME Contract with HUD. Accordingly, the BSA hereby assumes all obligations under the Contract as a condition to BSA's obligation to perform under this Agreement.

U. SIGNATURES

<i>Witness</i>	<i>BSA</i>
Printed Name:	Printed Name:
Signature:	Signature:

STATE OF MONTANA)

: ss.

County of Missoula)

On the _____ day of _____, 2008, before me, _____
_____, a Notary Public for the State of Montana, personally
appeared _____ and
_____ and whose names are subscribed to the within
instrument and acknowledged to me that they executed the same.

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

Seal:

Printed Name: _____

Notary Public for the State of Montana

Residing At: _____

My Commission Expires: _____

Attest

City of Billings

Cari Martin, City Clerk

Ron Tussing, Mayor, City of Billings

Signature:

Signature:

STATE OF MONTANA)

: ss.

County of Yellowstone)

On this ____ day of _____, 2008, before me, a Notary Public for the State of
Montana, personally appeared RON TUSSING and CARI MARTIN, known to me to be
the Mayor and City Clerk respectively of the City of Billings, and whose names are
subscribed to the within instrument and acknowledged to me that they executed the same.

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

<i>Seal:</i>	<hr/> Printed Name: _____ Notary Public for the State of Montana Residing At: _____ My Commission Expires: _____
Approved as to form:	_____ Brent Brooks, City Attorney

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, MAY 12, 2008

SUBJECT: Public Hearing and Approval of Resolution Approving and Adopting Third Quarter Budget Amendments for Fiscal Year 2007/2008

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

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

1. City/County Planning Fund (240) – The amount paid to Yellowstone County was not budgeted for GIS services expenditures in FY08. The GIS amount was instead reduced in the Planning tax collection revenue budget by the same amount when that amount was received from Yellowstone County. Thus, the revenue and expenditure budget should both be increased by \$40,000.
2. Downtown Tax Increment Debt Service Fund (329) / Downtown Tax Increment Operating Fund (202) – Approximately \$600,000 of assets remains in the debt service fund after the final principal and interest payments were made on March 1, 2008. This request is to transfer all remaining assets in the debt service fund to the Downtown Tax Increment Operating Fund (202). The \$600,000 is part of the money that the City allocated in the November 26, 2007, amended February 25, 2008, Development Agreement with the Downtown Billings Partnership and the Downtown Development Corporation.
3. Amend Park Fund (758) / General Fund (010) – Interest earned on the Amend Park Fund is transferred to the General Fund and is used for Amend Park projects. Fiscal year 2007 and 2006 transfers were less than actual interest earnings. This request is to transfer interest earnings not transferred in those years.
4. Solid Waste Landfill Fund (544) – The construction contract for the Phase 3 landfill cell project was awarded at the April 14th meeting and the bid came in higher than the original budget amount. This request is to increase the capital expenditure budget \$425,000 to match the bid amount. Revenue will not increase because there is sufficient unencumbered cash to pay these costs. These funds are necessary to complete the construction of the new cell before the current disposal area is completely filled.

5. Downtown Tax Increment Operating Fund (202) - This budget amendment is requested to increase the budget \$1,650,000 for the expenditures contracted for in the Development Agreement between the City of Billings and the Downtown Billings Partnership and the Downtown Development Corporation. The Agreement was approved on November 26, 2007, and was amended on February 25, 2008, and is evidenced by Resolutions 07-18636 and 08-18680.
6. South Tax Increment #5 Construction Fund (432) / Water Fund (502) / Gas Tax Fund (205) – This request is for capital expenditures for the design and construction of King Avenue East improvements. The construction contracts are for \$521,000. Loans from the Water and Gas Tax Funds will finance expenditures until bonds are sold.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2007/2008 per attached.

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

ATTACHMENT

A-Resolution to Make Fiscal Year 2007/2008 Adjustment Appropriations (with Exhibit A)

Attachment A

RESOLUTION 08-

A RESOLUTION TO MAKE **FISCAL YEAR 2008** ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT AND CAPITAL OUTLAY.

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

WHEREAS, based upon a **Quarterly Budget Review (FY 2007/2008)**, it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT A)

PASSED AND APPROVED by the City Council, this 12th day of May, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

EXHIBIT A

Revenue Expenditure

240 – City County Planning Fund

The expenditure budget for GIS services from Yellowstone County needs a \$40,000 increase. This cost is subtracted out of the tax collection payment from the County and thus is not shown as a separate payment. The tax collection revenue budget also needs to be increased by the same \$40,000.

240-4301-311 0110	\$40,000	Property Tax Revenue
240-4301-419 3934	\$40,000	GIS Services Expenditure

202 – Downtown Tax Increment Operating Fund

329 – Downtown Tax Increment Debt Service Fund

The final interest and principal payment was made for Downtown Tax Increment Debt Service Fund in March 2008 and the fund has a balance of approximately \$600,000 to transfer to Fund 202, the Downtown Tax Increment Operating Fund. This budget adjustment is requested to transfer these funds.

202-1513-383 7514	\$600,000	Transfer from Debt Service Fund
329-1531-472 8225	\$600,000	Transfer to Operating Fund

758 – Amend Park Fund

010 – General Fund

In the Amend Park Fund, revenues in excess of expenditures are transferred to the General Fund to reimburse that fund for costs incurred for that parks maintenance and improvements. This budget amendment is requested for the transfer of excess funds not transferred in fiscal years 2006 and 2007. There is no revenue amendment for fund 758 because the revenue was earned in prior years.

758-5174-452 8216	4,500	Transfer to the General Fund
010-5111-383 7564	4,500	Transfer from Amend Park Fund

544 – Solid Waste Landfill Fund

This budget amendment is requested to increase capital expenditures in the Solid Waste Fund by \$425,000. Revenue will not increase because there is sufficient unencumbered cash to pay these costs. The funds will be used for construction of the Phase 3 landfill cell. Bids were opened and were higher than estimated. These funds are necessary to complete the construction of the new cell before the current disposal

area is completely filled.

544-3123-435	9390	425,000	Landfill Infrastructure
--------------	------	---------	-------------------------

Revenue Expenditure

202 – Downtown Tax Increment Operating Fund

This budget amendment is requested to increase the budget for services and projects contracted for in the Development Agreement between the City of Billings and the Downtown Billings Partnership and the Downtown Development Corporation which was approved on November 26, 2007, and amended on February 25, 2008, and is evidenced by Resolutions 07-18636 and 08-18680. No revenue is budgeted because there is sufficient unencumbered cash to fund these expenditures.

202-1503-466	7946	220,000	Administration – Downtown Billings Partnership – Operating Agreement
202-1503-466	7973	1,430,000	DBP Development Incentives

432 –South Tax Increment #5 Construction Fund

502 – Water Fund

205 – Gas Tax Fund

This capital expenditure is for the design and construction of King Avenue East improvements. The construction contracts are for \$521,000. Loans from the Water and Gas Tax Funds will finance expenditures until bonds are sold.

432-3110-381	6950	166,417	Loan from fund 502
432-3110-381	6950	354,583	Loan from fund 205
432-3110-431	9310	521,000	Capital Outlay
205-3131-433	5933	354,583	Loan to fund 432
502-7211-601	5933	166,417	Loan to fund 432

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward II:
Annexation #08-06

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On April 28, 2008, the City Council approved the annexation of a 20.6-acre property located north of Alkali Creek Road. The request for annexation was submitted by Jim Pickens of Best Development Corp., the owner of the property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward II will be conducted at this meeting. The second reading of the ordinance will be conducted on May 27, 2008.

FINANCIAL IMPACT: There are no direct financial impacts if this ordinance is approved.

RECOMMENDATION

Staff recommends that the City Council hold the public hearing and approve the first reading of this ordinance that adds property to City Ward II.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

B. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD II PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

3. **AMENDMENT.** Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to the following designated Ward the following described real property:

A tract of land situated in the E1/2 of Section 28, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tracts 1A, 1B, and 1C, Amended Tract 1, Certificate of Survey No 2055, Recorded March 13, 2008, under Document No. 3457577, Records of Yellowstone County.

Including all adjacent right-of-way of Aronson Avenue.

Containing 20.632 gross and net acres.

(# 08-06) See Exhibit "A" Attached

4. **CERTIFICATION.** Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. **REPEALER.** All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 12th day of May, 2008.

PASSED by the City Council on the second reading this 27th day of May, 2008.

THE CITY OF BILLINGS:

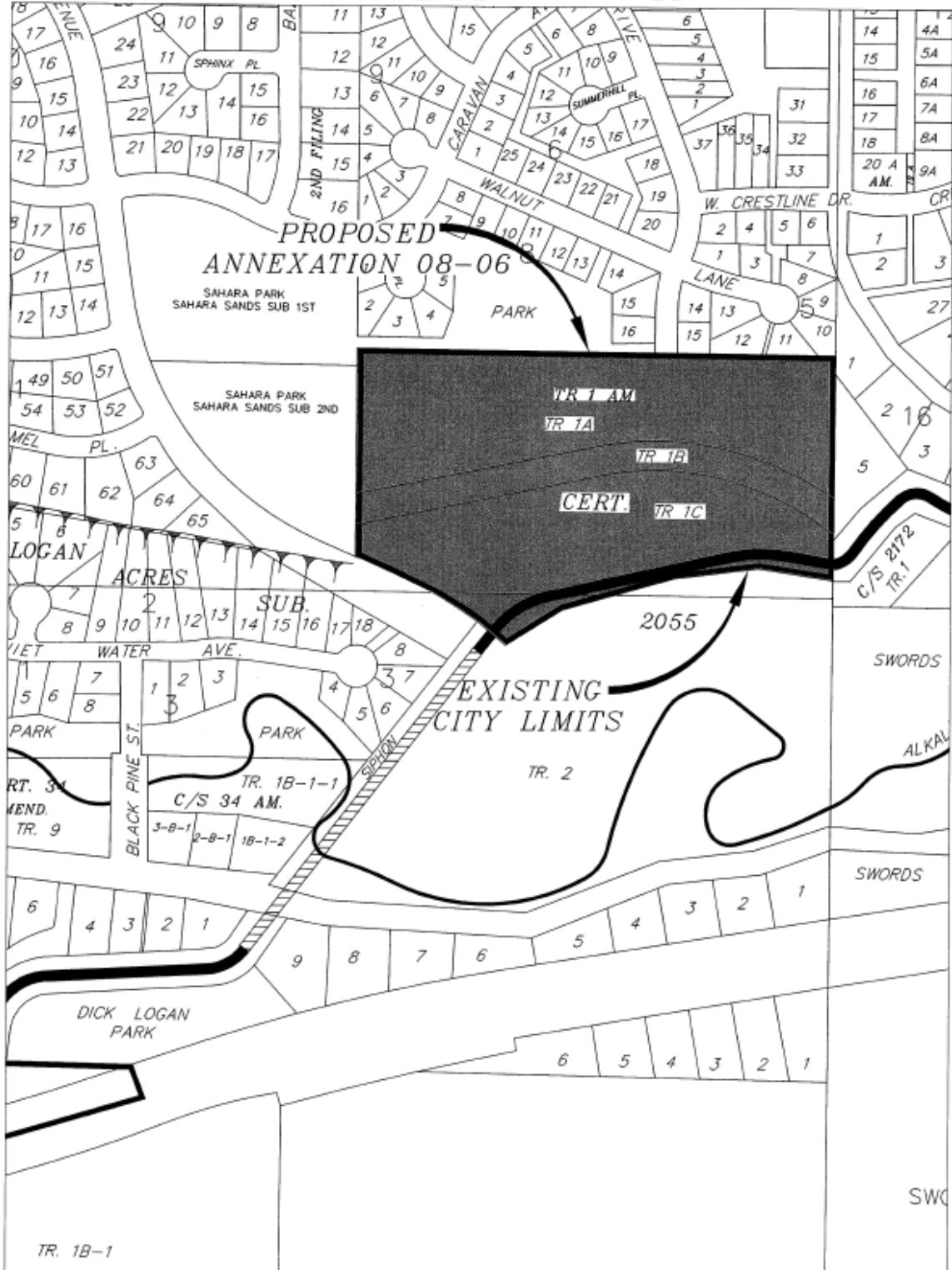
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

(AN 08-06)

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Public Hearing for Site Development Ordinance Variance # OP-08-03

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The owner of Wyoming Plaza, L.L.C. requests a variance from Section 1203(j) of the site development ordinance pertaining to the off-street parking so he may change the use of the building from retail to medical for a portion of the building which is currently unoccupied. The building is located at 1407 Wyoming Avenue, on Lots 1 - 3, Block 2, Houser Subdivision. This property is located between 14th Street West and 15th Street West along the north side of Wyoming Avenue. The building was recently constructed in 2007 at which time it was designed for retail use. One unit of the building is currently occupied as a hair salon. The unoccupied proposed new use is for a chiropractic office. Thus the new use is medical and constitutes a change of use and a change in the off-street parking requirements.

