

# CITY OF BILLINGS

## CITY OF BILLINGS' VISION STATEMENT:

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

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## AGENDA

COUNCIL CHAMBERS

June 9, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ulledalen

ROLL CALL

MINUTES – May 27, 2008

COURTESIES – Worksite Wellness Bronze Award

PROCLAMATIONS – Community Stance Against Drugs and Violence Day, June 14

ADMINISTRATOR REPORTS – Tina Volek

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

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

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

### **CONSENT AGENDA:**

1. A. Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Board of Appeals	06/09/08	12/31/11
2.		Exchange City Golf Corporation	06/09/08	12/31/10
3.	Leonard Smith Jr.	Mayor's Committee on Homelessness	06/09/08	12/31/10
4.	Ken Chase	Mayor's Committee on Homelessness	06/09/08	12/31/08

5.		Human Relations Commission	06/09/08	12/31/10
6.		Human Relations Commission	06/09/08	12/31/10
7.	Leticia Moore	Parking Advisory Board	06/09/08	12/31/09
8.	David Hummel	Public Utilities Board	06/09/08	12/31/11
9.	Linda Gallagher	TBID Board	06/09/08	09/01/08
10.	Joyce Bratland	TBID Board	06/09/08	09/01/09

3. Unexpired term of Jacquelyn Wagner
4. Unexpired term of Dustin Machler
5. Unexpired term of Shoshana Tom
6. Unexpired term of Jean Smith
7. Unexpired term of Ken Nicholson
9. Unexpired term of Chris Ervin
10. Unexpired term of Chris Walters

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

**B. Bid Awards**

**(1) W.O. 07-14, Moore Lane and Monad Road Water and Sewer Improvements** (opened 5/27/08). Recommend Western Municipal Construction, \$130,621.00.

[\(Corresponding Staff Memo B1\)](#)

**(2) SID 1379 King Avenue West – Landscaping Design.** Bid opening delayed to June 10, 2008. Recommend delay of award to June 23, 2008.

[\(Corresponding Staff Memo B2\)](#)

**C. Approval** of Assignment of the West End Hangar Ground Lease with Russell Schmitt to Western Security Bank for financing purposes, at no cost to the City.

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

**D. Approval** of Two (2) West End Hangar Ground Leases with John M. and/or Marcia A. Nash to Western Security Bank for financing purposes, at no cost to the City.

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

**E. Montana Department of Transportation Utility Agreements (2) for the Airport Road project:**

(1) MDT and City of Billings: Lowering of two water mains to allow construction of the “G Line” portion of the project, MDT pays 75%; City’s share is 25% of project, estimated \$24,000.

(2) MDT and City of Billings: Utility work in proposed right-of-way, MDT pays 46.75%; City’s share is 25% of utility relocations, 8% for traffic control, 8% for mobilization, 12.25% for indirect costs, estimated \$50,000.

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

**F. Approval** of Vehicle Lease Agreement with Underriner Motors for six (6) vehicles, 7/1/08-6/30/09, for City County Special Investigations Unit (CCSIU), \$27,000.  
[\(Corresponding Staff Memo F\)](#)

**G. Acknowledge receipt of Petition to Vacate** the alley within Block 260 of Billings Original Townsite for a value of \$6,875 and set a public hearing for July 14, 2008. Aaron Sparboe, petitioner.  
[\(Corresponding Staff Memo G\)](#)

**H. Resolution** closing Special Improvement/Sidewalk Bond Debt Funds to SID Revolving Fund, \$10,154.28 to the City.  
[\(Corresponding Staff Memo H\)](#)

**I. Memorandum of Understanding (MOU)** between the City of Billings and Billings Public Schools for two (2) middle school resource officers, 7/1/08-6/30/09, \$52,000 to the City.  
[\(Corresponding Staff Memo I\)](#)

**J. Memorandum of Understanding (MOU)** between the City of Billings and Billings Public Schools for three (3) high school resource officers, 7/1/08-6/30/09, \$62,400 to the City.  
[\(Corresponding Staff Memo J\)](#)

**K. Acceptance of Sidewalk Easements** (2) for SID 1379 – King Avenue West:

- (1) Shiloh Glen Apartments, northwest corner of King Avenue West and Olympic, no cost to the City.
- (2) Town Pump, intersection of 32<sup>nd</sup> Street West and King Avenue West, no cost to the City.

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

**L. Street Closures:**

- (1) Expert Tire, 9:00 a.m. - 4:00 p.m., 6/21/08, North 31<sup>st</sup> Street between Montana and 1<sup>st</sup> Avenue North.  
[\(Corresponding Staff Memo L1\)](#)

- (2) Yellowstone Health Partnership Fun Run/Walk, 7:00 a.m. - 10:00 a.m., 6/22/08, commencing at 2<sup>nd</sup> Avenue South and South 26<sup>th</sup>, east to South 25<sup>th</sup> Street, south to 6<sup>th</sup> Avenue South, west to South 37<sup>th</sup> Street, north to 2<sup>nd</sup> Avenue South, east to South 28<sup>th</sup> Street, south to 9<sup>th</sup> Avenue South, west to South 31<sup>st</sup> Street, north to the 6<sup>th</sup> Avenue South entrance of South Park.  
[\(Corresponding Staff Memo L2\)](#)

- (3) Reporter Big Sky Office, American Cancer Society Benefit Car Show, 7:00 a.m. - 4:00 p.m., 6/21/08, North 14<sup>th</sup> Street between 1<sup>st</sup> and 2<sup>nd</sup> Avenue North.  
[\(Corresponding Staff Memo L3\)](#)

(4) Downtown Billings Association Events:

(a) Alive After 5, 3:00 p.m. - 9:00 p.m., 7/17/08, North 30<sup>th</sup> Street between 1<sup>st</sup> Avenue North and 2<sup>nd</sup> Avenue North

(b) Alive After 5, 3:00 p.m. - 9:00 p.m., 7/31/08, North 29<sup>th</sup> Street between Montana Avenue and 1<sup>st</sup> Avenue North

[\(Corresponding Staff Memo L4\)](#)

**M. Approval** of grant application and acceptance of the 2008 Technology Grant award to purchase a Crime Scene Investigation Vehicle for Police Department, \$177,077.

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

**N. Approval** of grant application and acceptance of the 2008 Technology Grant award to purchase digital video cameras for approximately one-half of the police vehicles, \$205,766.

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

**O. Resolution** for Temporary Suspension of the Camping Ordinance for BLM's annual seasonal fire mobilization operation at Billings Logan International Airport, 7/1/08-10/31/08, at no cost to the City.

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

**P. Second/Final reading Ordinance for Zone Change #838:** Approval of a zone change and adoption of the 12 criteria for property in a Planned Development (PD) with underlying zoning of Public (P) to an underlying zoning district of Highway Commercial (HC) on a .75-acre parcel of land legally described as a portion of Lots 1-4 & 15 of Amended Lot 15A, Block 2, Southgate Subdivision, 1<sup>st</sup> Filing, located directly east of 5379 Southgate Drive. City of Billings, owner; Bruce McCandless, Assistant City Administrator, agent.

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

**Q. Second/Final reading Ordinance for Zone Change #839:** Approval of a zone change and adoption of the 12 criteria for a change from Residential 9600 (R-96) to Neighborhood Commercial (NC) on Lots 3 through 7, Block 9, Central Acres Subdivision, 5<sup>th</sup> Filing, located at 3133 Central Avenue. Charles Haynes, Ira & Ruth Park, and Alan Oster, owners; Gerald Neumann, agent.

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

**R. Second/Final reading Ordinance for Zone Change #840:** Approval of a zone change and adoption of the 12 criteria for a change from Residential Multi-Family-Restricted (RMF-R) to Residential Professional (RP) on Lot 4A, Block 2, Goodman Subdivision, 4<sup>th</sup> Filing, described as a 67,110 square foot parcel of land on the southeast corner of the intersection of 41<sup>st</sup> Street West and Avenue C. Randall Swenson, Steve Repac and Jeff Muri, owners; Engineering, Inc., agent.

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



**S. Second/Final reading Ordinance for Zone Change #841:** Approval of a zone change and adoption of the 12 criteria for a change from Residential 7000 (R-70) to Entryway General Commercial (EGC) on Lot 1, Block 5, Pinnick Subdivision, 3<sup>rd</sup> Filing, less the north 110 feet; described as a 3.043-acre parcel generally located on the northeast corner of the intersection of Newman Lane and King Avenue East; Christ the King Lutheran Church, owner; Kristin Omvig and Jared LeFevre of Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents.

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

**T. Second/Final reading Ordinance for Zone Change #842:** Approval of a zone change and adoption of the 12 criteria for a change from Residential 9600 (R-96) to Entryway General Commercial (EGC) on Tract 1 of C/S 2350; a 4.34-acre parcel generally located on the northeast corner of King Avenue East and Calhoun Lane; Robert Medvec, owner; Kristin Omvig and Jared LeFevre of Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents.

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

**U. Second/Final reading Ordinance for Zone Change #843:** A text amendment to Section 27-1502(b) of the Unified Zoning Regulations requiring that a pre-application neighborhood meeting be held within a 2-mile radius of the subject property of a proposed zone change.

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

**V. (a) Second/Final reading Ordinance Model Cable TV Ordinance.**

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

**(b) Second/Final reading Ordinance** repealing existing Cable TV Franchise Ordinance and enacting new Franchise Ordinance with Bresnan Communications.

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

**W. Preliminary Plat** of Tract 1 of C/S 1531 and Tract 2 of C/S 193, Chalice Acres Subdivision, conditional approval of the plat and adoption of the Findings of Fact.

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

**X. Final Plat** of Brookshire Subdivision.

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

**Y. Cancellation** of Checks and Warrants, \$24,380.49

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

**Z. Bills and Payroll**

(1) May 9, 2008

[\(Corresponding Staff Memo Z1\)](#)

(2) May 16, 2008

[\(Corresponding Staff Memo Z2\)](#)

(Action: approval or disapproval of Consent Agenda.)

## **REGULAR AGENDA:**

2. **RESOLUTION** ordering construction of improvements for W.O. 02-08, Milton Lane School Route, \$480,500 total project cost. (Continued from 5/27/08) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 2\)](#)
3. **PUBLIC HEARING AND RESOLUTION** approving the disposal of City property, approval of Right-of-Way Easement and Right-of-Way Agreements to Montana Department of Transportation for Airport Road Project MT 009. Subject property is described as 11 acres adjacent to the existing Highway 3 Corridor, beginning at the east end of the Airport property and west to approximately the Airport Operations Building, \$184,400 revenue, less \$23,775 returned to the FAA, for net revenue of \$160,625. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING AND RESOLUTION** adopting a new fee schedule for various applications and services rendered by the Planning Division. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND RESOLUTION** setting FY 2009 mill levy rates for the General Fund, Transit Operating Fund, Library Operating Fund, and Public Safety I Fund. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 5\)](#)
6. **PUBLIC HEARING AND RESOLUTIONS** setting annual FY 2009 assessments for the Park Maintenance Districts; Light Maintenance Districts; Fire Hydrant Maintenance; Street Maintenance; Storm Sewer; Arterial Construction; Business Improvement District; Residential/Commercial Collection, Disposal, and Landfill Fees; and Tourism Business Improvement District. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 6\)](#)
7. **PUBLIC HEARING AND RESOLUTION** approving and adopting the FY 2008-2009 Budget. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 7\)](#)
8. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward I to include recently annexed property in Annex #08-07, a 4.76-acre property legally described as Tract 1, C/S 2350 and located on the

northeast corner of King Avenue East and Calhoun Lane. Robert Medvec, owner and petitioner. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

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

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

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

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

## **PROCLAMATION**

**Whereas** ~ This is a time to celebrate the great efforts of our citizens and organizations of Billings, Montana and the surrounding area who are marching as a community against drugs and violence; and

**Whereas** ~ this diverse group of dedicated people is setting an example by “walking the talk” and showing their concern and care for those involved in the problems of drugs and violence; and

**Whereas** ~ this 11<sup>th</sup> annual March Against Drugs and Violence, one of the largest in the state, is addressing these issues through education and community action, outreach and prayer, is leading the way with community leaders, clergy, citizens, families and youth as they search for solutions and promoting a message of achieving a better life for all; and

**Whereas** ~ this is a great community which recognizes and addresses its problems with confidence and honesty, coming together in faith with courage to be counted in as part of the solution with a goal of making this city a safe and healthy place for all to live.