ALTERNATIVES ANALYZED:

1. Approve the variance. Approval of this variance will allow the Wyoming Plaza, L.L.C., with the addition of the Chiropractic Health Associates, P. L.L. C. to use the facility at 1407 Wyoming Avenue without meeting the Site Development Ordinance which covers the requirements for off-street parking needs.
2. Do not approve the variance. If this variance is denied, the owner's options to meet the requirements of the Site Development Ordinances will require redesign or relocation of the Chiropractic Health Associates, P. L.L. C.

FINANCIAL IMPACT: There is no direct financial impact to the City. Advertising costs for the public hearing are offset by the variance application fee.

RECOMMENDATION

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

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

ATTACHMENTS

- A. Application for Variance
- B. Proposed Site Plan - showing the 27 parking stalls
- C. Proposed Site Plan of Building Usage

INTRODUCTION

Mike Stock the owner of Wyoming Plaza, L.L.C., has requested a variance from Section 1203(j) of the site development ordinance pertaining to the off-street parking so he may change the use of the building from retail to medical for a portion of the building which is currently unoccupied. The building is located at 1407 Wyoming Avenue, on Lots 1 - 3, Block 2, Houser Subdivision. This property is located between 14th Street West and 15th Street West along the north side of Wyoming Avenue. The building was recently constructed in 2007 at which time it was designed for retail use. One unit of the building is currently occupied as a hair salon. The unoccupied proposed new use is for a chiropractic office. Thus the new use is medical and constitutes a change of use and a change in the off-street parking requirements. The owner of Wyoming Plaza, L.L.C., therefore, requests variances for Section 6-1203(j) of the Site Development Ordinance. Section 6-1203(j) pertaining to the number of off-street parking stalls required.

BACKGROUND

The owner of Wyoming Plaza, L.L.C. has provided a Site Plan for the variance showing the current parking lot lay out for the facility's off-street parking that was constructed with the project (see attachment "B").

In accordance with past City practices, City staff and the owner have calculated that the required parking needed to meet the off-street parking requirements is 31, based on Section 6-1203. Off-street parking requirements using the following parking requirements from Section 6-1203(j) Table of minimum standards.

TABLE OF MINIMUM STADARDS – OFF-STREET PARKING

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

The use for the building when constructed was for retail. Currently one of the occupants of the building is a hair salon (Attachment "C").

The proposed use for the other portion of the building is for Chiropractic Health Associates, P. L.L. C. (Attachment "C"), which is a medical practice and constitutes a change of use and a change in the off-street parking requirements.

The original retail requirements for off-street parking at this location required 27 parking stalls.

The change of use for the Wyoming Plaza, L.L.C., with the addition of the Chiropractic Health Associates, P. L.L. C., would require 31 off-street parking stalls.

- For the requested variance, the Site Development Ordinance reads as follows:
- Section 6-1203(j):

- *Table of minimum standards.* Required parking spaces shall be in conformance with the following table and where alternative standards are indicated, the greater requirement applies in conflicting computation; where the total quota results in a fraction the next highest full unit shall be provided.

ALTERNATIVES ANALYSIS

1. Approve the variance. Approval of this variance will allow the Wyoming Plaza, L.L.C., with the addition of the Chiropractic Health Associates, P. L.L. C. to use the facility at 1407 Wyoming Avenue without meeting the Site Development Ordinance which covers the requirements for off-street parking needs.
2. Do not approve the variance. If this variance is denied, the owner's options to meet the requirements of the Site Development Ordinances will require redesign or relocation of the Chiropractic Health Associates, P. L.L. C.

SUMMARY

Mike Stock the Wyoming Plaza, L.L.C., will only able to provide 27 of the 31 required parking stalls. On street parking is not recognized in this district as meeting part of the off-street parking requirements. The proposed site does not have the adequate space for any additional parking stalls as the site is currently proposed.

In the future, if the building is sold to be used as medical offices or similar usage and a change in use reducing the requirements does not occur, the new tenant would not be able to install or meet the parking requirements as the site currently is proposed or exists. Parking could become an issue if the new tenant is not interested in offering incentives for creating alternative transportation such as carpooling, riding the bus, walking, and riding bikes.

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

RECOMMENDATION

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

ATTACHMENTS

- A. Application for Variance
- B. Proposed Site Plan - showing the 27 parking stalls
- C. Proposed Site Plan of Building Usage

Attachment "A"

Application # OP-08-03

APPLICATION FOR VARIANCE

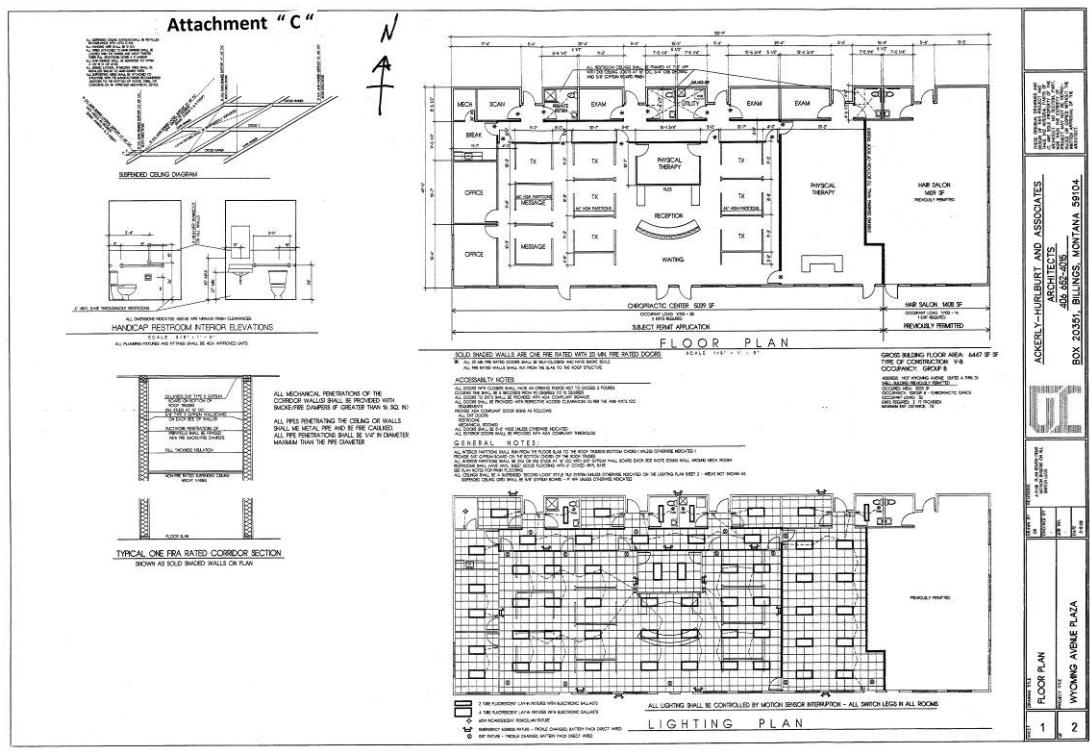
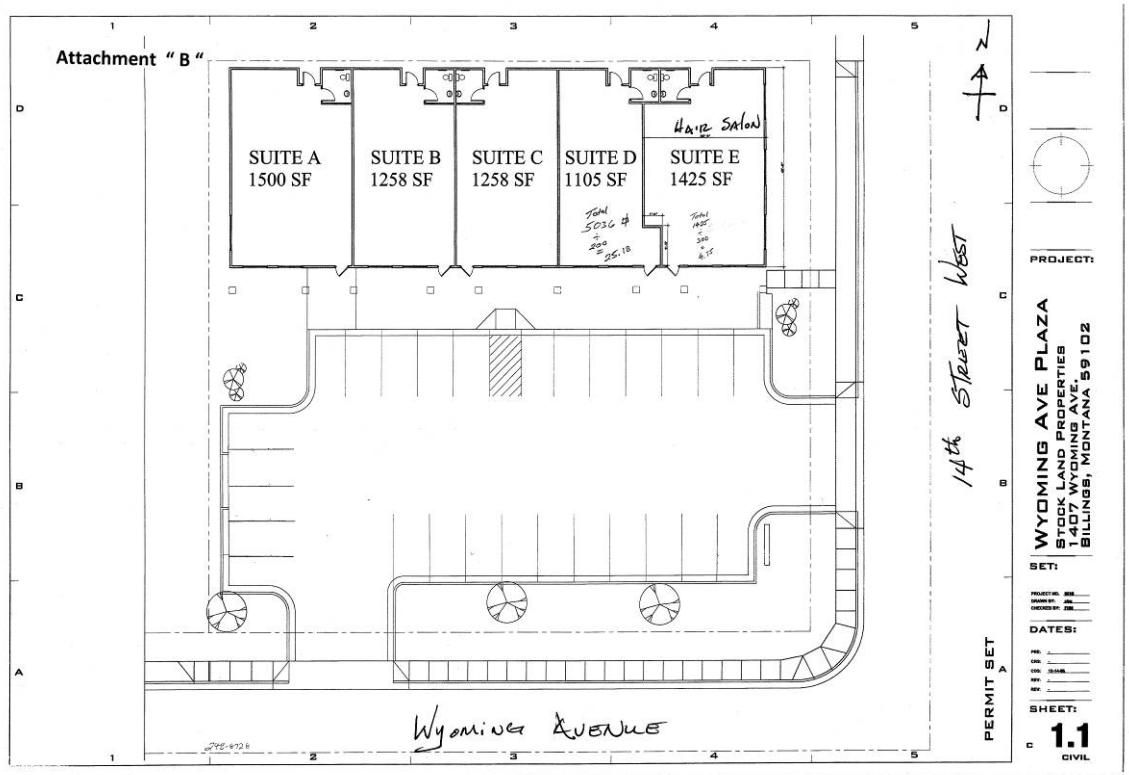
1. Legal description of property: Lots 1, 2 & 3 Block 2
Houser Subdivision Billings. MT 59102
2. Address (if unknown, contact the City Engineer's office) or general location: 1407 Wyoming Billings. 59102
3. Owner(s): Wyoming Plaza LLC
(Recorded Owner)
1135 Bluegrass Dr. East
(Address)
406-591-4540
(Phone Number)
4. Agent(s): Michael Stock
(Name)
1135 Bluegrass Dr. East
(Address)
406-591-4540
(Phone Number)
5. Section of the Site Development Ordinance that this request for variance applies to: Sec. 6-1203
6. Reason for request: Chiropractic Health Associates PLLC Billings
New Tenant to lease 5036 sq ft of Wyoming Office
Plaza - Change off Street Parking requirements from
1/300 to 1/200 medical Dental Clinic use creating
room for 3 more spaces.
7. Covenants for deed restrictions on the property: Yes No X
(if yes, please include a copy)

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

Signature: Michael J. A. Date: 4/16/08
(Recorded Owner) Wyoming Plaza LLC (Pss)

Fee: \$60.00 Receipt #: Pd \$60.00 CK
1757

Hearing Date: 5/12/08



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Public Hearing and Resolution to Create Expanded PMD No. 4026, to Include Twin Oaks 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 of the park areas will be by the developer through private contract. Park Maintenance District No. 4026 for Uinta Park Subdivision needs to be expanded to include Twin Oaks Subdivision to provide for the maintenance of the Twin Oaks 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 the expanded district. The City Council approved a Resolution of Intent to create the expanded district at the April 14, 2008, Council meeting, and a Public Notice of Intent was advertised as required, and a Notice of Intent was mailed to the property owners within the proposed expansion area for the district. The protest period was from April 17, 2008, through May 2, 2008. There were zero (0) valid protests received during the protest and comment period. The Resolution to Create the Expanded Park Maintenance District No. 4026 to provide funds for the maintenance of Twin Oaks Park, along with Uinta Park, will complete the expansion of PMD 4026 to include Twin Oaks Subdivision within its boundaries.