**Now therefore**, I Ron Tussing, as Mayor of the City of Billings, Montana do hereby declare June 14<sup>th</sup> 2008 as

### **Community in a Stance Against Drugs and Violence Day**

and invite all citizens to observe this day by participating in this public demonstration of discovering hope through concerned citizens.

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Ron Tussing, Mayor

# A



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JUNE 9, 2008**

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**TITLE:** Boards & Commissions –Appointment  
**DEPARTMENT:** City Administrator’s Office  
**PRESENTED BY:** wynnette Maddox, Administration

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**PROBLEM/ISSUE STATEMENT:** Confirmation of the appointment for the Board and Commission position that is vacant due to no applications in January or resignations.

**FINANCIAL IMPACT:** No financial impact involved.

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Board of Appeals	06/09/08	12/31/11
2.		Exchange City Golf Corporation	06/09/08	12/31/10
3.	Leonard Smith Jr.	Mayor’s Committee on Homelessness	06/09/08	12/31/10
4.	Ken Chase	Mayor’s Committee on Homelessness	06/09/08	12/31/08
5.		Human Relations Commission	06/09/08	12/31/10
6.		Human Relations Commission	06/09/08	12/31/10
7.	Leticia Moore	Parking Advisory Board	06/09/08	12/31/09
8.	David Hummel	Public Utilities Board	06/09/08	12/31/11
9.	Linda Gallagher	TBID Board	06/09/08	09/01/08

10.	Joyce Bratland	TBID Board	06/09/08	09/01/09
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- 8. Unexpired term of Jacquelyn Wagner
- 9. Unexpired term of Dustin Machler
- 10. Unexpired term of Shoshana Tom
- 11. Unexpired term of Jean Smith
- 12. Unexpired term of Ken Nicholson
- 9. Unexpired term of Chris Ervin
- 10. Unexpired term of Chris Walters

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

Attachments

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# B1

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 9, 2008

TITLE: WO 07-14 Moore Lane and Monad Road Water and Sewer Improvements  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for Work Order 07-14 Moore Lane and Monad Road Water and Sewer Improvements on May 27, 2008. This project will replace the existing water line and install a new sewer line in Moore Lane. MDT is planning on reconstructing the intersection of Moore Lane and Monad Road with a concrete intersection. As such, these utilities need to be installed before the intersection construction starts.

#### ALTERNATIVES ANALYZED:

1. Award the contract for W.O. 07-14 to Western Municipal Construction in the amount of \$130,621.00; or
2. Reject all bids and do not award contract for W.O. 07-14

**FINANCIAL IMPACT:** Funding for this project will be out of the 2008 water and sewer rehabilitation funds. We received three bids for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 132,994.80
Western Municipal Construction	\$ 130,621.00
Knife River Corporation	\$ 130,680.44
COP Construction	\$ 134,399.80

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

#### Work Order 07-14 Moore Lane and Monad Road Water and Sewer Improvements Funding

2008 Water and Sewer Rehab (Citywide)	\$ 300,000.00
Contract Amount (This Memo)	\$(130,621.00)
<b>Remaining Funds</b>	<b>\$ 169,379.00</b>

**RECOMMENDATION**

Staff recommends that Council award Western Municipal Construction's bid for Work Order 07-14 Moore Lane and Monad Road Water and Sewer Improvements in the amount of \$130,621.00

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

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



# B2

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

City of Billings, Montana  
Monday, June 9, 2008

TITLE: SID 1379 King Avenue West – Landscaping Design  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** Bids were planned to be received and evaluated for the landscaping contract for SID 1379 King Avenue West on May 27, 2008. Due to the requirement that bids be acted upon at the next council meeting, a delay action was taken at the May 27, 2008 council meeting. Due to concerns raised at the pre-bid meeting, a time extension is needed to properly bid the project. The project will not be bid until June 10, 2008, so the bid will not be awarded until the June 23, 2008, council meeting. This project will provide for landscaping features for the boulevard and other areas relating to the King Avenue West expansion project from S. 31<sup>st</sup> Street West to Shiloh Road.

#### **ALTERNATIVES ANALYZED:**

1. Delay awarding SID 1379 King Avenue West – Landscaping design until the June 23, 2008, City Council Meeting.

**FINANCIAL IMPACT:** Funding for this project will be provided entirely from Arterial Funds.

#### **RECOMMENDATION**

Staff recommends that Council delay awarding SID 1379 King Avenue West – Landscaping Design until the June 23, 2008, City Council Meeting.

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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**TITLE:** Assignment of the West End Hangar Ground Lease with Russell Schmitt to Western Security Bank for Financing Purposes

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** On January 10, 2000, the City Council approved a twenty-year West End Hangar Ground Lease by and between Russell Schmitt and the City of Billings. Mr. Schmitt constructed a sixty-foot (60') by sixty-foot (60') aircraft hangar on the 5,950 square foot leased parcel. The hangar is located in the City's West End General Aviation area located at the Billings Logan International Airport. Mr. Schmitt's original loan was with First Citizen's Bank. Western Security Bank has since assumed the assets of First Citizen's Bank, including Mr. Schmitt's loan. Western Security Bank is requesting an Assignment of Mr. Schmitt's interest in the Lease to secure the loan it assumed from First Citizen's Bank.

The assignment language has been reviewed by both 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 hangar construction on this leased parcel, as Western Security Bank seeks to secure its assumed loan for the costs of construction by Mr. Schmitt.

**FINANCIAL IMPACT:** There would be no financial impact to the City, as Mr. Schmitt will still be required to pay the annual ground lease rentals as established in the Lease dated January 10, 2000, by and between Russell Schmitt and the City of Billings.

**RECOMMENDATION**

Staff recommends that Council approve the Assignment of the West End Hangar Ground Lease with Russell Schmitt to Western Security Bank, to secure the bank's assumed loan to Mr. Schmitt for the cost of the hangar construction.

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

D

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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**TITLE:** Assignment of Two (2) West End Hangar Ground Leases with John M. and/or Marcia A. Nash to Western Security Bank for Financing Purposes

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** On December 17, 2007, the City Council approved two (2) West End Hangar Ground Leases on Lots 12 and 13, by and between John M. and/or Marcia A. Nash and the City of Billings. Mr. and Mrs. Nash desire to construct a third one hundred and twenty-foot (120') by sixty-foot (60') duplex-style aircraft hangar in the City's West End General Aviation area located at the Billings Logan International Airport. This area was developed in the early 1990's specifically to accommodate the general aviation tenants with this type of lease and hangar construction. Mr. and Mrs. Nash are working with Western Security Bank on financing the construction of the hangar.

The assignment language has been reviewed by both 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 hangar construction on these lots, as Western Security Bank seeks to secure its loan for the costs of construction by Mr. and Mrs. Nash.

**FINANCIAL IMPACT:** There would be no financial impact to the City, as Mr. and Mrs. Nash will still be required to pay the annual ground lease rentals as established in the Leases dated December 17, 2007, by and between John M. and/or Marcia A. Nash and the City of Billings.

**RECOMMENDATION**

Staff recommends that Council approve the Assignment of the West End Hangar Ground Leases with John M. and/or Marcia A. Nash to Western Security Bank, to secure the bank's loan to Mr. and Mrs. Nash for the cost of the hangar construction.

**Approved By:**      **City Administrator** \_\_\_\_      **City Attorney** \_\_\_\_  
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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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**TITLE:** Utility Agreements for the Airport Road Project Between the Montana Department of Transportation and the City of Billings

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** The Montana Department of Transportation (MDT) is developing a highway construction project on Airport Road. This project will require that the City of Billings sign two separate utility agreements.

The first agreement (Attachment A) will cover the lowering of two water mains to allow construction of the “G Line” portion of the Airport Road project through the Boot Hill subdivision near Main Street. This work is designed by MDT, bid by the City and will be a Council action item for construction award this fall. This agreement is necessary for MDT to reimburse the City Of Billings 75% of the costs for this work. The two water mains are critical sections of the city’s water main system. As a result, the city is performing this work.

The second agreement (Attachment B) will cover additional utility work designed by MDT and includes work that will be bid and awarded by MDT as part of the entire Airport Road project. This agreement is necessary to grant MDT the authority to adjust, replace, and relocate city utilities that presently occupy the proposed right-of-way.

**ALTERNATIVES ANALYZED:**

- **Approve the two utility agreements.**
- Do not approve the two utility agreements.

**FINANCIAL IMPACT:**

*The first agreement (Attachment A):* The city will be responsible for 25% of the actual costs of the utility relocations. The total estimated city costs at this time are \$24,000.

*The second agreement (Attachment B):* The city will be responsible for 25% of the actual costs of the utility relocations; 8% for traffic control; 8% for mobilization; and 12.25% for indirect costs (IDC). The total estimated city costs at this time are \$50,000.

### **RECOMMENDATION**

Staff recommends that Council approve the two Utility agreements for the Airport Road project between the MDT and the City of Billings.

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

### **ATTACHMENTS**

- A. State of Montana Department of Transportation Utilities Agreement for the work to be completed by the City Of Billings
- B. State of Montana Department of Transportation Utilities Agreement for the work to be completed by MDT as part of the Airport Road Project

## Attachment "A"

### STATE OF MONTANA DEPARTMENT OF TRANSPORTATION UTILITIES AGREEMENT

FEDERAL-AID PROJECT: MT-CM-STPU (009) CONTROL NUMBER: 4743  
DESIGNATION: BILLINGS AIRPORT ROAD  
YELLOWSTONE, COUNTY

An agreement between the City of Billings and the Montana Department of Transportation for changing and/or relocating water facilities as required by the construction of a Federal-Aid Road Project.

The City of Billings, hereinafter referred to as the "UTILITY," and the Montana Department of Transportation, hereinafter referred to as the "STATE," agree as follows:

1. That, due to the construction of this project, certain adjustments of the existing plant of the UTILITY will have to be made where it now occupies the existing and/or proposed highway right-of-way.

2. The total estimate cost excluding betterment  
is: \$ 95,146.86 Incl. \$ 0.00 Eng.  
State Cost \$ 71,360.14 Incl. \$ 0.00 Eng.  
Utility Cost \$ 23,786.72 Incl. \$ 0.00 Eng.  
Betterment \$N/A

3. A copy of a cost estimate and plans indicating plant adjustments are attached as "Exhibit A" and made a part of this agreement. The STATE'S obligation under this agreement will be in accordance with all applicable STATE and Federal laws in existence on the date of execution of this agreement and the UTILITY will comply with the Volume 23 Code of Federal Regulations, Part 645, Subparts A and B, and subsequent amendments, Title 48 Code of Federal Regulations and also the laws of the State of Montana.

4. Unless otherwise approved by STATE, the estimate and final bill must be by Unit Cost. The Utility proposes to accomplish the work by estimating and billing the work by UNIT COST ACTUAL COST ~~XX~~ LUMP SUM       . The unit costs are provisionally approved pending final review and approval by the STATE. The final bill will be paid using your then current approved Unit Costs at completion of the work.