ALTERNATIVES ANALYZED:

- Create the Expanded Park Maintenance District 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 Expanded Park Maintenance District

FINANCIAL IMPACT: The maintenance costs for the park improvements 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 Phase I of Twin Oaks Subdivision 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 Subdivision Improvements Agreement.

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

ATTACHMENT:

A: Resolution

INTRODUCTION

Approval of the Resolution to Create Expanded Park Maintenance District No. 4026 for the maintenance of the Twin Oaks and Uinta Park Subdivision parks located on Uinta Park Drive and Twin Oaks Drive west of Lake Elmo Road in the Billings Heights neighborhood is the final step in the process required to create the expanded park maintenance district to pay for the costs of maintaining Twin Oaks and Uinta Park Subdivision parks.

PROCEDURAL HISTORY

- Twin Oaks Subdivision received preliminary plat approval in July of 2006 and was annexed into the City.
- The final plat will be considered by the City Council at the April 28th, 2008, meeting. 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 adopted by the City Council with the approval of the plat in July of 2006.
- The Resolution of Intent for creating the Expanded Uinta Park Twin Oaks Maintenance District was passed by the Billings City Council at the April 14, 2008, council meeting.
- A Public Notice of Intent was advertised for 2 consecutive weeks, April 17th, 2008, and April 25th, 2008, and a copy of the Public Notice of Intention to Create District 4026 was sent to each property owner in the Twin Oaks Subdivision. The Notice stated the procedure for filing protests or comments, and set the dates of the protest and comment period from April 28, 2008, through May 2, 2008.
- There were zero (0) protests and zero (0) comments received during the protest period.
- The Public Hearing and the Resolution to Create the Expanded Park Maintenance District 4026 will be the final step to create the expanded Park Maintenance District 4026 for the maintenance of Uinta and Twin Oaks Parks.

BACKGROUND

The Uinta Park Subdivision Improvements Agreement calls for the park improvements to be made and the Park Maintenance District to be created during the Phase III development of the subdivision, as agreed to in the Subdivision Improvements Agreement for Uinta Park Subdivision. The proposed maintenance district for the park includes 169 single family residential lots. There are on file Waivers of Protest for the formation of the park maintenance district for all lots within the Uinta Park Subdivision.

ALTERNATIVES ANALYSIS

- Create the Park Maintenance District
- Do not create the Park Maintenance District

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 Subdivision Improvements Agreement.

ATTACHMENT:

A: Resolution.

RESOLUTION NUMBER 08-
**A RESOLUTION TO EXPAND THE BOUNDARIES OF EXTENDED SPECIAL
IMPROVEMENT MAINTENANCE DISTRICT NO. 4026 FOR THE PURPOSE
OF MAINTAINING THE EXISTING AND FUTURE PUBLIC AREA
IMPROVEMENTS IN UNTA PARK SUBDIVISION TO INCLUDE TWIN OAKS
SUBDIVISION.**

WHEREAS, City Council of Billings, Montana hereby finds, determines and declares that:

1. The public interest and convenience require expanding the boundaries of Special Improvement Maintenance District No. 4026 created by *Resolution 05-18269 on May 23, 2005*.
2. All lands are benefited and no lands that are not benefited have been included within the district. All lands within the district will be enhanced in value to the extent of the assessments to be levied upon such lands, and all lands included within the district should be assessed accordingly to pay the cost and expenses of the district.

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

1. *Jurisdiction and Creation:* Extended Special Improvement Maintenance District No.4026 is of more than local or ordinary public benefit. The Council has acquired jurisdiction to order the improvements and it does hereby expand the boundaries of Special Improvement Maintenance District No. 4026. All lands included in the expanded boundaries of Extended Special Improvement Maintenance District No. 4026 are benefited and no lands that are not benefited have been included in said district.
2. *General Character of Improvements and Maintenance:* 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.
3. *Boundaries:* The boundaries of the district are described and designated on Exhibit "A" attached hereto.
4. *Maintenance Estimate:* The estimated cost of the proposed expansion maintenance for the current year shall be \$208.09 per lot as described in the Maintenance Estimate attached hereto as Exhibit "D".
5. *Assessment Method:* All of the costs and expenses of the district will be assessed against the entire district, and each eligible lot or parcel of land within the district will be assessed for that part of the whole cost which its assessable area bears to the total assessable area in the entire district, exclusive of streets, avenues, alleys and public places. 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. Assessments for each lot during the current year will be approximately \$208.09 per lot. In accordance with 7-1-1479 MCA, the assessment for each lot in each ensuing year will be set by the City Council by resolution.
6. *Payment of Assessment:* The assessments for all maintenance and costs of the district shall be paid in equal annual installments, provided that the payment of one-half of said annual assessment may be

deferred to May 31 of the year following the assessment. All money derived from the collection of said assessments otherwise shall constitute the existing fund known as Fund of Special Improvement Maintenance District No. 4026.

7. *Bonds for Improvements:* There will be no bonds sold for this district as it is for maintenance only.
8. *Engineering:* No engineering will be required for the maintenance of the district.
9. *District Accounts:* The Director of Finance is hereby authorized and directed to establish the necessary accounts to govern the receiving of all revenues and the expenditures of the same district.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana and **APPROVED**, this day _____ of _____, 2008.

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

**PARK MAINTENANCE DISTRICT NO. 4039
TWIN OAKS SUBDIVISION**

BEING TRACTS 1 & 2 OF CERTIFICATE OF SURVEY NO. 3190
SITUATED IN THE NW 1/4 OF SECTION 22, T. 1 N., R. 26 E., P.M.M.
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED BY : ENGINEERING, INC.
JANUARY, 2008
BILLINGS, MONTANA

EXHIBIT B

**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				
BA SUB	ELE	SUB OBJ	ACCOUNT DESCRIPTION	
	34	10	Operations and Supplies	
		20	Electricity	\$ 180.00
		50	City Water	\$ 3,500.00
	39	65	Ground Maintenance	\$ 950.00
		90	Other Service/Finance Charges	\$ 715.00
	54	10	Parks Charge for Services	\$ 4,400.00
			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

[Back to Regular Agenda](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: Public Hearing to Vacate a portion North 26th Street and 2nd Avenue North

DEPARTMENT: Public Works/Engineering

PRESENTED BY: David D. Mumford, PE, Public Works Director
 Bruce McCandless, Asst. City Administrator

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 supposed to vacate a portion of North 26th Street and 2nd Avenue North. The rights of way 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 current adjacent owners, Yellowstone County and the Big Sky Economic Development Authority (BSEDA) petitioned for the vacation. The right of way will be vacated to BSEDA and the Downtown Billings Partnership (DBP), the proposed, eventual owners of the adjacent property. The City will be paid \$252,150. The vacation has a delayed effective date that coincides with the Phase 2 property transactions as described in sections 4.2 and 5.3 of the Development Agreement.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: Per the approved Development Agreement, the City will be paid \$252,150 for the right of way proposed to be vacated.

RECOMMENDATION

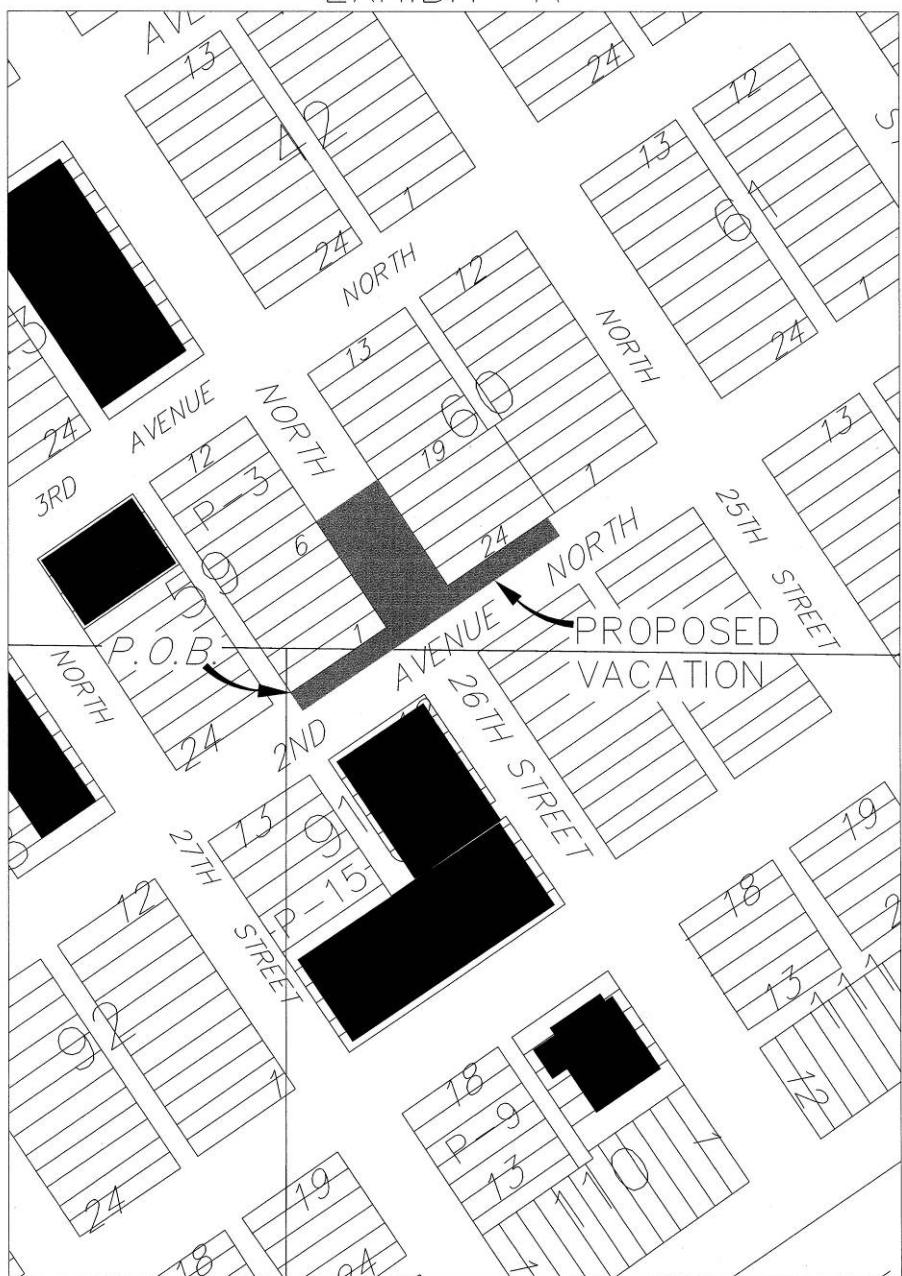
After the public hearing, staff recommends that Council approve the vacation of a portion of North 26th Street and 2nd Avenue North.