5. This agreement is not concluded on a Lump Sum basis in accordance with the provisions of Volume 23 CFR Part 645, Subpart A and any amendments thereto. Under State Statute, STATE cannot reimburse UTILITY for Engineering Cost except for areas on private easements.

6. That UTILITY will make any necessary adjustments in its plant required by the proposed construction with its own forces, a continuing contractor, agreed price contractor or by competitive bidding, all in accordance with the terms of current agreements.

7. That the use of a contractor by a UTILITY must be in accordance with practices followed by the utility in the accomplishment of the UTILITY'S non-highway related work. Contractors hired by the UTILITY must comply with all applicable statutes and regulation, including but not limited to workers compensation, unemployment, licensing, bonding and insurance, and all applicable Civil Rights requirements per Addendum "B".

8. When a Utility Company proposes to estimate and bill using actual costs, a



project diary for utility forces, contractors and consultants must be maintained which can be reviewed during the progress of the work by the STATE. The diary will be submitted to the STATE with the final bill for actual cost agreements. A detailed work order report must accompany the bill and contain the following:

- (a) Construction Labor (utilities own forces) - this report shall have the hours and wages for the people who work on the project.
- (b) Materials - this report shall have a listing of all materials, description, quantity and price, used on the project.
- (c) Salvage - this report shall have a listing of all materials returned to inventory and those sold as salvage. The materials returned to inventory shall be at the same rate when it was billed to the project.
- (d) Equipment - this report shall contain all forms of equipment usage, except those owned and used by "Contracted Labor". The hours and the hourly rate or the spread amount of each piece of equipment used on the project.
- (e) Overheads - Usually both the direct (benefits) and indirect (general & administrative) overhead will be in this section, they may or may not be combined.
- (f) Contract Labor - If a Contractor is used on the relocation project, the name of the Contractor(s), their mailing and street address, and phone number shall be included on the final bill. A copy of the Contractors bill to the Utility shall accompany the final bill.
- (g) Consultant/Engineering - If a Consultant is used on the relocation project, the name of the Consultant, their mailing and street address, and phone number shall be included on the final bill. A copy of the Consultants bill to the Utility shall accompany the final bill.
- (h) Miscellaneous Items - this may include items such as meals, lodging, miscellaneous direct expenses, and sometimes equipment rentals (though these should be listed under equipment). A copy of the invoices shall accompany the final bill.

The final bill must be in the same format as the work order estimate.

9. The STATE may terminate this agreement upon fifteen (15) days' written notice to the UTILITY. If the STATE terminates this agreement, it will reimburse UTILITY the STATE'S share of the eligible costs the UTILITY has incurred under this agreement to the date specified in the termination notice.

10. That cost records of the UTILITY pertaining to this project will be subject to audit inspection at any time by representatives of the STATE, including the legislative auditor and fiscal analyst, and the Federal Highway Administration. Such records must be retained for a period of not less than three years from the date of final payment. FINAL PAYMENT to the Utility may be based on an audit.

11. No actual work is to be performed under this agreement until written authority to proceed is received from the respective District Administrator.

12. **Final bills must be submitted to the STATE within 365 days after all work has been completed. Non-compliance could jeopardize reimbursement.**

13. Utilities retained or relocated within the highway right-of-way shall comply with the STATE Regulations Governing Occupancy of Highway Right-of-Way. These locations must be approved by the appropriate District Administrator.

14. The Utility is authorized to proceed with preparing final plans, completing design, ordering material and negotiating right-of-way easements. Authorization to proceed with the actual relocation work will be granted by the appropriate Montana Department of Transportation District Administrator.

15. Due to the type of facilities provided for in this agreement, it is mutually agreed between the UTILITY and the STATE that no expired service life credit is due as provided for in Section 645.117 of Volume 23 CFR, Part 645, Subpart A.

16. Addendum "A" is attached and by this reference, made a part of this agreement if the UTILITY is relocating underground facilities within existing or proposed highway right-of-way, STATE OF MONTANA.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008

City of Billings

BY \_\_\_\_\_

STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION

BY \_\_\_\_\_

Authorized Signature

Approved MDT Legal Counsel  
and Civil Rights Bureau

WFS:sg

## **ADDENDUM "A"**

### **BACKFILLING OF EXCAVATED AREAS BENEATH ROADWAY SECTION**

Utility construction, which lies beneath the construction limits of the roadway, which requires backfilling of excavated areas, shall be subject to inspection by engineers of the State and shall meet the following specifications. The State's inspector shall designate on the ground the specific area where these requirements shall apply.

#### **BACKFILLING**

All backfilling shall meet the following requirements except when other methods are specified for certain types of installations.

Backfill material shall not contain sticks, sod, frozen soil or other unacceptable matter.

Backfill material shall be placed in layers of six-inch loose thickness or less. All backfill material shall be compacted.

#### **MOISTURE AND DENSITY REQUIREMENTS**

Each layer of material shall be compacted, with the proper use of water, until the in-place density of the material being compacted is not less than 95 percent of the maximum density established for the material being compacted or the material source or both. Water required shall be sufficient to obtain optimum moisture content plus or minus two percentage points, as determined by Montana Test Methods, unless modified by the engineer for conditions applicable to the character of the material being tested.

Material tests used to establish the maximum density values will be preformed in accordance with Montana Test Method MT-210, or AASHTO-T-99. In-place density and moisture testing will be performed in accordance with applicable Montana Test Methods MT-212, MT-215, & MT-218. The percent compaction will be determined after making proper adjustments, when necessary, for oversize material.

Each layer of roadbed material that cannot be properly tested by Montana Test Methods, MT-212, MT-215, & MT-218, shall be compacted with compaction equipment in addition to compaction by hauling and spreading equipment. Compaction equipment for rocky material that cannot be tested shall normally be grid rollers, pneumatic-tired rollers, vibrating rollers, vibrating compactors, or self-propelled tamping rollers. Sheepfoot rollers shall not be used unless specifically directed. Water shall be used where directed.

Costs to achieve the above requirements are included in the estimate of this agreement and also will be included in bids for work pertaining to this agreement. It is recognized that until actual construction takes place it will be impossible to determine those areas that will require work above and beyond that which could have been expected to achieve the above requirements.

If such areas of extra work are determined during the actual construction, an "Order for Additional Work and/or Cost Increase" will be prepared by the State for Payment of the additional work so construction of the utility can take place accordingly.

**ADDENDUM "B"**  
**NON-DISCRIMINATION NOTICE**

During the performance of this Agreement, City of Billings (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

- A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**
- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
  - (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
  - (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
  - (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
  - (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
    - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
    - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
  - (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

Revised November 17, 2005

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

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

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

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

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

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

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

Revised November 17, 2005

**Summary of Costs**  
for  
**City of Billings**  
Waterline Relocation G- LINE

Subject MT-CM-STPU (009) I/C  
Billings Airport Road  
Control No. 4743

Item No.	Quantities	Description	Unit	Unit Cost	Total Unit Cost
601-014-400	2	CONNECTION 400 MM	EACH	\$700.00	\$1,400.00
	2	CONNECTION 750 MM	EACH	\$1,050.00	\$2,100.00
603-710-000	2792.4	DUCTILE IRON FITTINGS	KG	\$12.19	\$34,039.36
	44.3	DUCTILE IRON PIPE 400MM CL52	M	\$325.00	\$14,397.50
	50.1	DUCTILE IRON PIPE 750MM CL52	M	\$750.00	\$37,575.00
603-806-050	1	HYDRANT ASSEMBLY	EACH	\$4,500.00	\$4,500.00
621-050-000	1	REMOVE WATER VALVE BOXES	EACH	\$300.00	\$300.00
621-070-000	1	REMOVE FIRE HYDRANT	EACH	\$835.00	\$835.00
<b>Total</b>					<b>\$95,146.86</b>
MDT Cost Share 75%		\$95,146.86 X .75 =	\$71,360.14		\$71,360.14
Utility Cost Share 25%		\$95,146.86 X .25 =	\$23,786.72		\$23,786.72
<b>Total</b>					<b>\$95,146.86</b>

Note: \_\_\_\_\_

SG: \_\_\_\_\_

APPROVED  
DATE 4-17-08  
LS  
SIGNATURE



STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION  
UTILITIES AGREEMENT

**Attachment "B"**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008 between the State of Montana, acting through its Department of Transportation, hereinafter called the "STATE", and the City of Billings, owner of the utility, hereinafter called the "OWNER".

WITNESSETH:

WHEREAS, the STATE proposes to construct a public highway to be known as Billings Airport Road in Yellowstone County, State of Montana, and designated as Highway Project MT-CM-STPU (009), as shown on plans submitted to OWNER, and

WHEREAS, that public highway is to be constructed over and near the present highway right-of-way known as U-1024, where certain water and sanitary sewer facilities under the jurisdiction of OWNER are in conflict with the construction of the public highway, as shown by "Exhibit A", and

WHEREAS, STATE and OWNER agree that it is necessary and in the public interest of all parties that some of the existing facilities be adjusted, repaired, replaced and relocated, and

WHEREAS, STATE and OWNER agree that the construction of the public highway and all of the work, including adjustment, replacement, repair and relocation of certain existing water and sanitary sewer facilities, be included in the contract entered into by STATE and a private contractor, and that the manner of performing the construction referred to in this Agreement is in the best interest of the STATE and OWNER.

NOW THEREFORE, in consideration of the mutual obligations contained herein, STATE and OWNER agree that:

1. STATE will let a project for the construction of the public highway, including the work covered in this Agreement, as shown by "Exhibit A."
2. Pursuant to the authority granted to OWNER by the laws of Montana, OWNER grants to STATE the authority to adjust, replace, repair and relocate those facilities under the

jurisdiction of OWNER which presently occupy part of the proposed right-of-way.

3. All construction performed pursuant to this Agreement shall be done in accordance with the then-current Standard Specifications for Road and Bridge Construction, Montana Public Works Standard Specifications, and the Plans, Specifications and Special Provisions of the construction or improvements for the project prepared by OWNER, all of which are by this reference incorporated and made a part of this Agreement.

4. The adjustments to the facilities referred to in this Agreement cover only that segment of the water and sanitary sewer system of OWNER directly affected by the construction of the highway and STATE and OWNER will determine which adjustments to facilities of OWNER are necessary; and the STATE shall, in accordance with the plans, construct the most economical type of facilities in the new location that will meet the same service requirements of the old facilities in the old location.

5. The STATE will stake and inspect the installation of the new water and sanitary sewer lines. The STATE'S contractor will chlorinate and pressure test the new water line. The OWNER will pay the STATE for the actual cost of work accomplished on the OWNER'S line based on contract bid prices. An additional 8% will be applied to the billing of construction costs to cover the cost of Traffic Control and an additional 8% to cover the cost of Mobilization.

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

For this project, STATE billings to the OWNER will include a charge for the indirect costs at the current fiscal year indirect cost rate, which amount will be applied toward the total project contribution of the OWNER. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.]

6. The total estimated cost of the adjustments at this time is \$153,470.37. Proportionate



participation is: STATE \$115,102.78 (75%); and OWNER \$38,367.59 (25%), plus \$3,069.41 (8%) charge for Traffic Control and \$3,069.41 (8%) for Mobilization, and an additional \$5,452.04 (12.25%) charge for Indirect Cost (IDC). The total estimated cost to OWNER is \$49,958.45. The total estimated costs are \$165,061.23. Copies of a cost estimate and plans indicating facility adjustments are hereby attached as "Exhibit A" and made a part of this Agreement. The STATE's obligation under this Agreement shall be in accordance with all applicable State and Federal laws in existence on the date of execution of this Agreement.