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

ATTACHMENTS

- A. Map Depicting Area to be Vacated
- B. Resolution to Vacate

EXHIBIT "A"



A RESOLUTION OF THE CITY OF BILLINGS, MONTANA,
DISCONTINUING AND VACATING A PORTION OF NORTH 26TH
STREET AND 2ND AVENUE NORTH.

WHEREAS, the City of Billings, as a party to a Development Agreement to develop a downtown US General Services Administration courthouse, agreed to vacate and sell a portion of N. 26th Street and 2nd Avenue North right of way to the adjacent property owners for further conveyance to the courthouse developer, and

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of a portion of North 26th Street and 2nd Avenue North as described hereinafter; and

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

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

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., a portion of North 26th Street and 2nd Avenue North more particularly described as follows:

A PORTION OF NORTH 26TH STREET AND
A PORTION OF THE NORTH 25 FEET OF 2ND AVENUE NORTH

A tract of land situated within the City of Billings, in the Billings Original Townsite, Recorded September 1, 1884, Under Document No. 16312, Records of Yellowstone County, Montana, more particularly described as follows:

Beginning at the southwest corner of Lot 1, Block 59, of said Billings Original Townsite; thence northeasterly along the north right-of-way of 2nd Avenue North for a distance of 140.0 feet to the southeast corner of said Lot 1; thence northwesterly along the west right-of-way of North 26th Street for a distance of 150.0 feet to the northeast corner of Lot 6 of said Block 59; thence northeasterly across the North 26th Street right-of-way for a distance of 80.0 feet to the northwest corner of Lot 19, Block 60, of said Billings Original Townsite; thence southeasterly along the east right-of-way of North 26th Street for a distance of 150.0 feet to the southwest corner of Lot 24 of said Block 60; thence

northeasterly along the north right-of-way of 2nd Avenue North for a distance of 140.0 to a point; thence southeasterly for a distance of 25.0 feet on a line that is perpendicular to the north right-of-way of 2nd Avenue North to a point; thence southwesterly and parallel to the north right-of-way of 2nd Avenue North for a distance of 360.0 feet to a point; thence northwesterly for a distance of 25.0 feet to the Point of Beginning. Said vacation containing 21,000 gross and net square feet.

Is hereby discontinued, abandoned and vacated in accordance with Section 3.

2. **PUBLIC INTEREST.** The discontinuance, vacation and abandonment of the above described portion of North 26th Street and 2nd Avenue North is in the best interest of the public and can be done without any public detriment.

3. **DELAYED EFFECTIVE DATE.** The discontinuance, vacation and abandonment of the described street right of way will take effect upon execution of property sales and exchanges that are described as Phase 2 transactions in Sections 4.2 and 5.3 of a Development Agreement among the City of Billings, County of Yellowstone, White Family LLC, Big Sky Economic Development Corporation, Downtown Development Corporation and the Downtown Billings Partnership, Inc. and dated January 29, 2008. If the Phase 2 transactions do not take place as anticipated by said Development Agreement, this discontinuance, vacation and abandonment of the described street right of way shall be null and void.

PASSED by the City Council and APPROVED this 12th day of May 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, May 12, 2008

TITLE: Public Hearing and Resolution Disposing of City-Owned Property –
Approximately 10 Acres in Cottonwood Park

DEPARTMENT: City Attorney/City County Planning/PRPL

PRESENTED BY: Brent Brooks, City Attorney

PROBLEM/ISSUE STATEMENT: The attached, proposed Resolution disposing of City-owned property within Cottonwood Park has been prepared to comply with Billings City Code Sections 22-901 and 902 and is the next step in the process of complying with the Cottonwood Park Development Agreement executed between the City, School District #2, and Westward Ho, Inc., and Yellowstone County in 2002. That Development Agreement, among other provisions, donated approximately 38.16 acres of land to the City for use exclusively for park and park-related purposes. A portion of that Development Agreement provided that School District #2 would have an option to purchase land within the 38 total acres, for purposes of constructing an elementary school. The Development Agreement also required the School District to exercise its option to purchase within 5 years of the agreement. The School District has previously exercised its option to purchase in 2007 and has now formally submitted a proposed buy-sell agreement for the Mayor and City Council to consider.

BMCC Section 22-902 requires that the City Council hold a public hearing prior to final disposal of land and approve a Resolution authorizing the disposal of such land.

ALTERNATIVES ANALYZED: If the City Council does not approve the Resolution, then consideration of the related buy-sell agreement from School District #2 cannot proceed. Further, the City would be in violation of the 2002 Cottonwood Park Development Agreement by not cooperating with and agreeing to sell a portion of Cottonwood Park to School District #2 at an agreed-upon fair market appraisal.

FINANCIAL IMPACT: The financial impact to the City is receipt of \$200,000 for the sale of up to 10 acres within Cottonwood Park to School District #2 as proposed in the related Cottonwood Park School Site Purchase and Sale Agreement, also scheduled for the April 28, 2008, City Council Agenda.

RECOMMENDATION: Staff recommends that the Mayor and City Council approve the attached Resolution pursuant to BMCC 22-902.

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

RESOLUTION 08-_____

A RESOLUTION PURSUANT TO BILLINGS, MONTANA, CITY CODE, ARTICLE 22-900: SALE, DISPOSAL, OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE DISPOSED OF AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings owns and desires to dispose of and sell public land in Cottonwood Park to School District #2; and,

WHEREAS, the location of the public property to be disposed of is more particularly described as follows: Approximately ten (10) acres of undeveloped public land in the northwest portion of Cottonwood Park, Billings, Yellowstone County, Montana, according to the official plat now on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana; and

WHEREAS, the notice of public hearing required by Section 22-902 of the Billings, Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings, Montana City Code was duly held on the 12th day of May, 2008;

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

1. That the City staff is authorized to proceed with the sale and conveyance by warranty deed of approximately ten (10) acres of land in Cottonwood Park under the requirements of Section 22-902 of the Billings, Montana City Code; and,
2. That the Mayor is authorized to execute all documents legally necessary to complete this sale and transfer of ownership to School District #2.

APPROVED AND PASSED by the City Council of the City of Billings, Montana, this 12th day of May, 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, May 12, 2008

TITLE: Consideration and approval or disapproval of Cottonwood Park School Site Purchase and Sale Agreement selling approximately 10 Acres in Cottonwood Park to School District # 2.

DEPARTMENT: City Attorney/City County Planning/PRPL

PRESENTED BY: Brent Brooks, City Attorney

PROBLEM/ISSUE STATEMENT: In 2002, the City, School District #2, Westward Ho, Inc., and Yellowstone County, Montana, entered into a contract entitled "Charitable Gift and Cottonwood Park Development Agreement." This Development Agreement was recorded with the Yellowstone County Clerk and Recorder and executed by the various governing bodies and private donor. As part of this Development Agreement, the City received approximately 38.16 acres of land commonly known as Cottonwood Park at no cost. This park is generally located north of Colton Boulevard and west of 54th Street West. Within the Development Agreement, the City granted to School District #2 the option to purchase up to 10 contiguous acres within the 38.16 acres of land within Cottonwood Park. All of the parties to the Development Agreement intended that the land that would be designated by School District #2 and thereafter purchased would be used for a public school. Although the desired location of such school property has not been formally surveyed, the City and School District #2 have tentatively identified the proposed location as generally described in the attached "Purchase and Sale Agreement."

The original 2002 Development Agreement specified that, once School District #2 exercised its option to purchase up to 10 acres within Cottonwood Park, the School District and the City would initiate completion of the sale within 6 months of the School District obtaining all the necessary approvals which occurred in November, 2007. The City and the School District have tentatively agreed within the attached Purchase and Sale Agreement that a closing deadline of June 30, 2008, satisfies the original deadlines imposed by the 2002 Development Agreement allowing for the School District's purchase of the 10 acres.

The School District #2 has proposed to purchase the 10 acres for a purchase price of Two Hundred Thousand Dollars (\$200,000).

ALTERNATIVES ANALYZED: Because School District #2 has exercised its option to purchase elementary school site property within Cottonwood Park in accordance with the 2002 Development Agreement, the only alternative for the Council to consider is the amount of the purchase price. That purchase price as proposed by School District #2 is \$200,000. Should the Council contest or dispute that amount, it could reject that purchase price proposed by School District #2, obtain a new formal fair market value appraisal for the property which may or may not confirm \$200,000 as a reasonable fair market value of the 10 acres. The most recent formal appraisal of the property was conducted on March 28, 2005, which yielded an appraised fair market value for the 10 acres of approximately \$200,000. A less formal estimated fair market value study analyzing comparable sales in the vicinity was conducted by Charlie Hamwey of Real Estate by Hamwey in September 2007. That study resulted in an estimate that the 10 acre parcel was worth approximately \$250,000. However, the Council has informally indicated earlier this year it would be receptive to accepting the less amount of \$200,000 as a reasonable sale price.

FINANCIAL IMPACT: The financial impact to the City would be receipt of the proposed purchase amount of \$200,000. This amount is required to be specifically expended for improvements to Cottonwood Park as required by the Development Agreement of 2002. Therefore, the use of these funds has been specifically earmarked for park development and cannot be used for any other purpose.

RECOMMENDATION

Staff recommends that the Mayor and City Council approve the attached Cottonwood Park School Site Purchase and Sale Agreement and authorize Mayor to execute any necessary, related documents to complete the sale and transfer of ownership to School District #2 for the purchase price of \$200,000.

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

ATTACHMENTS

A. Proposed Purchase and Sale Agreement from School District #2 to City.

INTRODUCTION In 2002, the City, Billings School District #2, Westward Ho, Inc., and Yellowstone County, Montana, entered into a contract entitled “Charitable Gift and Cottonwood Park Development Agreement.” That Development Agreement provided a gift of 38.16 acres of undeveloped land west of 54th St. West to the City. This Development Agreement also provided that School District #2 could purchase up to 10 acres within Cottonwood Park for use as an elementary school. Certain prerequisites were required of School District #2 in order to exercise that option and the District has now completed them by submitting the attached Purchase and Sale Agreement proposing that the City Council sell the designated 10 acres to School District #2 for the purchase price of \$200,000.

PROCEDURAL HISTORY /BACKGROUND

- 2002: City, School District #2, Westward Ho, Inc., and Yellowstone County, Montana executed a Development Agreement for Cottonwood Park whereby the City received 38.16 acres of park land west of 54th St. West and School District #2 retained an option to purchase up to 10 acres for an elementary school site.
- August 2007: School District #2 Board of Trustees initiated steps to exercise its option to purchase up to 10 acres of land within Cottonwood Park for purposes of an elementary school location.
- November 2007: As required by state statute, School District #2 voters were given the opportunity to approve the location of the elementary school within Cottonwood Park. That location was approved.
- May 2008: Approval of Cottonwood Park School Site Purchase and Sale Agreement by Mayor, City Council, and School District #2 Board of Trustees.

ALTERNATIVES ANALYSIS School District #2 has complied with the 2002 Cottonwood Park Development Agreement by exercising its option to purchase ten (10) acres from the City. The alternative available to the Mayor and City Council is to reject the proposed purchase and sale of those ten (10) acres for \$200,000 and submit a counter-proposal to School District #2 concerning the amount of the purchase in an amount it deemed appropriate and reasonable. The Council has previously, informally indicated to staff during a brief worksession discussion that it would be receptive to agreeing to the \$200,000 amount. It is within the discretion of the Mayor and City Council to accept the March 2005 appraisal as the fair market value of the 10 acres sought to be purchased by School District #2. It is also within the discretion of the Mayor and City Council to obtain an updated formal appraisal of the 10 acres and submit a counter proposal to School District #2. The voters in the fall of 2007 approved the location and purchase amount of \$200,000; therefore, the School District Board of Trustees may require additional voter approval should a different purchase amount be proposed by the Mayor and City Council.

STAKEHOLDERS Westward Ho, Inc., the original donors of the 38.16 acres to the City, is most interested in accomplishing the purchase of the ten (10) acres by School District #2 as expeditiously as possible. The proceeds from the sale received by the City would be applied exclusively to development of Cottonwood Park, although the proposed \$200,000 purchase price would not pay for all development of the Park.

School District #2 is also a stakeholder which intends to proceed with construction of an elementary school. The specific date of construction is currently under discussion by the School District Board of Trustees.

With the increasing development of various subdivisions immediately west of 54th St. West and the completion of Fire Station #7 on the east side of 54th St. West, there are numerous new developments that would logically utilize either or both the elementary school and the Park.

RECOMMENDATION

Staff recommends that the Mayor and City Council approve the Cottonwood Park School Site Purchase and Sale Agreement in the amount of \$200,000.

ATTACHMENTS

A. Cottonwood Park School Site Purchase and Sale Agreement.

**COTTONWOOD PARK SCHOOL SITE
PURCHASE AND SALE AGREEMENT**

This **COTTONWOOD PARK SCHOOL SITE PURCHASE AND SALE AGREEMENT** (the "Purchase Agreement") is made between **THE CITY OF BILLINGS, MONTANA** ("the City" or "Seller") and **BILLINGS ELEMENTARY SCHOOL DISTRICT 2, YELLOWSTONE COUNTY** (also known as Billings Public Schools or Billings School District No. 2 and hereinafter referred to as "the District" or "Buyer"). The effective date of this Purchase Agreement (the "Effective Date") shall be the later date of the dates this Purchase Agreement is executed by Seller and Buyer below.

RECITALS

A. In 2002, the City, the District, Westward Ho, Inc., and Yellowstone County entered into a contract entitled "Charitable Gift and Cottonwood Park Development Agreement" (the "Development Agreement"). The Development Agreement is recorded in the records of the Yellowstone County Clerk and Recorder under Document No. 3210655.

B. Through the Development Agreement, the City received at no cost approximately 38.16 acres of land commonly referred to Cottonwood Park, which is generally located north of Colton Boulevard and west of 54th Street West and is more particularly located in the SE ¼ of the NE ¼ of Section 31, Township 1 North, Range 25 East, PMM in Yellowstone County (the "Development Agreement Property").

C. In the Development Agreement, the City granted to the District the option to purchase up to ten contiguous acres of the Development Agreement Property. The real property subject to the District's option to purchase is referred to in the Development Agreement as the "Designated Property" and shall be referred to as the same herein. The parties to the Development Agreement intend that the Designated Property be used for a public school. Although the Designated Property has not been formally surveyed or subdivided from the Development Agreement Property, the parties to the Development Agreement identified the proposed location in the conceptual land use plan attached to the Development Agreement as Exhibit E.

D. The District's Board of Trustees exercised its option to purchase in 2007 (see the minutes of the Board's meetings on January 17, 2005, January 16, 2006, July 16, 2007, and August 20, 2007, all public records available through the District's website billingsschools.org/index.php or at the District's Clerk's office at 415 North 30th Street in Billings). As required by Montana law, the Board called for a school election seeking voter approval of the Designated Property as an elementary school site on November 6, 2007. The Designated Property was approved as a school site by the voters with 17,921 voting in favor of the site and 8,320 voting against. The Board may now enter into an agreement with the City for the purchase of

the Designated Property. Mont. Code Ann. § 20-6-603. The Board approved this Purchase Agreement at its regular meeting on April 21, 2008.

E. [This recital is reserved for description of City Council Action, as needed]

F. As provided for in Montana law, Seller desires to sell to Seller and Buyer desires to purchase from Seller the Designated Property, according to the provisions hereinafter set forth.

G. The transaction contemplated by this Purchase Agreement has been approved by both the Board of Trustees of Billings Elementary School District No. 2 and the Billings City Council.

AGREEMENT

For Valuable Consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **DESCRIPTION OF PROPERTY SOLD.** Pursuant to the Development Agreement, which by reference is made a part hereof, Seller hereby agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, subject to the exceptions and reservations hereinafter described, the Designated Property. The parties agree that the Designated Property is generally described as:

Unplatted land being the NW ¼ SE ¼ NE ¼ of Section 31, Township 1 North, Range 25 East, P.M.M., in the City of Billings, Yellowstone County, Montana.

The parties agree the Designated Property shall be subdivided surveyed by the City and the City shall create a discrete tract of no more than ten (10) acres which can be conveyed to the District, as contemplated in the from the Development Agreement Property and this Purchase Agreement. The parties restate that the Designated Property shall not be materially relocated from the proposed site identified in Exhibit E of the Development Agreement, unless prior to the subdivision survey the City and the District determine that there is a mutually acceptable alternative school site. The precise location and size of the Designated Property shall be upon the mutual consent of the Seller and Buyer and shall be determined by the parties before the subdivision survey of the Designated Property. Upon the subdivision survey of the Designated Property, the Seller shall provide to Buyer a specific legal description, which legal description shall be attached hereto as Attachment A.

2. **CLOSING.** If this Purchase Agreement has not been previously terminated as permitted herein and if the conditions to close as set forth below have been met, closing

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 2 of 12

("Closing") of this sale shall occur on or before ~~May 6~~ June 30, 2008, at the office of American Title and Escrow in Billings, Montana ("Closing Agent"). Closing may take place at any other date, time or place with the consent of Seller and Buyer. The parties agree that the closing deadline of June 30, 2008, satisfies the closing requirement stated in Paragraph 16 of the Development Agreement. Except as otherwise provided for herein, the closing costs shall be shared equally by Seller and Buyer. The closing costs shall be limited to the Closing Agent's closing fee and deed recording fees. Closing costs shall not include costs associated with subdividing the subject property.

3. PURCHASE PRICE. Buyer agrees to pay or cause to be paid to the Seller the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000) (the "Purchase Price") for the Designated Property, which shall be paid at Closing.

The Closing Agent shall not deliver the Purchase Price to Seller until the Warranty Deed (defined below) has been recorded, title has been updated and the Closing Agent is prepared to issue the title insurance policy required herein.

4. CONVEYANCE. At Closing, Seller will deliver to Buyer an executed warranty deed (the "Warranty Deed") conveying valid, marketable fee simple title to the Designated Property, to the Buyer, free and clear of all liens, encumbrances and title defects, except the following:

- a) Reservations and exceptions in patents from the United States or the State of Montana.
- b) Existing easements and rights-of-way.
- c) All building, use, zoning, sanitary and environmental restrictions.
- d) General and special taxes and assessments for 2008 and subsequent years.
- e) Mineral and royalty reservations or conveyances of record and any oil, gas and/or mineral leases of record.
- f) Those additional exceptions approved in writing by Buyer.
- g) The notice and restrictive covenant stated in Paragraph 13 of the Development Agreement, to wit:

"The property conveyed pursuant to this deed or instrument is subject to various covenants and restrictions described in a Charitable Gift and Park Development Agreement ('Agreement') by which Westward Ho, Inc., a Montana corporation, agreed to donate to the City of Billings approximately 38.16 acres of real estate to be developed and

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 3 of 12

maintained as a multifunctional community park, public school, and/or public library. A copy of the Agreement has been filed with the Yellowstone County Clerk and Recorder. It is expressly understood and agreed by and between the parties hereto that the property herein described is subject to the terms of the Agreement and shall be forever maintained as a public park, school, or library in accordance with the terms of the Agreement. In the event that any portion of the property is used as either a public school or a public library but such use is discontinued for a period of five (5) years, that portion of the property shall revert to the City of Billings for use as a public park and associated uses. Should a portion of the property used as a public school revert to the City of Billings through the operation of this paragraph, said property and attached improvements shall revert 'as is' and the School District shall not be liable for any costs, expenses or charges whatsoever for its discontinued use of the public school, nor shall it have any duty to remediate, demolish or otherwise participate in the preparation of the designated property for any change in use."

The parties affirm that Montana law governs the City's and District's ownership and use of the Designated Property, which may place different or additional restrictions on the Designated Property.

The Parties agree it is necessary for the City to subdivide survey the Designated Property from the Development Agreement Property. Any cost associated with subdividing surveying the Development Agreement Property shall be the City's responsibility.

5. TITLE MATTERS. Buyer shall not be obligated to purchase the Designated Property unless at, or prior to, Closing each of the following conditions has been met or Buyer has expressly waived said conditions in writing. Seller agrees to cooperate with Buyer and to execute any documents which may be necessary or convenient to the performance of these conditions.

- a) Within a reasonable time after the subdivision survey of the Designated Property from the Development Agreement Property and the creation of a discrete tract, Seller, at Seller's expense, shall obtain a title commitment for a standard Owner's Title Insurance Policy through American Title and Escrow in Billings for the Designated Property and in the amount of the Purchase Price, with legible copies of all documents referred to therein ("Title Commitment"). Within thirty (30) days after Buyer's receipt of the Title Commitment, Buyer shall raise any objections to title, which objections shall be made to Seller in writing ("Title Objections"). Seller shall have fifteen (15) days from receipt of Buyer's Title Objections to remove and/or cure same. If Seller, after expending diligent efforts, is unable to remove and/or cure such Title Objections, Buyer shall have the right to (i) cure the

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 4 of 12

Title Objections itself and close this transaction, (ii) close this transaction notwithstanding the Title Objections, or (iii) terminate this Agreement.

- b) Seller shall convey to Buyer good and marketable title to the Designated Property, which shall be free and clear of all liens, leasehold interests, tenancies, encumbrances, and other exceptions to title, except the liens of taxes and assessments not yet due and payable, easements and restrictions of public record, and those exceptions approved in writing by Buyer ("Permitted Exceptions").
- c) Within a reasonable time after the Closing, Seller shall cause, at Seller's expense, an owner's policy of title insurance to be issued to Buyer in accordance with the terms of this paragraph.

6. POSSESSION. Seller agrees to deliver possession of the Designated Property to the Buyer at Closing.

7. ATTORNEY FEES. If either party defaults in its performance and the other party employs an attorney, which may include in-house counsel employed by a party, because of such default, the defaulting party agrees to pay, on demand, all costs, charges and expenses, including reasonable attorney fees, reasonably incurred at any time by the other party or parties because of the default, together with interest thereon at the rate of ten percent (10%) per annum.

9. NOTICE. Any notice to be given hereunder shall be in writing and shall either be served upon a party personally, or served by registered or certified mail, return receipt requested, directed to the party to be served at the following addresses:

If to Seller, to:

City of Billings
P. O. Box 1178
Billings, MT 59103
Attn: City Administrator

If to Buyer, to:

Billings Elementary District 2
415 N. 30th Street
Billings, MT 59101
Attn: Superintendent

A party wishing to change its designated address shall do so by notice in writing to the other party. Notice served by mail shall be deemed complete when deposited in

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 5 of 12

the United States mail, postage prepaid and addressed to the party as above referenced, or at such other address as the parties may designate in accordance with this paragraph. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given shall be deemed to be a receipt of the notice.

10. BROKERAGE. Buyer and Seller represent and warrant that all negotiations relative to this Purchase Agreement have been carried on by them directly, without the intervention of any person, and no commissions relating to the purchase and sale hereof are due to any person.