7. By state statute, STATE will not reimburse OWNER for engineering costs for designing, locating, staking, inspecting or any other incidental costs for engineering.

8. The adjustments agreed to in Item No. 6 above are based on the STATE paying 75% of relocation costs, excepting betterments, if any, where facilities occupy public road or street rights-of-way. The OWNER will be billed in advance for its portion of the estimated total costs of the project no more than sixty (60) days before bid opening. Although the anticipated expenses will have been discussed with OWNER representatives before that time, the STATE will provide a detailed breakdown of all estimated costs with the billing.

The OWNER will submit payment to the STATE within thirty (30) days of billing. The STATE will not proceed further with the project's development if payment is not made within (30) days of billing. If the federal government requires a reimbursement or return of any federal funds because a project doesn't advance due to OWNER's failure to make any scheduled payment, the OWNER agrees that it will reimburse the STATE for those federal funds within thirty (30) days of billing.

If, after initial payment is made, bid opening or contract award by the STATE is delayed or postponed by 30 days or more, or canceled for any reason, the STATE agrees to immediately refund the OWNER's initial payment upon the OWNER's request. The parties understand that it is possible that the estimate may be exceeded once construction is begun, and any change orders, increases, or unforeseen expenses applicable to the OWNER's portion of the project will be borne by the OWNER. STATE's Project Manager will inform the OWNER's point of contact

beforehand, and as early as possible, of anything that appears will result in a cost increase, and will discuss the need for any possible change order with the OWNER and will consider the OWNER'S comments and concerns for that change order. This consultation with the OWNER will not prevent, delay, or excuse the OWNER from paying for, any change orders deemed necessary by STATE.

The contact for billing, accounting and change order questions for the OWNER shall be:

City of Billings  
Attn: Chris Hertz  
510 North Broadway 4th Floor  
Billings, MT 59101

Within six (6) months after the project has been finally accepted with the final costs submitted, the STATE will submit a final statement to the OWNER. The final statement will provide details of any expenses that may be identified as "miscellaneous". The final statement will include a refund of unspent portions of the OWNER's initial payment, payable to the OWNER in an amount equaling the difference between that payment and the OWNER's share of the final costs. If the final statement exceeds the OWNER's payments thus far, the OWNER will remit to the STATE within thirty (30) days of the final statement the difference between OWNER's share of final costs and OWNER's earlier payment. If payment is not made within that thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year, and continue to accrue until paid in full. If the OWNER is billed for additional funds, STATE will not participate in any future funding agreements with the OWNER until full payment, including interest, is received from the OWNER.

Payments to this project will be coordinated through the STATE's Administration Division (to be directed to MDT's Accounts Receivable Collections Technician and Accounting Systems Operations Supervisor). Payments to this project will be provided to the above STATE staff in the form of a check to be credited to this project.

9. The award of the contract including the highway construction and OWNER water line relocation will be based on the successful bidder of the combined contract, as determined and accepted by STATE.

10. OWNER agrees to cooperate fully with the STATE in all aspects of the work contemplated by this Agreement.

11. OWNER acknowledges that it has reviewed the plans for the proposed construction of the facilities covered by this Agreement.

12. STATE and OWNER agree that when the construction encompassed by this Agreement is completed and accepted by STATE and concurred in by OWNER all responsibility of STATE ceases.

13. Records of the OWNER pertaining to this project will be subject to inspection at any time by representatives of the STATE, including the legislative auditor and fiscal analyst, and the Federal Highway Administration. Project records must be retained for a period of not less than three years from the date of final payment.

14. Inspection for all phases of work on OWNER'S facility will be provided by OWNER. Contact, questions, or discussions about contractor work will be directed to the STATE's Project Manager. No direct contact shall occur between OWNER and Contractor.

15. This Agreement is subject to the terms and provisions of Volume 23 Code of Federal Regulations, Part 645, Subpart A and B, and subsequent amendments, Title 48 Code of Federal Regulations in existence on the date of execution of this Agreement. The Code of Federal Regulations are hereby incorporated in and made a part of this Agreement by reference to the extent that is applicable to this Agreement and not inconsistent therewith.

16. NONDISCRIMINATION

If the OWNER enters into a contract or agreement with a contractor to perform any of the work which the OWNER is required to perform under the terms of this agreement, the OWNER, for itself, its assigns, and successors in interest, agrees that it will not discriminate in the choice of contractors and will include all the nondiscrimination provisions set forth in Exhibit "B" attached hereto and made a part hereof, in any such contract or agreement.

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

**It is understood that the OWNER is responsible for obtaining any permits required for adjustment of its facility.**

City of Billings

STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Approved for Legal Content  
MDT Legal Services

WFS:sg

**Summary of Costs**  
for  
**City of Billings**  
Water & Sanitary Sewer Relocation & Adjustments

Subject MT-CM-STPU (009) I/C  
Billings Airport Road  
Control No. 4743

Item No.	Quantities	Description	Unit	Unit Cost	Total Unit Cost
207-300-000	191	BEDDING MATERIAL	M3	\$36.14	\$6,902.74
601-014-390	2	CONNECTION 300MM	EACH	\$600.00	\$1,200.00
601-014-400	2	CONNECTION 400MM	EACH	\$700.00	\$1,400.00
	2	CONNECTION 500MM	EACH	\$800.00	\$1,600.00
601-100-100	36	INSULATION	M2	\$28.23	\$1,016.28
602-010-000	251.8	REMOVE PIPE CULVERTS	M	\$43.21	\$10,880.28
603-610-250	230	PIPE-PVC 250MM SANITARY	M	\$292.41	\$67,254.30
603-610-350	60.6	PIPE-PVC 300MM WATER	M	\$119.91	\$7,266.55
603-711-000	1612.2	DUCTILE IRON FITTINGS	KG	\$12.19	\$18,433.72
	18.5	DUCTILE IRON PIPE 400MM CL52	M	\$325.00	\$6,012.50
	18.2	DUCTILE IRON PIPE 500MM CL52	M	\$425.00	\$6,885.00
604-011-200	6	MANHOLE-1200MM-TYPE 1	EACH	\$2,133.78	\$12,802.68
604-031-200	1	MANHOLE-1200MM-TYPE 3	EACH	\$2,724.58	\$2,724.58
621-010-000	4	REMOVE MANHOLES	EACH	\$417.08	\$1,668.32
621-230-000	1	RESET FIRE HYDRANT	EACH	\$1,995.27	\$1,995.27
621-241-000	1	SEWER SERVICE CONNECTION	EACH	\$1,400.00	\$1,400.00
621-412-000	6	ADJUST VALVE BOXES	EACH	\$308.56	\$1,851.36
621-430-000	4	ADJUST MANHOLES	EACH	\$544.20	\$2,176.80
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
<b>Total</b>					<b>\$153,470.37</b>
MDT Cost Share 75%	\$153,470.37	X .75 =	\$115,102.78		\$115,102.78
Utility Cost Share 25%	\$153,470.37	X .25 =	\$38,367.59		\$38,367.59
Utility Mobilization 8%	\$38,367.59	X .08 =	\$3,069.41		\$3,069.41
Utility Traffic Control 8%	\$38,367.59	X .08 =	\$3,069.41		\$3,069.41
<b>MDT TOTAL COST</b>					<b>\$115,102.78</b>
UTILITY SUB TOTAL	\$38,367.59 + \$3,069.41 + \$3,069.41 =		\$44,506.41		\$44,506.41
IDC 12.25%	\$44,506.41 X	12.25% =	\$5,452.04		\$5,452.04
<b>UTILITY TOTAL COST</b>	\$44,506.41 + \$5,452.04 =		\$49,958.45		<b>\$49,958.45</b>
<b>Total</b>					<b>\$165,061.23</b>

EXHIBIT "A"

Note: 75% State 25% City

APPROVED

DATE 4-21-08

SG: jw

SIGNATURE

OK FOR  
SIGNATURE  
SGOK FOR  
SIGNATURE  
[Signature]

**EXHIBIT "B"**  
**NONDISCRIMINATION NOTICE**

During the performance of this Agreement, City of Billings (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

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  - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued

Revised November 17, 2005

pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

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

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

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

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

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

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

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

Revised November 17, 2005

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F

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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

**DEPARTMENT:** Police Department

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

**PROBLEM/ISSUE STATEMENT:** For many years the Billings Police Department has had officers operating in an undercover capacity. The work entails the use of unmarked cars that are unique from standard detective vehicles. Because undercover officers and their equipment are routinely exposed to the criminal element, it is necessary to rotate equipment. Rotating cars is an essential aspect of undercover operations. The reason for frequent rotation of cars is to ensure the safety of the undercover officer and to prevent the operation from being compromised.

Major car dealers in the City have been contacted for bids on these vehicles. Underriner Motors is the only dealer interested in leasing vehicles to the City for special operations purposes.

**FINANCIAL IMPACT:** The cost of leasing 6 vehicles will be \$27,000 (\$375 per vehicle per month) and the dollars have been budgeted in the drug forfeiture fund for FY 08. This is an increase of \$25 per vehicle over last year's agreement.

**RECOMMENDATION**

Staff recommends Council approval of the attached agreement between Underriner Motors and the City of Billings to lease six (6) vehicles for the City contingent of the City County Special Investigations Unit (CCSIU) from July 1, 2008, to June 30, 2009, in the amount of \$27,000.

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

**ATTACHMENT**

A - Lease Agreement with Underriner Motors – 5 pages



# **AUTOMOBILE LEASE AGREEMENT**

This AGREEMENT made June 9, 2008, by and between **UNDERRINER MOTORS** with its principal place of business at 523 North 29th Street, Billings, Montana (the LESSOR), and **THE BILLINGS MONTANA POLICE DEPARTMENT**, P. O. Box 1554, Billings, MT 59103 (the LESSEE), for the lease of six (6) vehicles.

The terms of this agreement is for a period of 12 months from July 1, 2008 to June 30, 2009, subject to the terms and conditions set forth below:

1) **RENTAL:** The LESSEE shall pay to the LESSOR a monthly rental of **THREE HUNDRED SEVENTY FIVE DOLLARS (\$375.00)** per vehicle (6 vehicles) for a total of **TWENTY SEVEN THOUSAND DOLLARS (\$27,000.00)**, paid on an annual basis.

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

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

## **4) INSURANCE:**

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

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

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

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

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

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

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

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

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

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

13) **INDEMNITY:** LESSOR assumes no liability for any acts or omissions of the LESSEE or the LESSEE'S agents. The LESSEE hereby released and agrees to indemnify the

LESSOR and hold the LESSOR harmless from any and all claims against the LESSOR of any kind or nature whatsoever, arising out of or resulting from the use and/or operation of the leased vehicles by the LESSEE, including any expenses and attorneys' fees which the LESSOR may incur in defending any such claims, except such claims or portions thereof as are covered by applicable insurance as otherwise herein provided.

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

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

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

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

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

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

LESSOR for LESSEE'S failure to make any of the payments required by this Agreement or for LESSEE'S failure or inability to perform the conditions of this Agreement, and LESSEE hereby waives all claims for injury suffered through or loss caused by such repossession.

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

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

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

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

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

LESSEE:

CITY OF BILLINGS

BY \_\_\_\_\_  
RON TUSSING, MAYOR

LESSOR:

UNDERRINER MOTORS

BY \_\_\_\_\_  
BILL UNDERRINER , OWNER

ATTEST BY:

\_\_\_\_\_  
CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
BRENT BROOKS, CITY ATTORNEY  
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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

**TITLE:** Acknowledge Receipt of Petition to Vacate the alley within Block 260 of Billings Original Townsite and Set a Public Hearing

**DEPARTMENT:** Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** Aaron Sparboe, owner of the property within Block 260 of Billings Original Townsite, has petitioned to vacate the alley within Block 260. Mr. Sparboe owns all of the property abutting the proposed right-of-way and is proposing to develop the property in the future. The total amount of right of way to be vacated is 2,500 square feet.

**ALTERNATIVES ANALYZED:**

1. Approve acknowledgement of petition to vacate the above-mentioned right-of-way and set a public hearing for July 14, 2008.
2. Do not approve acknowledgement of petition.

**FINANCIAL IMPACT:** At the March 24, 2008, City Council Meeting, Council agreed to vacate a portion of the alley within Block 261 of Billings Original Townsite for \$1.25 per square foot. This was based on a comparison land sales report done by Charles H. Hamwey. The petitioner is offering the same amount for this right of way. With 5,500 square feet of right of way proposed to be vacated, Mr. Sparboe is offering the city \$6,875.00.

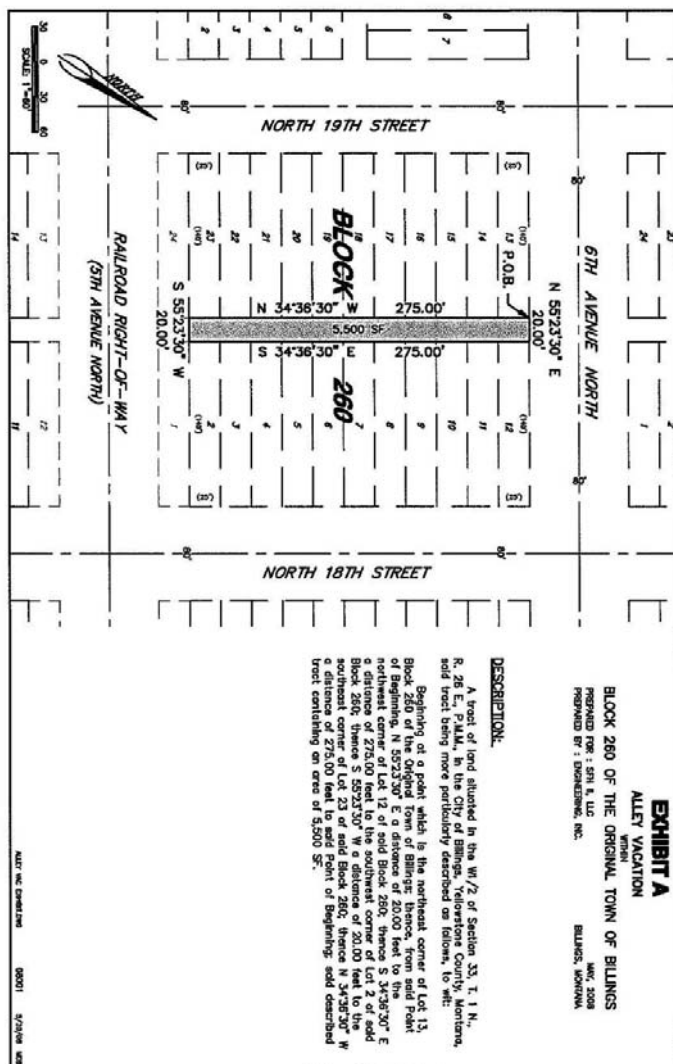
**RECOMMENDATION**

Staff recommends that Council acknowledge the receipt of petition to vacate the alley within Block 260 of Billings Original Townsite and set a public hearing for July 14, 2008.

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

**ATTACHMENT**

- A. Map Depicting Areas to be Vacated



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H

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JUNE 9, 2008**

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

**DEPARTMENT:** Administration-Finance Division

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

**PROBLEM/ISSUE STATEMENT:** State law requires closing SID/Sidewalk debt service funds once the debt has been satisfied. Any excess/deficit cash balances upon completion of the bond obligations are transferred to the SID Revolving Fund. Fund 859 will be closed and projects 621316, 621319 and 621320 will be closed in fund 820.

**FINANCIAL IMPACT:** The revolving fund will receive cash of \$10,154.28 for a Special Improvement District in Fund 820 with positive cash. Cash was loaned from the SID Revolving Fund to Special Improvement Districts in funds 820 and 859 to pay bond principal and interest. The loans in the amount of \$110,554.66 are a result of district delinquencies and are uncollectible. The loans will be written off in the SID revolving fund. The cash balance in the SID Revolving Fund is about \$4,120,000. The properties will show delinquent assessments at the County. The City may recover some of these delinquencies if a property changes ownership or is sold at tax sale.

**RECOMMENDATION**

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

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

**ATTACHMENTS**

- A- Resolution to Close the Special Improvement District Debt Funds & Sidewalk Special Assessment Debt Funds to the Special Improvement District Revolving Fund

- B- Location of SIDs & Sidewalks
- C- Detailed Amounts Closed to the Revolving Fund



**ATTACHMENT A**

RESOLUTION \_\_\_\_\_

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

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

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

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

That the Special Improvement/Sidewalk Funds be closed to the SID Revolving Fund effective June 9, 2008:

PASSED AND APPROVED by the City Council, this 9<sup>th</sup> day of June 2008

THE CITY OF BILLINGS:

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

ATTEST:

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

**ATTACHMENT B**

SID 820 - Non-Pooled Series

SID 1316 N. 27<sup>th</sup> - From 6<sup>th</sup> Ave. N to BBWA Canal - Street Improvements  
SID 1319 Park Lane & Highwood Dr. - Curb, Gutter Sidewalk + Storm Drain  
SID 1320 Henesta Drive at 31<sup>st</sup> St. West - Curb, Gutter Sidewalk + Storm Drain

SID 859 - 1992 A Pooled Sidewalk Series

SID 9301	Sidewalk Work	Miscellaneous Curb, Gutter & Sidewalk Program
SID 9302	Sidewalk Work	Miscellaneous Curb, Gutter & Sidewalk Program
SID 9303	Sidewalk Work	Miscellaneous Curb, Gutter & Sidewalk Program
SID 9397	Sidewalk Work	Miscellaneous Curb, Gutter & Sidewalk Program
SID 9398	Sidewalk Work	Miscellaneous Curb, Gutter & Sidewalk Program
SID 9399	Sidewalk Work	Miscellaneous Curb, Gutter & Sidewalk Program
SID 9403	Sidewalk Work	Miscellaneous Curb, Gutter & Sidewalk Program
SID 9497	Sidewalk Work	Miscellaneous Curb, Gutter & Sidewalk Program
SID 9601	Sidewalk Work	Miscellaneous Curb, Gutter & Sidewalk Program

*ATTACHMENT C*

**SID 820**

PROJECT	ISSUE	ISSUE		ACCRUED	ACCTS	FUND
NUMBER	DATE	AMOUNT	CASH	INTEREST	REC	BALANCE
1316	1992	885,000.00	(41,894.95)	6.70	-	(41,888.25)
1319	1992	220,000.00	(22,802.86)	(29.17)	-	(22,832.03)
1320	1992	<u>189,000.00</u>	<u>10,154.28</u>	<u>63.50</u>	-	<u>10,217.78</u>
<b>TOTALS</b>		<b>1,294,000.00</b>	<b>(54,543.53)</b>	<b>41.03</b>	<b>-</b>	<b>(54,502.50)</b>

**SID 859** 1992 A Pooled Sidewalk Series

PROJECT	ISSUE	ISSUE		ACCRUED	ACCTS	FUND
NUMBER	DATE	AMOUNT	CASH	INTEREST	REC	BALANCE
921	1992	-	-	(0.01)	-	(0.01)
9301	1992	226,887.00	(13,456.08)	(10.18)	-	(13,466.26)
9302	1992	180,276.00	(10,344.52)	(7.90)	-	(10,352.42)
9303	1992	112,675.00	(10,228.99)	2.78	-	(10,226.21)
9397	1992	12,216.00	(778.94)	(0.62)	-	(779.56)
9398	1992	22,678.00	(1,481.60)	(2.04)	-	(1,483.64)
9399	1992	17,254.00	(1,177.01)	(0.74)	-	(1,177.75)
9403	1992	120,688.00	(5,670.80)	(14.13)	-	(5,684.93)
9497	1992	4,716.00	(69.08)	(0.46)	-	(69.54)
9601	1992	<u>27,610.00</u>	<u>(2,649.83)</u>	<u>(2.20)</u>	-	<u>(2,652.03)</u>
<b>TOTALS</b>		<b>725,000.00</b>	<b>(45,856.85)</b>	<b>(35.50)</b>	<b>-</b>	<b>(45,892.35)</b>

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**AGENDA ITEM:**

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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

**PROBLEM/ISSUE STATEMENT:** Pursuant to City Council approval, the Billings Police Department and the Billings Public Schools have developed a School Resource Officer (SRO) program which places two officers in the middle schools. The attached Memorandum of Understanding (MOU) makes provisions for program objectives and guidelines, officer selection processes, financial consideration and effective date and provisions for termination of the agreement. The MOU is for a period of one year, from July 1, 2008, to June 30, 2009, and has been approved by the School Board at its May 19, 2008, meeting. The School Resource Officer Program is a collaborative effort by certified law enforcement officers, educators, students, parents, and the community to offer a liaison program in the schools in an effort to reduce crime, drug abuse, violence, and provide a safe school environment. City Council is being asked to approve this MOU and authorize the Mayor to sign.

**FINANCIAL IMPACT:** The total cost of the 2 officers in the middle school SRO positions is \$137,587.60. The Billings Public Schools will provide a \$52,000 payment to the City of Billings to defray some of the salary and benefit costs of the 2 officers. We have increased the School District payment by 4% over last year. The officers do report back to the Police Department during the summer months and help the department accomplish various tasks during those months.

**RECOMMENDATION**

Staff recommends that City Council approve the attached Memorandum of Understanding between the City of Billings and the Billings Public Schools effective July 1, 2008, to June 30, 2009.

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

**ATTACHMENT**

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

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

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

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

The purpose of this document is to facilitate a clear understanding of roles, duties, and responsibilities. This Memorandum of Understanding (MOU) is being set forth on this \_\_\_\_\_ day of \_\_\_\_\_, 2008 with full recognition that the agreement and document must be a living document to allow for program evolution and provide for some City of Billings and Billings School District variances, needs, and future changes. It is recognized that the School Resource Officer Program has enjoyed a thirteen (13) year history within the City of Billings, since a limited pilot project at Billings West High School was implemented by the West End Community Oriented Policing team, and has enjoyed an excellent relationship with the schools. This MOU is being set forth to provide universal clarification of expectations, to minimize confusion, and to provide for consistency between officers, schools, principals, and directors.

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

**MISSION STATEMENT - BILLINGS POLICE DEPARTMENT**

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

**MISSION STATEMENT - SCHOOL RESOURCE OFFICER PROGRAM**

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

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

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

It should be recognized that School Resource Officers:

- ◆ are encouraged to be a part of Student Council /Groups and School Staff when requested, and to work as a team with other school officials for the betterment of students and the school and neighborhood environment as a whole;
- ◆ are encouraged to work extra curricular activities as requested by the school administrator. It is recognized by all parties that these assignments provide further opportunities for crime prevention and crime detection. Any work by the SRO in this capacity will be approved by the assigned Police Department Supervisor and will be consistent with the FLSA and Police Union Contract. The SRO will not be used as a replacement officer for off-duty/special duty assignments. It will not relieve the School District of the need to provide adequate security at special events. All after hours work shall be approved by the SRO supervisor in advance;
- ◆ are expected to keep the school principal or his designee informed about law enforcement action which occurs on school property and/or which may involve a student. This, of course, will not occur if the information is inappropriate for release according to the Montana Criminal Justice Information Act of 1979;

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

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

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

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

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

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

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

◆ should not be relied upon or scheduled to serve as bus stop monitors, hallway monitors, nor lunch room monitors. Although, time permitting, SROs should assist school officials who are regularly assigned in these capacities since they provide excellent opportunities to

achieve program objectives, including professional and friendly contact with youth, positive relationships and crime prevention.