11. ENVIRONMENTAL MATTERS AND ENVIRONMENTAL ASSESSMENT. Seller makes the following representations and warranties to the best of its knowledge: (a) no Hazardous Material exists at, in, on, under, or about the Designated Property or in any water on or under the surface of the Designated Property; (b) no Hazardous Material has been generated, discharged, released, deposited, stored, disposed of, placed, or otherwise located at, in, on, under, or about the Designated Property or in any water on or under the surface of the Designated Property, (c) no part of the Designated Property has been used as a landfill, dump, industrial waste disposal area, waste treatment facility, gasoline service station, or any other similar purpose or for any industrial purpose, (d) no above-ground storage tanks or underground storage tanks are or were located on the Designated Property, (e) no investigations, administrative proceedings, litigation, regulatory actions, or claims are pending, proposed, or threatened, or have ever been brought, with respect to the existence of any Hazardous Material at, in, on, under, or about the Designated Property or in any water on or under the surface of the Designated Property or to an alleged violation at, in, on, under, or about the Designated Property of any Environmental Law or regulation, (f) Seller has not violated any Environmental Law or regulation, at, in, on, under, or about the Designated Property, nor, to the best of Seller's knowledge, has any third party, and (g) neither all nor any part of the Designated Property is listed on the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or on any other list, schedule, log, inventory, or record of hazardous waste sites maintained by any federal, state, or local government agency. As used herein, the term "Hazardous Material" shall be defined as asbestos, urea-formaldehyde, petroleum hydrocarbons and other petroleum products (including gasoline, diesel fuel, fuel oil, crude oil and motor oil and constituents of those products), perchlorethylene, tetrachloroethylene, vinyl chloride, polychlorinated biphenyls ("PCB's"), nuclear fuel or materials, chemical, biological or medical wastes, radioactive materials, explosives, known or suspected carcinogens, petroleum products, and all dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances defined as hazardous or as a pollutant or contaminant in, or the release or disposal of which is regulated by, any federal, state or local Environmental Law. The term "Environmental Law" shall mean and include any federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 6 of 12

the environment, including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, law or ordinance.

Before the Closing, Buyer shall have reasonable access to the Designated Property, at its own risk and expense, to conduct or to have conducted for its benefit a Phase I Environmental Assessment, if it elects to do so. Buyer agrees to indemnify and hold harmless the Seller from all liabilities, obligations, claims and expenses (including reasonable attorneys fees) arising out of or related to the Buyer's, or those acting on the Buyer's behalf, conducting of a Phase I Environmental Assessment on the Designated Property. The obligation under the preceding sentence shall survive any termination of this Purchase Agreement. If Buyer is not satisfied with the Phase I Environmental Assessment, Buyer shall so notify the Seller. The Buyer and Seller shall then attempt to negotiate the matter that causes the Buyer's dissatisfaction with the Phase I Environmental Assessment. If, despite their good faith efforts to do so, the Buyer and the Seller are unable to satisfactorily negotiate the matter that causes the Buyer's dissatisfaction with the Phase I Environmental Assessment, then, upon notice to Seller (given not less than ten (10) days before the date of Closing), Buyer may terminate this Purchase Agreement. If Buyer so terminates this Purchase Agreement, the parties will have no further rights or obligations against the other under this Purchase Agreement, except for those obligations that are expressly stated to survive termination. If the Buyer either is satisfied with the Phase I Environmental Assessment or the matter that causes Buyer's dissatisfaction with the Phase I Environmental Assessment is successfully negotiated, the parties shall proceed to Closing on the same terms and conditions as set forth in this Purchase Agreement, subject to any modification to which the Buyer and Seller may have agreed in their negotiation of the matter that causes the Buyer's dissatisfaction with the Phase I Environmental Assessment.

12. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller warrants and represents to Buyer, which warranties and representations shall be true and correct as of the Closing Date, that:

- a) Seller has good and marketable fee simple title to the Designated Property, which will be free from liens and encumbrances at Closing;
- b) No suit, action, or legal, administrative, arbitration, or other proceeding or governmental investigation is pending or, to Seller's knowledge, is threatened against Seller which would affect the Designated Property. There is no outstanding judgment, decree, or order against Seller that affects the Designated Property;
- c) Neither the execution and delivery of this Purchase Agreement, nor Seller's consummation of any of the transactions contemplated hereby, will result in a breach of any applicable statute or regulation, or of any administrative or court order or decree, or conflict with or result in the breach of any term, provision, covenant, or condition of any agreement or

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 7 of 12

other instrument to which Seller is a party or by which it may be bound, or which with the giving of notice or lapse of time or both would constitute an event of default thereunder; and

- d) Seller shall keep the Designated Property in the same condition from the date of this Purchase Agreement to the time Buyer takes possession.

These warranties and representations will survive the Closing. Seller will indemnify and hold Buyer harmless from any damage, loss, claims, or liability arising out of any falsity, omission, or misstatement of the matters set forth in this paragraph.

13. BUYER'S REPRESENTATIONS. Buyer warrants and represents to Seller, which warranties and representations shall be true and correct as of the Closing Date, that neither the execution and delivery of this Purchase Agreement, nor Buyer's consummation of any of the transactions contemplated hereby, will result in a breach of any applicable statute or regulation, or of any administrative or court order or decree, nor conflict with or result in the breach of any term, provisions, covenant or condition of any agreement or other instrument to which Buyer is a party or by which it may be bound, or which with the giving of notice or lapse of time or both would constitute an event of default thereunder.

These warranties and representations will survive the Closing. Buyer will indemnify and hold Seller harmless from any damage, loss, claims, or liability arising out of any falsity, omission, or misstatement of the matters set forth in this paragraph.

14. BUYER'S INVESTIGATION AND DUE DILIGENCE. In addition to Buyer's right to conduct a Phase I Environmental Site Assessment under paragraph 11, Buyer shall have the right, at Buyer's expense to inspect and investigate the Designated Property pursuant to the terms and conditions of this paragraph. Before the Closing, Buyer and its employees, agents, designees, contractors and professionals, will have the right to conduct due diligence with respect to the Designated Property, the terms and conditions of this Purchase Agreement and the matters set forth below to its sole satisfaction for the purpose of evaluating this transaction for all matters and aspects, including but not limited to, all: tax matters; parking and traffic flow; security; safety; health; financing and expenses associated with and/or anticipated and/or expected from the Designated Property and any building or improvement to be located thereon; title matters; local, state and/or federal rules, regulations; hydraulics, including but not limited to water tables, piping, water delivery systems, cisterns, sewer, access and rights pertaining thereto; zoning, policies and legislation; liens, encumbrances and encroachments; soil suitability; state and federal financing; bonding and/or levy requirements; subsequent voter approvals; lease and lease back sufficiency and/or potential; suitability as a school site; management; structural, mechanical, electrical, HVAC, plumbing and aesthetic matters; legal compliance and suitability; regulatory, administrative and other legal matters; and/or any other matter deemed necessary in the District's sole judgment, all of which may be reviewed from a past, current or

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 8 of 12

anticipated basis. Disclosures made by Seller to Buyer prior to Closing will not limit Buyer's ability to investigate all matters pertaining to such disclosures. At all times prior to Closing, on an as necessary basis as deemed reasonably appropriate by Buyer, Seller will make the Designated Property available for inspection, and the Seller will make its agents and employees available to answer questions and to provide information, in order to assist in the timely completion of Buyer's inspection and due diligence. In the event that Buyer determines in its sole discretion that as a result of its inspection or due diligence the transaction contemplated herein is not acceptable to it, then the offer set forth in this Purchase Agreement may be terminated at Buyer's option without payment, penalty, cost or fee to Seller.

15. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS. The closing of this purchase and sale of the Designated Property is conditioned upon the occurrence of all of the following prior to Closing unless waived by the Buyer in writing:

- a) Seller complying with all of its obligations under this Purchase Agreement;
- b) All of Seller's representations and warranties set forth herein shall be true and correct;
- c) Buyer completing its inspection and due diligence review as set forth in this Agreement and approving the Designated Property in writing to Seller;
- d) There shall have been no material adverse change in the condition of the Designated Property from the date of this Purchase Agreement;
- e) Seller terminating any and all leases pertaining to the Designated Property, if any, to Buyer's sole satisfaction;
- f) Buyer and Seller agreeing on the final form of warranty deed;
- g) Seller obtaining at Seller's expense all necessary permits and approvals, including the surveying, ~~subdivision, proper zoning and replatting~~ of the Designated Property to accomplish the transaction contemplated herein;
- h) The approval of the transaction contemplated by this Purchase Agreement by Buyers' Board of Trustees; and
- i) The approval of the transaction contemplated by this Purchase Agreement by the Seller's City Council,

hereinafter referred to as "Conditions to Close."

If any of the Conditions to Close have not been satisfied by the Closing date or by such later date as may be hereafter mutually agreed upon in writing by the parties, this Purchase Agreement shall terminate upon written notice from Buyer to Seller.

16. REMEDIES ON DEFAULT.

a) If Seller fails to consummate this Purchase Agreement in accordance with its terms for any reason within the control of the Seller, Buyer shall have as Buyer's sole remedy the option of either of the following: (i) rescinding this Purchase Agreement by giving written notice to Seller; or (ii) enforcing specific performance by Seller of Seller's obligations hereunder.

b) If Buyer fails to consummate this Purchase Agreement in accordance with its terms for any reason with the control of Buyer, Seller shall have as Seller's sole remedy against Buyer the option of either of the following: (i) rescinding this Purchase Agreement by giving written notice to Buyer; or (ii) enforcing specific performance by Buyer of Buyer's obligations hereunder.

17. PARTIES' AGREEMENT. The parties make the Development Agreement a part of this Purchase Agreement. The Recitals above are part of this Purchase Agreement. Except as otherwise provided for herein, this Agreement, the Warranty Deed, and the Development Agreement contain the entire agreement and understanding of the parties, and supersede any and all prior negotiations and understandings. This Purchase Agreement shall not be modified, amended or changed in any respect except by written document signed by all parties hereto.

18. INTERPRETATION. If any portion of this Purchase Agreement shall be held to be void or unenforceable, the balance thereof shall nonetheless be effective. This Purchase Agreement has been made and entered into in the State of Montana and shall be governed by the laws of the State of Montana.

19. HEADINGS. The headings used in this Purchase Agreement are for convenience only, and shall not be construed as part of this Purchase Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

20. BINDING EFFECT. This Purchase Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors, successors in interest and assigns of the parties.

21. SURVIVAL OF AGREEMENT. This Purchase Agreement and all of the representations, warranties, covenants, promises, indemnities and agreements of the parties contained herein or in documents provided pursuant to this Purchase Agreement

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 10 of 12

shall survive the execution and delivery of this Purchase Agreement, the closing and the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement effective the day and year first above written.

BILLINGS ELEMENTARY SCHOOL DISTRICT 2

By: _____ Dated: _____
Malcolm Goodrich
Its Board of Trustees Chairperson

Attest:

Leo Hudetz, District Clerk

THE CITY OF BILLINGS

By: _____ Dated: _____
Its _____

Attest:

City Clerk

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 11 of 12

Attachment A

Legal Description of the Designated Property

Cottonwood Park School Site
Purchase and Sale Agreement
Between the City of Billings and
Billings Elementary School District 2
Page 12 of 12

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 12, 2008

TITLE: MDT Maintenance Agreement for Rimrock Road

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: The Montana Department of Transportation (MDT) is requiring a maintenance agreement between the City of Billings and MDT for the maintenance of sidewalks and trail along Rimrock Road between Shiloh Road and 54th Street West. The City of Billings has agreed in the past to maintenance agreements with MDT guaranteeing that improvements constructed by MDT in City rights-of-way will be maintained. MDT has recently revised the maintenance agreements with all cities in Montana placing onerous requirements on cities. The agreement outlines very specific maintenance procedures that must be followed. The required maintenance procedures (grinding or milling down sidewalk displacements, surface patching, crack sealing, replacing small portions of damaged sidewalk, sweeping, cleaning, washing, the removal of snow, debris) significantly exceed the maintenance equipment and program funding presently available, not only for the City of Billings, but for MDT as well. That is to say, MDT does not have the equipment or funding to perform the level of maintenance on its other rights-of-way that it would impose upon the City of Billings with this contract language. We have requested that MDT modify the contract to the previous language that requires the City of Billings to maintain the sidewalks and trail in accordance with the custom and practice for public works in the area, without specifying what methods must be employed to satisfy that standard. MDT has refused to modify the agreement and has stated the project will not proceed until the City of Billings agrees to the new language.