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

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

### **SELECTION AND FINANCIAL CONSIDERATION**

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

In return for services provided by the two officers, the Billings School District will pay to the City of Billings the sum of Fifty Two Thousand Dollars (\$52,000) by July 30, 2008.

### **PROGRAM ASSESSMENT**

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

- ◆ Success of established goals and objectives.
- ◆ An internal survey of high school administration, faculty and student council members, primarily concerning perceptions of safety and security.
- ◆ Traditional police-citizen contacts (citations, arrests, FIRs, etc.).
- ◆ Non-traditional police-citizen contacts (meetings attended, problem areas addressed, student or family interviews, etc.).
- ◆ Surrounding neighborhood feedback and reaction to police efforts to address issues concerning the schools and students.
- ◆ Accomplishment of tasks agreed upon as part of any work plan written in conjunction with the Principal.



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

## **EFFECTIVE DATE**

This Memorandum of Understanding is effective July 1, 2008, and shall remain in effect through June 30, 2009 unless renewed by agreement of both parties or terminated as provided herein.

## **TERMINATION OF AGREEMENT**

Either party may terminate this agreement upon sixty (60) days written notice to the other party. If this agreement is terminated by School District #2, then the full balance of the Fifty Two Thousand Dollars (\$52,000) will be retained by the City of Billings in order to maintain the middle school SRO program. If the agreement is terminated by the City of Billings, then the pro-rated balance of the Fifty Two Thousand Dollars (\$52,000) will be refunded to School District #2. The pro-rated balance will be based on the total number of school days for the 2008/2009 school year and the number of school days remaining after the date of termination of the agreement.

## **NOTICES**

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

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

or to School District #2 at:

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

**MODIFICATION; ENTIRE AGREEMENT OF PARTIES EXPRESSED**

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

Executed this \_\_\_\_ day of \_\_\_\_\_, 2008.

**SCHOOL DISTRICT #2**

Attest:

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

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

**CITY OF BILLINGS**

Attest:

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

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

Approved as to form:

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

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

J

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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

**PROBLEM/ISSUE STATEMENT:** Pursuant to City Council approval, the Billings Police Department and the Billings Public Schools have developed a School Resource Officer (SRO) program which places one officer in each of the three public high schools. The attached Memorandum of Understanding (MOU) makes provisions for program objectives and guidelines, officer selection processes, financial consideration and effective date and provisions for termination of the agreement. The MOU is for a period of one year, from July 1, 2008, to June 30, 2009, and was approved by the School Board at its May 19, 2008, meeting. The School Resource Officer Program is a collaborative effort by certified law enforcement officers, educators, students, parents, and the community to offer a liaison program in the schools in an effort to reduce crime, drug abuse, violence, and provide a safe school environment. City Council is being asked to approve this MOU and authorize the Mayor to sign.

**FINANCIAL IMPACT** The total cost of the 3 officers in the SRO positions is \$206,455.81. The Billings Public Schools will provide a \$62,400 payment, which is a 4% increase over last year, to the City of Billings to defray some of the salary and benefit costs. The officers do report back to the Police Department during the summer months and help the department accomplish various tasks during those months.

**RECOMMENDATION**

Staff recommends that City Council approve the attached Memorandum of Understanding between the City of Billings and the Billings Public Schools effective July 1, 2008, to June 30, 2009.

**ATTACHMENT**

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

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

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

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

The purpose of this document is to facilitate a clear understanding of roles, duties, and responsibilities. This Memorandum of Understanding (MOU) is being set forth on this \_\_\_\_\_ day of \_\_\_\_\_, 2008 with full recognition that the agreement and document must be a living document to allow for program evolution and provide for some City of Billings and Billings School District variances, needs, and future changes. It is recognized that the School Resource Officer Program has enjoyed a thirteen (13) year history within the City of Billings, since a limited pilot project at Billings West High School was implemented by the West End Community Oriented Policing team, and has enjoyed an excellent relationship with the schools. This MOU is being set forth to provide universal clarification of expectations, to minimize confusion, and to provide for consistency between officers, schools, principals, and directors.

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

**MISSION STATEMENT - BILLINGS POLICE DEPARTMENT**

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

**MISSION STATEMENT - SCHOOL RESOURCE OFFICER PROGRAM**

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

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

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

It should be recognized that School Resource Officers:

- ◆ are encouraged to be a part of Student Council /Groups and School Staff when requested, and to work as a team with other school officials for the betterment of students and the school and neighborhood environment as a whole;
- ◆ are encouraged to work extra curricular activities as requested by the school administrator. It is recognized by all parties that these assignments provide further opportunities for crime prevention and crime detection. Any work by the SRO in this capacity will be approved by the assigned Police Department Supervisor and will be consistent with the FLSA and Police Union Contract. The SRO will not be used as a replacement officer for off-duty/special duty assignments. It will not relieve the School District of the need to provide adequate security at special events. All after hours work shall be approved by the SRO supervisor in advance;
- ◆ are expected to keep the school principal or his designee informed about law enforcement action which occurs on school property and/or which may involve a student. This, of course, will not occur if the information is inappropriate for release according to the Montana Criminal Justice Information Act of 1979;

- ◆ are police officers assigned as Uniform Patrol Officers of the Operations Division of the Billings Police Department. As such, their primary responsibilities are to investigate criminal cases involving youth, maintain order through the enforcement of local, state and federal laws, to recover stolen property and bring perpetrators to justice;
- ◆ are governed by the rules, policies, shifts, schedules, procedures and practices of the Billings Police Department and the City of Billings, under the supervision of an assigned Sergeant;
- ◆ are expected to attend all training, meetings and appointments assigned by the Police Department. It is recognized that some of these will conflict with officer availability at the school during normal school hours. These conflicts will be minimized as much as possible but the potential exists that such requirements will take precedence over school presence. The officer shall strive to keep the school principal or his representative informed about his/her absences and/or activities as appropriate on a need to know basis;
- ◆ are governed and covered by the current Collective Labor Agreement between City of Billings and the Montana Public Employees Association-Billings Police Unit;
- ◆ are considered by the City of Billings as “non-exempt” employees covered by the Fair Labor Standards Act and subject to it and the Police Union Contract for compensation and pay; Duty assignment in the summer months, when school is not in session, will be under the direction of the Police Operations Commander. SRO's may also be required to work regular police duty assignments, at other times when school is not in session, when so directed by the Police Operations Commander;
- ◆ are not security guards provided to the school district by the Billings Police Department. They should not be viewed by school officials as a replacement for security, although it is recognized that police presence has a crime prevention impact. If security is needed, the school district is encouraged to employ its own or to contract with a private security provider;
- ◆ are police officers and not school teachers, school administrators, nor school counselors. The officers will assist teachers with classroom presentations on relative topics when requested and able. They will also work with families, individual students and other school staff members with counseling and guidance efforts when requested and appropriate. We, the undersigned, encourage team work, partnerships, cooperation and coordination between the officers, their supervisors and the school administrators and their staff, as well as with the surrounding neighborhood;
- ◆ should not be relied upon or scheduled to serve as bus stop monitors, hallway monitors, nor lunch room monitors. Although, time permitting, SROs should assist school officials who are regularly assigned in these capacities since they provide excellent opportunities to

achieve program objectives, including professional and friendly contact with youth, positive relationships and crime prevention.

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

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

### **SELECTION AND FINANCIAL CONSIDERATION**

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

In return for services provided by the three officers, the Billings School District will pay to the City of Billings the sum of Sixty Two Thousand Four Hundred Dollars (\$62,400) by July 30, 2008.

### **PROGRAM ASSESSMENT**

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

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

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

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

## **EFFECTIVE DATE**

This Memorandum of Understanding is effective July 1, 2008, and shall remain in effect through June 30, 2009, unless renewed by agreement of both parties or terminated as provided herein.

## **TERMINATION OF AGREEMENT**

Either party may terminate this agreement upon sixty (60) days written notice to the other party. If this agreement is terminated by School District #2, then the full balance of the Sixty Two Thousand Four Hundred Dollars (\$62,400) will be retained by the City of Billings in order to maintain the high school SRO program. If the agreement is terminated by the City of Billings, then the pro-rated balance of the Sixty Two Thousand Four Hundred Dollars (\$62,400) will be refunded to School District #2. The pro-rated balance will be based on the total number of school days for the 2008/2009 school year and the number of school days remaining after the date of termination of the agreement.

## **NOTICES**

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

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

or to School District #2 at:

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



**MODIFICATION; ENTIRE AGREEMENT OF PARTIES EXPRESSED**

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

Executed this \_\_\_\_ day of \_\_\_\_\_, 2008.

**SCHOOL DISTRICT #2**

Attest:

_____	By: _____
Leo Hudetz	JACK COPPS
Clerk	Superintendent

**CITY OF BILLINGS**

Attest:

_____	By: _____
City Clerk	Mayor

Approved as to form:

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

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**

City of Billings, Montana  
Monday, June 9, 2008

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**TITLE:** Acceptance of Sidewalk Easements for SID 1379 – King Avenue West  
**DEPARTMENT:** Public Works Department – Engineering Division  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

---

**PROBLEM/ISSUE STATEMENT:** With construction of SID 1379, it was determined that there were two areas in which the City needs a sidewalk easement in order to build sidewalk near the roundabout, and to build ADA compliant ramps and drive approaches near the Town Pump at the intersection of 32<sup>nd</sup> and King. A sidewalk easement was needed from the owners of the Shiloh Glen Apartments at the northwest corner of King and Olympic because the construction of the roundabout did not leave adequate room to place a boulevard sidewalk on the northwest corner. A sidewalk easement was also needed from the owners of the Town Pump at the intersection of 32<sup>nd</sup> and King because we did not have adequate right-of-way to properly build an ADA compliant handicap ramp on the southeast corner of the intersection. We also needed an additional easement from the Town Pump because we did not have the right-of-way to build them an ADA compliant drive approach on 32<sup>nd</sup>. Both the owners of the Shiloh Glen Apartments and the Town Pump have agreed to grant the City of Billings these easements at no cost. The easement documents for both parties are attached.

**FINANCIAL IMPACT:** There is no financial impact with acceptance of these sidewalk easements.

**RECOMMENDATION**

Staff recommends that Council accept the easement from the owners of the Shiloh Glen Apartments and from the owners of the Town Pump.

**ATTACHMENT**

- A. Public Sidewalk Easement for the Shiloh Glen Apartments
- B. Public Sidewalk Easement for the Town Pump

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

### PUBLIC SIDEWALK EASEMENT

THIS INDENTURE, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the following:

Shiloh Glen, LLC  
P.O. Box 19001  
Seattle, WA 98109,  
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 and convey unto the **GRANTEE**, perpetual easement to construct, reconstruct, maintain, operate, repair and improve necessary fixtures and appurtenances for sidewalk, accessibility ramps, multi-use paths and/or accessibility drive approaches over, across, under, and through the real property more particularly described as follows:

A tract being in the SW1/4 of Section 11, T.1S., R.25E., P.M.M., City of Billings, Yellowstone County, Montana, said tract being more particularly described as follows:

Beginning at a point that is N 89°45'35" E a distance of 47.99 feet from the southwest corner of Lot 1A of Amended Plat of Lot 1, Block 20 of Olympic Park Subdivision; thence from said point of beginning N 74°21'20" E a distance of 34.37 feet; thence along a compound curve to the left with a radius of 910 feet, a distance of 19.27 feet along the east property line of said Lot 1A; thence along a curve to the left with a radius of 10.00 feet, a distance of 15.82 feet;

thence S89°45'35" W a distance of 38.49 feet along the south property line of said Lot 1A to the point of beginning. Said easement containing 426.45 square feet.

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, free and clear of all encumbrances; the above-described interests in the real estate described and have hereunto set their hand.

SHILOH GLEN, LLC

BY: [Signature]

PRINTED

NAME: MICHAEL CHRISTIAN

ITS: MANAGER

STATE OF MONTANA )

:ss

County of Yellowstone )

On this 22nd day of April, 2008, before me, a Notary Public in and for the State of Washington, personally appeared Michael Christian, known to me to be the Manager of SHILOH GLEN, LLC whose name is subscribed to the foregoing instrument, and acknowledged to me that they duly executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Kimberly A Rowan  
Notary Public in and for the State of Washington

Printed Name: Kimberly A Rowan

Residing at Seattle, WA

My commission expires 3/20/2010

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

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.

\_\_\_\_\_  
Mayor, City of Billings

**ATTEST:**

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

STATE OF MONTANA     )  
                                      :SS  
County of Yellowstone    )

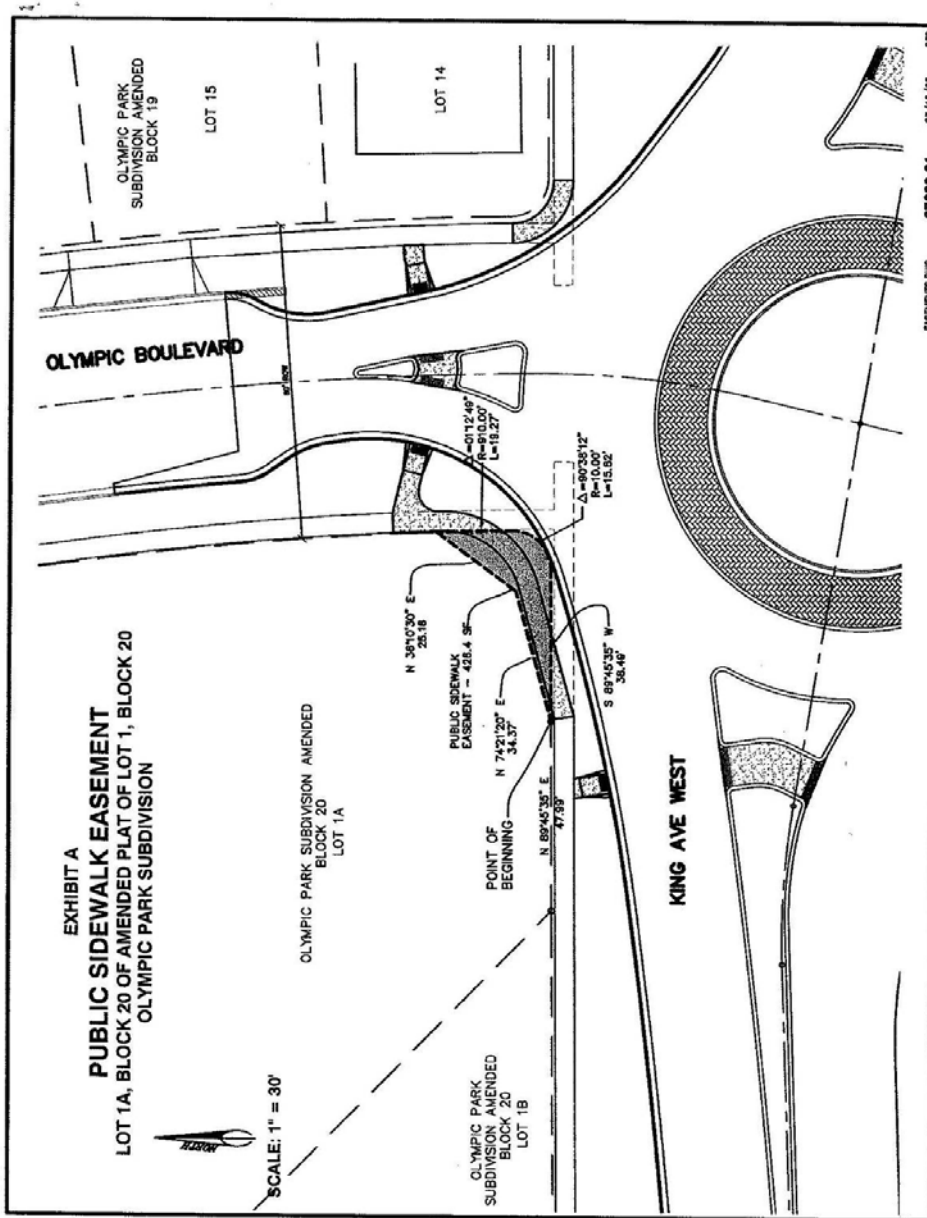
On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared RON TUSSING and \_\_\_\_\_, known to me to be the Mayor and City Clerk of Billings, respectively, and acknowledged to me that they duly executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana

Printed Name: \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_



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

#### PUBLIC SIDEWALK EASEMENT

THIS INDENTURE, made and entered into this 26<sup>th</sup> day of May, 2008, by and between the following:

Montana Commerce, LLC  
600 S. Main Street  
Butte, Montana 59701,  
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 and convey unto the **GRANTEE**, perpetual easement to construct, reconstruct, maintain, operate, repair and improve necessary fixtures and appurtenances for sidewalk, accessibility ramps, multi-use paths and/or accessibility drive approaches over, across, under, and through the real property more particularly described as follows:

A tract being in the NW1/4 of Section 13, T.1S., R.25E., P.M.M., City of Billings, Yellowstone County, Montana, said tract being more particularly described below and shown in the attached Exhibit A:

Beginning at a point that is the northwest corner of Tract 1C-2 of Amended Tract 1C of Amended Tract 1-A of Certificate of Survey No. 1479; thence from said point of beginning N 89°59'58" E a distance of 7.49 feet along the north property line of said Tract 1C-2; thence S 55°13'56" W a distance of 9.13 feet; thence N00°01'00" W a distance of 5.21 feet along the

west property line of said Tract 1C-2 to the point of beginning. Said easement containing 19.5 square feet.

**And,**

A tract being in the NW1/4 of Section 13, T.1S., R.25E., P.M.M., City of Billings, Yellowstone County, Montana, said tract being more particularly described below and shown in the attached Exhibit B:

Beginning at a point that is N00°01'00" W a distance of 15.02 feet from the southwest corner of Tract 1D of Amended Tract 1-A of Certificate of Survey No. 1479; thence from said point of beginning N00°01'00" W a distance of 60.92 feet along the west property line of said Tract 1D; thence S 45°01'01" W a distance of 7.07 feet; thence S 00°01'00" E a distance of 50.92 feet; thence S 44°58'59" W a distance of 7.07 feet to the point of beginning. Said easement containing 279.6 square feet.

**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, free and clear of all encumbrances; the above-described interests in the real estate described and have hereunto set their hand.

MONTANA COMMERCE, LLC

BY: *David J Kennally*

PRINTED  
NAME: *David J Kennally*

ITS: *Manager*



STATE OF MONTANA )  
 )  
 )  
County of Yellowstone )

On this 9<sup>th</sup> day of MAY, 2008, before me, a Notary Public in and for the State of Montana, personally appeared Daniel J. Kennedy, known to me to be the manager of MONTANA COMMERCE, LLC whose name is subscribed to the foregoing instrument, and acknowledged to me that they duly executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Dominique Endy  
Notary Public in and for the State of Montana

Printed Name: DOMINIQUE ENDY

Residing at Butte Silver Bow

My commission expires 11/10/2011

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

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.

\_\_\_\_\_  
Mayor, City of Billings

**ATTEST:**

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

STATE OF MONTANA       )  
                                      :SS  
County of Yellowstone    )

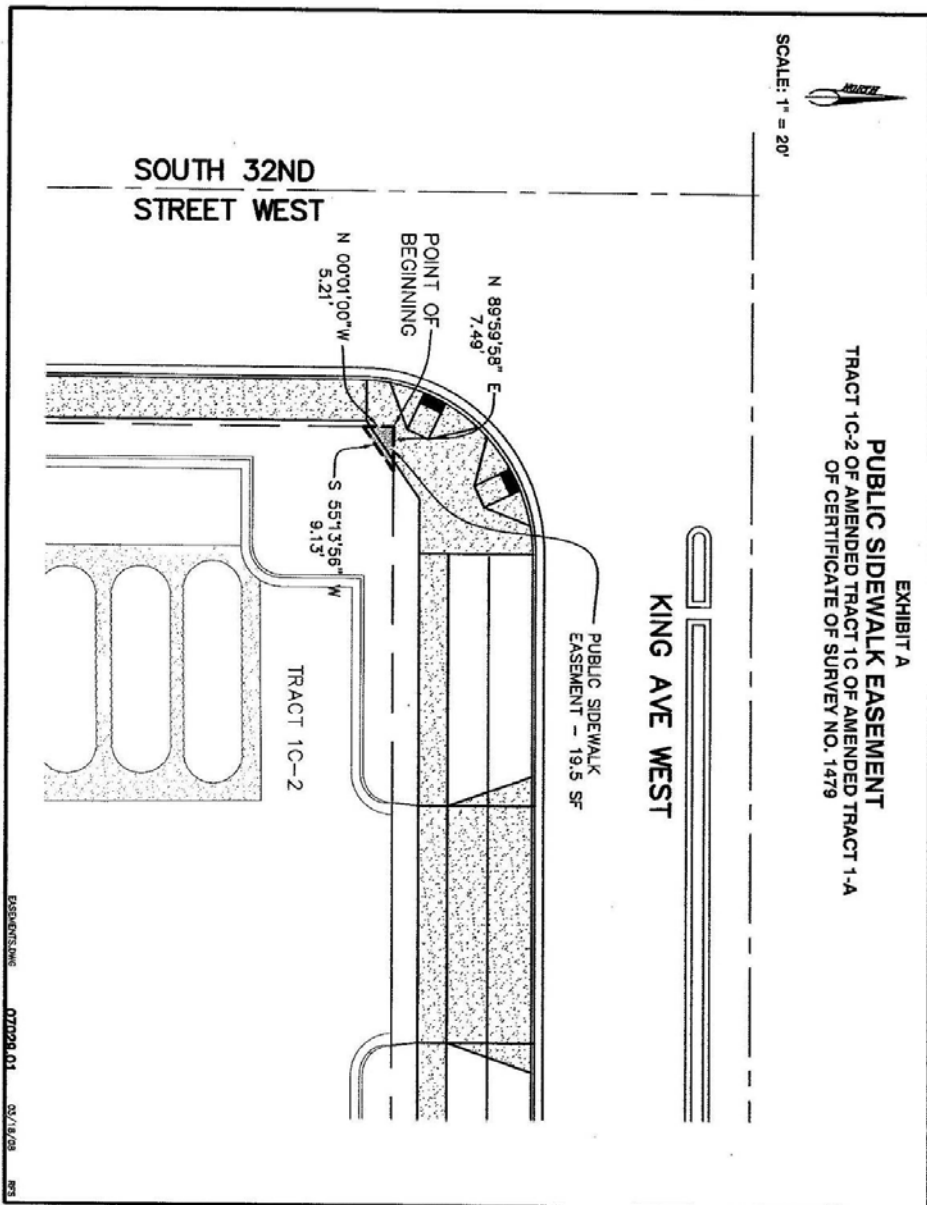
On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared RON TUSSING and \_\_\_\_\_, known to me to be the Mayor and City Clerk of Billings, respectively, and acknowledged to me that they duly executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