ALTERNATIVES ANALYZED: The City of Billings has three alternatives:

- The Billings City Council can authorize the City Administrator to sign the agreement with the State of Montana requiring the City of Billings to perform the specified maintenance duties. If the City Council directs the City Administrator to sign the agreement as specified by MDT, the maintenance requirements will exceed Public Works Departments equipment and manpower available. The agreement will also increase the City's liability risk for claims because it will establish a new, higher standard of care upon the City of Billings that future plaintiffs could allege were violated.

- The Billings City Council can direct staff to continue discussing with the State of Montana the contract language. MDT has stated they will not continue with the reconstruction of Rimrock Road until the City of Billings signs the agreement. Continued negotiations with MDT will delay the project past this construction season.
- The Billings City Council can authorize the City Administrator to sign an amended agreement with the maintenance language used in previous maintenance contracts. This option provides an agreement between the City of Billings and the State of Montana guaranteeing the City of Billings will maintain the sidewalks and trail. The amended agreement language will not place an onerous maintenance burden or increase the City's liability exposure. MDT has previously advised that it will reject this language and refuse to let the projects to bid, but if they were to reconsider their policy in the light of this Council's action, and similar actions by other communities around the state, it would still allow the affected projects to proceed during the 2008 construction season.

FINANCIAL IMPACT: Public Works Department will be required to absorb some level of new maintenance costs with the reconstruction project by agreeing to the new language.

RECOMMENDATION

Staff recommends that Council authorize the City Administrator to sign the modified maintenance agreement with MDT.

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

ATTACHMENTS: A - MDT Maintenance Agreement (original)
 B - MDT Maintenance Agreement (modified)

**Rimrock Road Shiloh to 54th-BLGS
CONSTRUCTION AGREEMENT
CITY-MAINTAINED ROUTE**

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, a Montana municipal corporation, hereinafter called the City.

WITNESSETH THAT:

I. WHEREAS the State and the City propose to construct certain improvements on a specific highway in and through the City, the construction being known as Federal Aid Project No. CM 1034(1), Rimrock RD-Shiloh To 54TH-BLGS, and

WHEREAS, the construction will be over and upon Urban Route 1034, Rimrock Road , and

WHEREAS, this agreement is only binding upon that portion of Rimrock RD-Shiloh To 54TH-BLGS that is located within the City limits, starting at project beginning station 16+23.10 to station 26+90, then beginning again at station 40+25 to 42+10, and

WHEREAS, the State and City desire to receive Federal funds to construct the highway, and

WHEREAS, the Federal Highway Administration (FHWA) of the U. S. Department of Transportation will not participate in the construction of the highway until and unless the City agrees to certain conditions, hereinafter set forth, and

WHEREAS, this document must be duly executed and on record with the State and FHWA before the work contemplated can be awarded to contract, and

WHEREAS, the City hereby concurs in the designation of the highway, which was designated under Section 60-2-110, MCA, and

WHEREAS, the City desires to have the construction done, the City deeming it to be a valuable and beneficial consideration,

II. NOW, THEREFORE, for and in consideration of the premises and of the agreement herein contained, the parties agree as follows:

(1) The City agrees to conform in all manner and respects to Chapter 8 of Title 61, MCA, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Chapter 8 of Title 61, MCA, with specific reference, but not limited to, the following matters:

(a) Installation of any signs, signals, or markings not in conformance with the Standards approved by the FHWA pursuant to 23 USC §109(d).

(b) Establishing a speed limit less than twenty-five (25) miles per hour in any urban district on the above-mentioned highway;

(c) Establishing a speed limit of less than thirty-five (35) miles per hour outside an urban district on the highway.

(d) Erecting any markings, sign, signal or traffic control device that will give preference to local routes which intersect with the highway; and no markings, sign, signal or traffic control device will be erected or constructed nor shall the establishment or modification of any speed zone, parking regulation or traffic marking which will affect traffic on the highway be made without proper traffic and engineering study indicating that such markings, sign, signal or traffic control device is required.

(e) Not requiring the stopping of all traffic at all intersecting streets, alleys and driveways before entering the highway, and where the City considers that the traffic control creates a hazardous situation, they may modify the traffic control devices as may be in the public interest from a safety and convenience standpoint.

(f) Prohibiting parallel parking on the highway; and

(g) Allowing stopping, standing or parking of a vehicle in a place prohibited by §61-8-354, MCA.

(h) The City will service, maintain and pay the cost of operating all improvements embraced by this agreement. As further consideration, the City agrees to accept any and all maintenance and other responsibilities pursuant to any applicable SWPPP and NOI administered by the Montana Department of Environmental Quality. These responsibilities will be accepted by the City at the time of final inspection. At that time the SWPPP will be transferred to the City, and City agrees to execute any necessary documents or take any other steps necessary for the transfer of responsibility for the SWPPP and the NOI at the appropriate time. The City agrees to indemnify and hold harmless the State, including the Department, for any claim, damage, loss or cause of action arising from, due to or allegedly due to the negligence of the City or its employees or the failure of the City to perform the maintenance activities described herein.

(2) In addition to the specific signs, signals and traffic control devices which may be shown on the plans, further restrictions as to parking, stopping and speed limits are set forth in the attached drawing labeled "Exhibit A," which is part of this agreement.

(3) The City has reviewed and approved the plans.

(4) The City will maintain the constructed facility and enforce the ordinances and/or regulations necessary and essential for the operations of the improvements as planned.

(5) The City agrees to assume full responsibility for maintenance of the sidewalks bordering the project, whether or not any portion of those sidewalks were constructed, reconstructed, or repaired in connection with the project. Specifically, the City will maintain or cause to be maintained the sidewalks/Multi-use paths adjacent to both sides of Rimrock Road from 16+08.2 to 41+97.99. Maintenance shall include all things ordinarily associated with sidewalk maintenance (including but not limited to, grinding or milling down sidewalk displacements, surface

patching, crack sealing, replacing small portions of damaged sidewalk, sweeping, cleaning, washing, the removal of snow, debris and other obstructions or impediments to safe pedestrian travel, and any and all other normally accepted maintenance practices). The City will inspect the sidewalks at regular and reasonable intervals, determined solely by the City to be adequate, to determine what, if any, maintenance needs to be performed. The City shall enforce its local ordinances to recover all costs associated with its maintenance activities from persons or entities who own property adjacent to the sidewalks and/or who receive the benefit of the maintenance performed. The City understands and agrees that its future maintenance of these sidewalks is a major part of the consideration for this agreement, that the money it is receiving for this project and the benefit conferred on the community by the completed project constitute ample compensation and consideration for its future sidewalk maintenance activities, and that by signing this agreement it is waiving any right it may have or believes it may have under Montana law to any additional compensation or consideration for its future sidewalk maintenance activities. The City agrees to accomplish that maintenance in the future and will not, in the event of later claims or litigation, allege that it was in any way the State's responsibility to maintain them. The City will maintain or cause the maintenance of these sidewalks for the life of these sidewalks.

The City will protect, indemnify, defend and save harmless the State and Department of Transportation (including its elected officials, employees, agents, and contractors) against and from all claims, liabilities, demands, causes of action, judgments (with any costs and attorney's fees that might be awarded), and losses to them arising in favor of or asserted by any person or entity (including the City itself) on account of personal injury, death or damage to property which in any way, in whole or in part, results from, arises out of, involves or is connected to the use of these sidewalks or the City's performance or failure to perform future sidewalk maintenance (including, but not limited to, its performance or failure to perform regular and reasonable inspections of the sidewalks). The City agrees that this indemnification will be fully binding on the City, whether it is insured for such claims or not, even if its insurance carrier refuses to be bound by the indemnification or otherwise fails or declines for any reason whatsoever to defend and indemnify the State or Department. The City's duty to defend the State or Department includes payment or reimbursement of all attorney's fees and costs the State or Department incurs, with legal counsel employed or hired by the State to be reimbursed at prevailing hourly market rates.

This agreement does not supersede, discharge, or extinguish any prior agreement between the parties, nor will any future agreement between the parties supersede, discharge, or extinguish this agreement, unless by specific reference and in clear terms.

(6) The City will maintain adequate traffic engineering capabilities to ensure that a continuing traffic engineering function is carried out on the project.

(7) The City will remove or cause to be removed or modified, any existing encroachments encountered as may be directed by the State and at any future time will not permit nor suffer any encroachments on the right-of-way of the road except upon the execution of the encroachment application and permit as issued by the State.

(8) The City agrees to regulate utility occupancy on the right-of-way of this completed project in conformance with occupancy regulations that will comply with or be more restrictive than the requirements of ADMINISTRATIVE RULES OF MONTANA 18.7.201 thru 18.7.241 governing "RIGHT OF WAY OCCUPANCY BY UTILITIES."

III. 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, 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 §21.5.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the City for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the City of the City's obligations under this Agreement and the Regulations relative to nondiscrimination.

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

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

- (a) withholding payments to the City under the Agreement until the City complies, and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: City will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. City will take such action with respect to any subcontract or procurement as the Department or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event City is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the City may request the Department 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, §49-3-207, MCA

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

(C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

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

(2) City will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "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 authorized representative of the City of Billings, on behalf of the City, has signed this agreement.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____, 2008
Administrator - Engineering Division

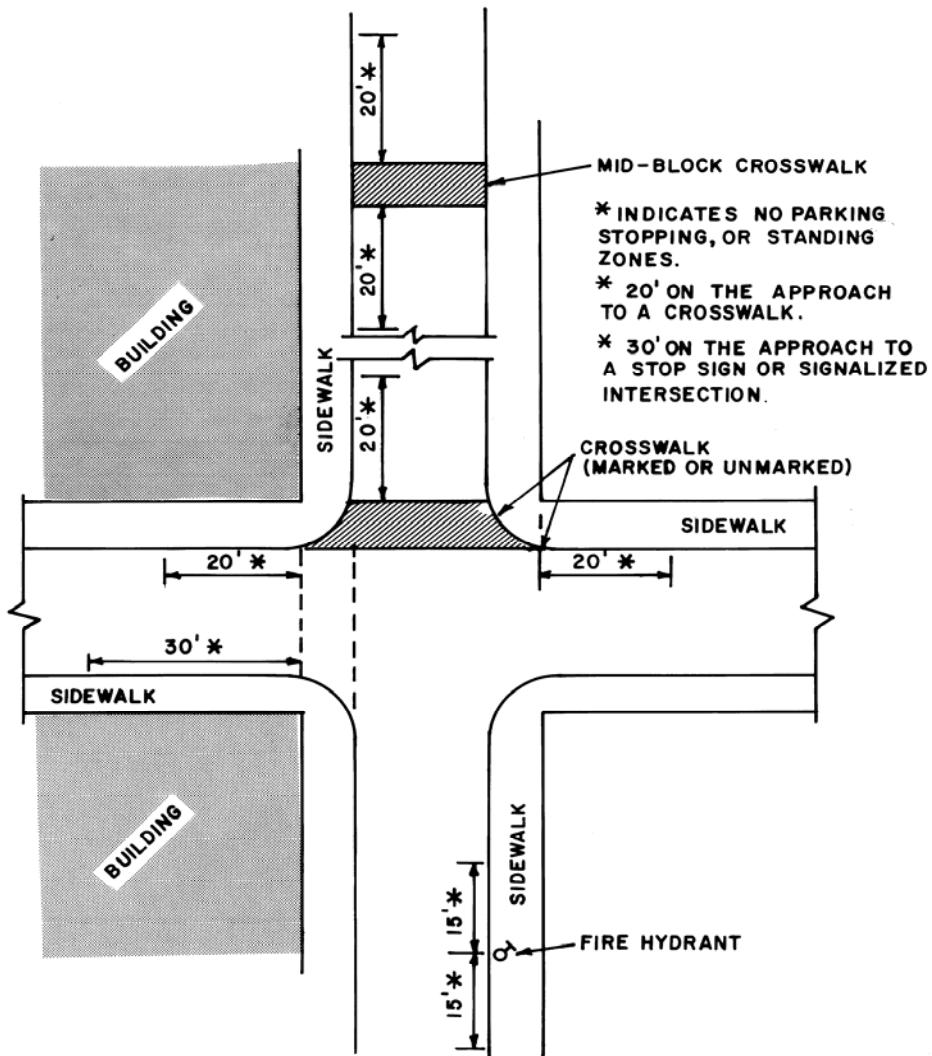
Approved for Legal Content

CITY OF BILLINGS

By

Billings City Administrator

"EXHIBIT A"



NO PARKING ZONES
As Defined by
MONTANA VEHICLE CODE
Prepared by Department of Transportation

**Rimrock Road Shiloh to 54th-BLGS
CONSTRUCTION AGREEMENT
CITY-MAINTAINED ROUTE**

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, a Montana municipal corporation, hereinafter called the City.

WITNESSETH THAT:

I. WHEREAS the State and the City propose to construct certain improvements on a specific highway in and through the City, the construction being known as Federal Aid Project No. CM 1034(1), Rimrock RD-Shiloh To 54TH-BLGS, and

WHEREAS, the construction will be over and upon Urban Route 1034, Rimrock Road, and

WHEREAS, this agreement is only binding upon that portion of Rimrock RD-Shiloh To 54TH-BLGS that is located within the City limits, starting at project beginning station 16+23.10 to station 26+90, then beginning again at station 40+25 to 42+10, and

WHEREAS, the State and City desire to receive Federal funds to construct the highway, and

WHEREAS, the Federal Highway Administration (FHWA) of the U. S. Department of Transportation will not participate in the construction of the highway until and unless the City agrees to certain conditions, hereinafter set forth, and

WHEREAS, this document must be duly executed and on record with the State and FHWA before the work contemplated can be awarded to contract, and

WHEREAS, the City hereby concurs in the designation of the highway, which was designated under Section 60-2-110, MCA, and

WHEREAS, the City desires to have the construction done, the City deeming it to be a valuable and beneficial consideration,

II. NOW, THEREFORE, for and in consideration of the premises and of the agreement herein contained, the parties agree as follows:

(1) The City agrees to conform in all manner and respects to Chapter 8 of Title 61, MCA, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Chapter 8 of Title 61, MCA, with specific reference, but not limited to, the following matters:

(a) Installation of any signs, signals, or markings not in conformance with the Standards approved by the FHWA pursuant to 23 USC §109(d).

(b) Establishing a speed limit less than twenty-five (25) miles per hour in any urban district on the above-mentioned highway;

(c) Establishing a speed limit of less than thirty-five (35) miles per hour outside an urban district on the highway.

(d) Erecting any markings, sign, signal or traffic control device that will give preference to local routes which intersect with the highway; and no markings, sign, signal or traffic control device will be erected or constructed nor shall the establishment or modification of any speed zone, parking regulation or traffic marking which will affect traffic on the highway be made without proper traffic and engineering study indicating that such markings, sign, signal or traffic control device is required.

(e) Not requiring the stopping of all traffic at all intersecting streets, alleys and driveways before entering the highway, and where the City considers that the traffic control creates a hazardous situation, they may modify the traffic control devices as may be in the public interest from a safety and convenience standpoint.

(f) Prohibiting parallel parking on the highway; and

(g) Allowing stopping, standing or parking of a vehicle in a place prohibited by §61-8-354, MCA.

(h) The City will service, maintain and pay the cost of operating all improvements embraced by this agreement. As further consideration, the City agrees to accept any and all maintenance and other responsibilities pursuant to any applicable SWPPP and NOI administered by the Montana Department of Environmental Quality. These responsibilities will be accepted by the City at the time of final inspection. At that time the SWPPP will be transferred to the City, and City agrees to execute any necessary documents or take any other steps necessary for the transfer of responsibility for the SWPPP and the NOI at the appropriate time. The City agrees to indemnify and hold harmless the State, including the Department, for any claim, damage, loss or cause of action arising from, due to or allegedly due to the negligence of the City or its employees or the failure of the City to perform the maintenance activities described herein.

(2) In addition to the specific signs, signals and traffic control devices which may be shown on the plans, further restrictions as to parking, stopping and speed limits are set forth in the attached drawing labeled "Exhibit A," which is part of this agreement.

(3) The City has reviewed and approved the plans.

(4) The City will maintain the constructed facility and enforce the ordinances and/or regulations necessary and essential for the operations of the improvements as planned.

(5) The City agrees to assume full responsibility for maintenance of the sidewalks bordering the project, whether or not any portion of those sidewalks were constructed, reconstructed, or repaired in connection with the project. The term "maintain" does not include the clearing of snow and ice, which may continue to be controlled by City ordinance.

Specifically, the City will maintain or cause to be maintained the sidewalks adjacent to both sides of Rimrock Road from 16+08.2 to 41+97.99. Maintenance shall include all things ordinarily associated with sidewalk maintenance (including but not limited to, grinding or milling down sidewalk displacements, surface patching, crack sealing, replacing small portions of damaged sidewalk, sweeping, cleaning, washing, the removal of snow, debris and other obstructions or impediments to safe pedestrian travel, and any and all other normally accepted maintenance practices). The City shall maintain or cause to be maintained the sidewalks bordering the project. The City will inspect the sidewalks at regular and reasonable intervals, determined solely by the City to be adequate, to determine what, if any, maintenance needs to be performed. The City shall enforce its local ordinances to recover all costs associated with its maintenance activities from persons or entities who own property adjacent to the sidewalks and/or who receive the benefit of the maintenance performed. The City understands and agrees that its future maintenance of these sidewalks is a major part of the consideration for this agreement, that the money it is receiving for this project and the benefit conferred on the community by the completed project constitute ample compensation and consideration for its future sidewalk maintenance activities, and that by signing this agreement it is waiving any right it may have or believes it may have under Montana law to any additional compensation or consideration for its future sidewalk maintenance activities. The City agrees to accomplish that maintenance in the future and will not, in the event of later claims or litigation, allege that it was in any way the State's responsibility to maintain them. The City will maintain or cause the maintenance of these sidewalks for the life of these sidewalks.

The City will protect, indemnify, defend and save harmless the State and Department of Transportation (including its elected officials, employees, agents, and contractors) against and from all claims, liabilities, demands, causes of action, judgments (with any costs and attorney's fees that might be awarded), and losses to them arising in favor of or asserted by any person or entity (including the City itself) on account of personal injury, death or damage to property which in any way, in whole or in part, results from, arises out of, involves or is connected to the use of these sidewalks or the City's performance or failure to perform future sidewalk maintenance (including, but not limited to, its performance or failure to perform regular and reasonable inspections of the sidewalks). The City agrees that this indemnification will be fully binding on the City, whether it is insured for such claims or not, even if its insurance carrier refuses to be bound by the indemnification or otherwise fails or declines for any reason whatsoever to defend and indemnify the State or Department. The City's duty to defend the State or Department includes payment or reimbursement of all attorney's fees and costs the State or Department incurs, with legal counsel employed or hired by the State to be reimbursed at prevailing hourly market rates.

This agreement does not supercede, discharge, or extinguish any prior agreement between the parties, nor will any future agreement between the parties supercede, discharge, or extinguish this agreement, unless by specific reference and in clear terms.

(6) The City will maintain adequate traffic engineering capabilities to ensure that a continuing traffic engineering function is carried out on the project.

(7) The City will remove or cause to be removed or modified, any existing encroachments encountered as may be directed by the State and at any future time will not permit

nor suffer any encroachments on the right-of-way of the road except upon the execution of the encroachment application and permit as issued by the State.

(8) The City agrees to regulate utility occupancy on the right-of-way of this completed project in conformance with occupancy regulations that will comply with or be more restrictive than the requirements of ADMINISTRATIVE RULES OF MONTANA 18.7.201 thru 18.7.241 governing "RIGHT OF WAY OCCUPANCY BY UTILITIES."

III. 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, 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 §21.5.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the City for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the City of the City's obligations under this Agreement and the Regulations relative to nondiscrimination.

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

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

- (a) withholding payments to the City under the Agreement until the City complies, and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: City will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. City will take such action with respect to any subcontract or procurement as the Department or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event City is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the City may request the Department 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, §49-3-207, MCA

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

© COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

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

(2) City will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "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 authorized representative of the City of Billings, on behalf of the City, has signed this agreement.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

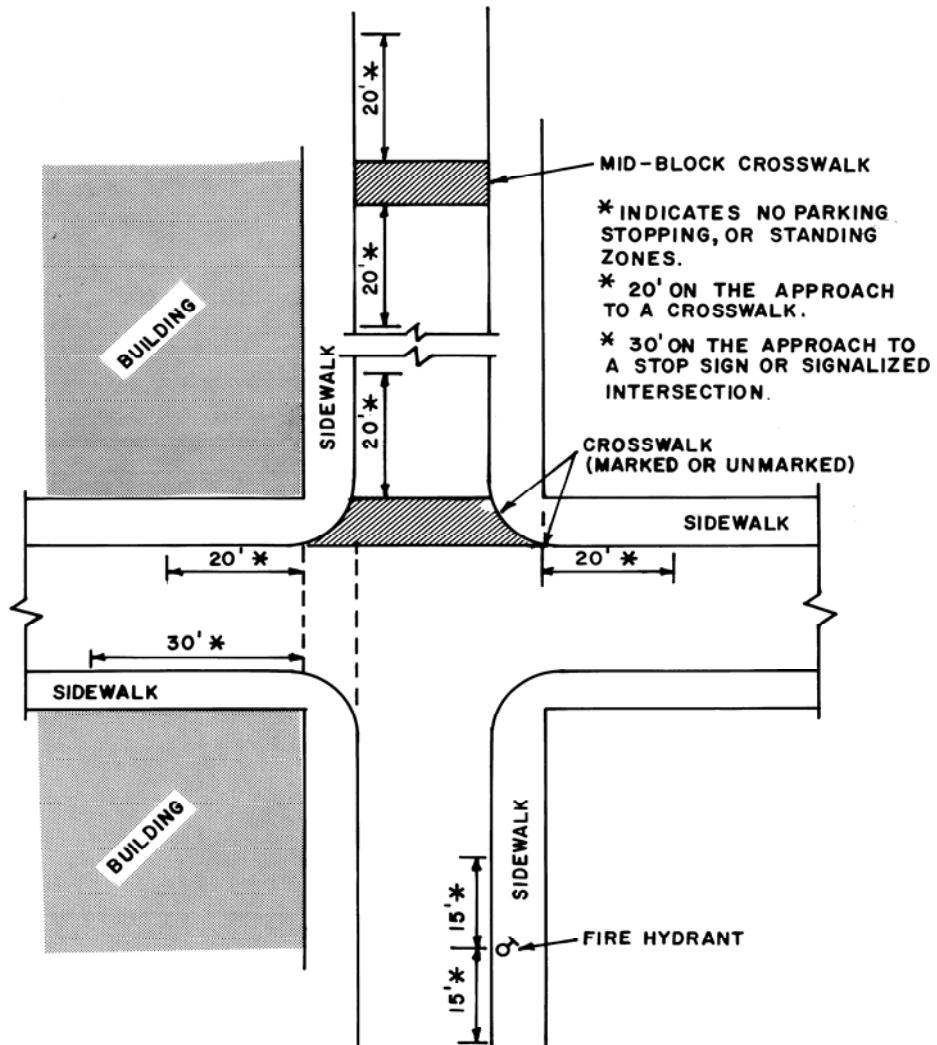
By _____, 2008
Administrator - Engineering Division

Approved for Legal Content

CITY OF BILLINGS

By _____
Billings City Administrator

"EXHIBIT A"



NO PARKING ZONES
As Defined by
MONTANA VEHICLE CODE
Prepared by Department of Transportation

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