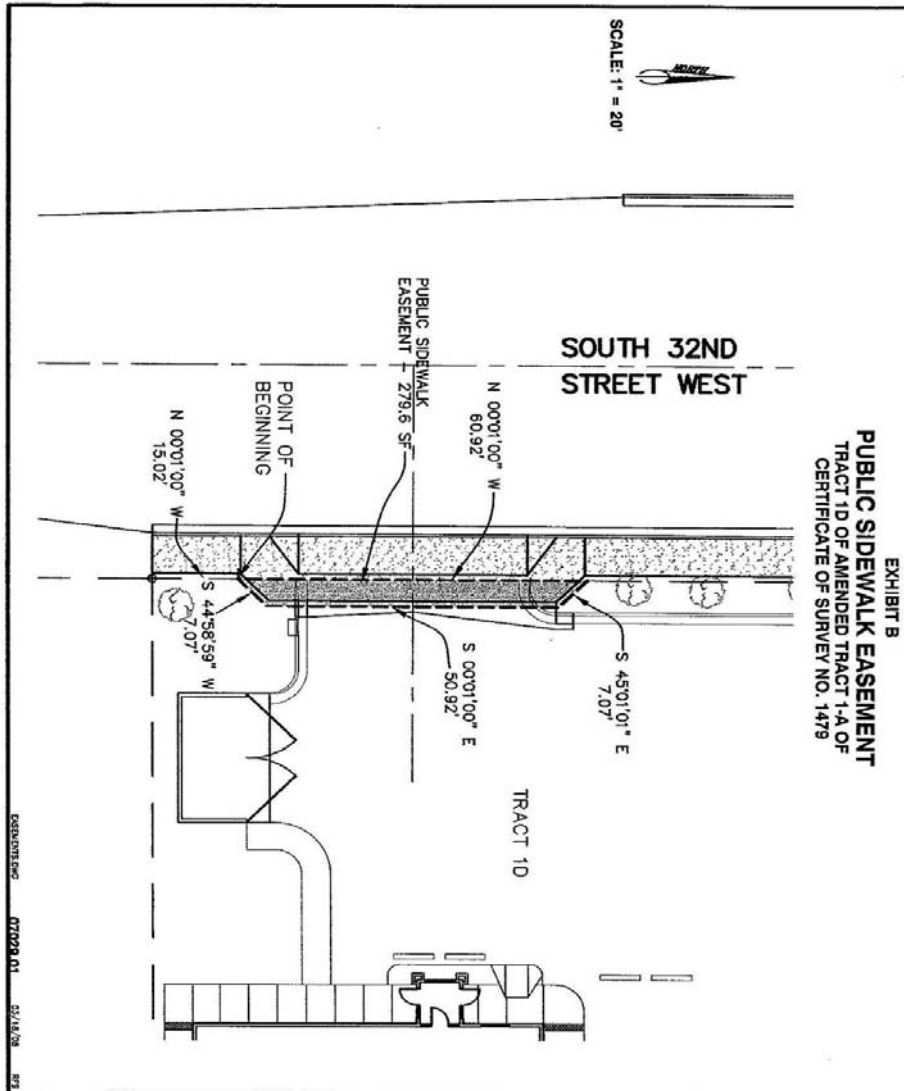
\_\_\_\_\_  
Notary Public in and for the State of Montana

Printed Name: \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_





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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, June 9<sup>th</sup>, 2008**


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TITLE: Expert Tire Street Closure Request  
 DEPARTMENT: Public Works/Engineering  
 PRESENTED BY: Dave Mumford, P.E., Public Works Director

---

**PROBLEM/ISSUE STATEMENT:** Expert Tire requests the temporary closure of North 31<sup>st</sup> Street between Montana and 1<sup>st</sup> Avenue North to use to set up tables for non profits to provide information to the community on safety. Closure is from 9:00 a.m. until 4:00 p.m. on Saturday June 21<sup>st</sup>.

Recommended conditions of approval include; Expert Tire:

1. Contact all businesses impacted and have them sign off on the event.
2. Cleaning the area being used.
3. Provide and install adequate traffic barricades directing motorists around closure.
4. Providing certificate of insurance naming City of Billings as additional insured

**ALTERNATIVES ANALYZED:**

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

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

**RECOMMENDATION**

Staff recommends that Council approve the closure named above for the Benefit Car Show.

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

ATTACHMENTS

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



City of Billings  
RIGHT-OF-WAY ACTIVITY  
PERMIT

Please check the type of activity you are applying for:

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

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

PERSON MAKING APPLICATION Sherril E. Skelton

ORGANIZATION MAKING APPLICATION Expert Tire

PHONE (406) 245-6184

ADDRESS 3016 1st Ave N Billings MT 59101  
CITY STATE ZIP

EMAIL ADDRESS \_\_\_\_\_

APPROXIMATE TIME EVENT WILL:

Assemble 9 am Start 10 am Disband 2:00 pm

DATE OF EVENT June 21, 2008

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

The purpose of the event is to provide guidance and awareness to keep our community safety aware and prepared. We're doing this as a free event the only cost is for food as a donation to one of the non-profit organizations at the event. There will be between 5-7 non-profit organizations represented to present information through literature and demonstration to explain why and how to prevent and prepare for potential safety hazards.

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

N/A

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

Desire to block off 31st street between Montana Ave and 1st.

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

Intention to use Downtown Billings Equipment (chairs, canopies, road blocks and Billings Construction supply for porta-potties and solid waste division for small trash cans. We will provide clean up crew.

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE Sherri D. Shelton DATE 5/21/2008

APPLICATION APPROVED \_\_\_\_\_ DATE \_\_\_\_\_

APPLICATION DENIED \_\_\_\_\_ DATE \_\_\_\_\_

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

**FOR CITY USE ONLY**

FEE: \_\_\_\_\_

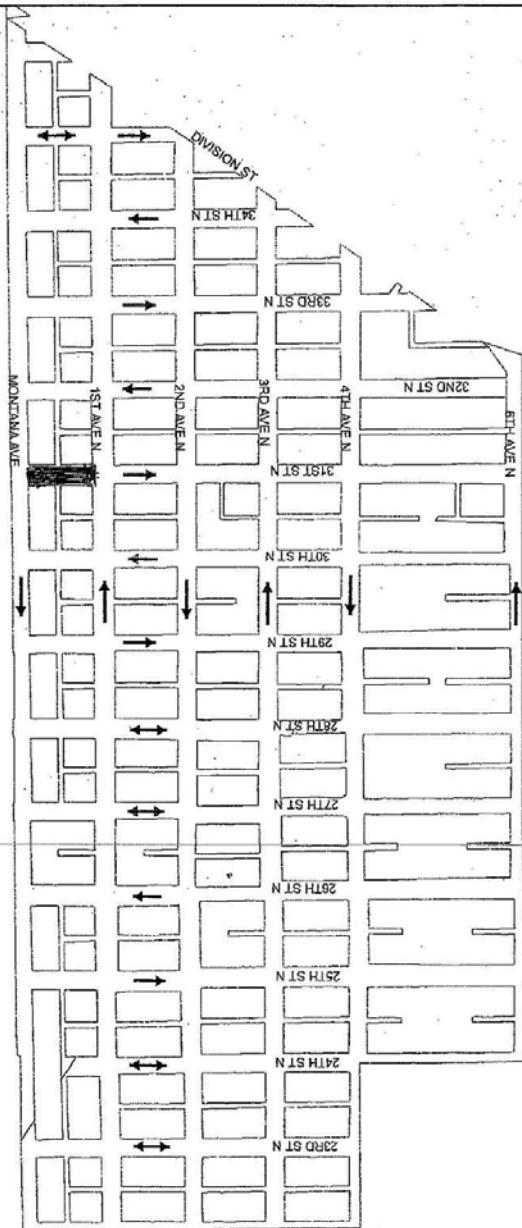
APPLICANT NOTIFIED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

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



# Downtown Billings Street Direction Map



<b>ACORD</b> <small>TM</small> <b>CERTIFICATE OF LIABILITY INSURANCE</b>		Page 1 of 2	DATE 05/20/2008
PRODUCER  Willis North America, Inc. 26 Century Blvd. P. O. Box 305191 Nashville, TN 372305191	877-945-7378	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED  BFS Retail and Commercial Operations, LLC c/o Subsidiaries 333 East Lake St. Bloomington, IL 60108	INSURERS AFFORDING COVERAGE		NAIC#
	INSURER A: Old Republic Insurance Company		24147-002
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES							
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	MWZY57618	11/1/2007	11/1/2008	EACH OCCURRENCE	\$	2,000,000
					DAMAGE TO RENTED PROPERTY (Ea occurrence)	\$	
					MED EXP (Any one person)	\$	
					PERSONAL & ADV INJURY	\$	2,000,000
					GENERAL AGGREGATE	\$	2,000,000
					PRODUCTS - COMP/OP/AGG	\$	2,000,000
	AUTOMOBILE LIABILITY						
	<input type="checkbox"/> ANY AUTO				COMBINED SINGLE LIMIT (Ea accident)	\$	
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per person)	\$	
	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$	
	<input type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident)	\$	
	<input type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY						
	<input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$	
					OTHER THAN AUTO ONLY: EA ACC	\$	
					AGG	\$	
	EXCESS/UMBRELLA LIABILITY						
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				EACH OCCURRENCE	\$	
	<input type="checkbox"/> DEDUCTIBLE				AGGREGATE	\$	
	<input type="checkbox"/> RETENTION \$					\$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				EL EACH ACCIDENT	\$	
	If yes, describe under SPECIAL PROVISIONS below				EL DISEASE - EA EMPLOYEE	\$	
	OTHER				EL DISEASE - POLICY LIMIT	\$	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS City of Billings is included as an Additional Insured to the General Liability as respects the negligence of the insured, except as superseded by a written contract.							

CERTIFICATE HOLDER	CANCELLATION
City of Billings 510 N. Broadway Billings, MT 59101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Carol M. Fortune</i>
ACORD 25 (2001/08)	Coll:2361486 Tpl:705910 Cert:10738971 © ACORD CORPORATION 1988



## BID Event Kit of Parts Usage Packet

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

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

-Date(s) of Event: Saturday, June 21, 2008

-Does this event require any Street Closure? x Yes        No

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

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

-Will you be serving alcoholic beverages?        Yes x No

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

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

List all:

N 31<sup>st</sup> From Montana Avenue to 1<sup>st</sup> Avenue North

Briefly Describe Your Event Activity/Participants:

Tables for non profits to provide information to the community on safety.

-Specify the exact date and TIME the blocks noted above will be CLOSED: 8:00 am

-Specify the exact date and TIME the blocks noted above will be REOPENED: 4:00 pm

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

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

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

BUSINESS NAME: ADDRESS: SIGNATURE:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_
11. \_\_\_\_\_

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9<sup>th</sup>, 2008**

TITLE: Yellowstone Health Partnership Fun Run/Walk Street Closure  
 DEPARTMENT: Public Works/Engineering  
 PRESENTED BY: Dave Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:**

The Yellowstone Health Partnership requests temporary street closures as outlined in the attached event route map on Sunday, June 22<sup>nd</sup>, 2008, from 7:00 am to 10:00 am for the Fun Run/Walk. Course map attached to brochure.

Recommended conditions of approval include that the Yellowstone Rimrunners:

1. Have no alcohol consumption in the public right of way
2. Clean area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Providing 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. Police, traffic control and litter removal are to be paid for by the Yellowstone Health Partnership.

**RECOMMENDATION**

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

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

#### ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. Brochure Describing Event & Course Map
- C. Certificate of insurance



City of Billings  
RIGHT-OF-WAY ACTIVITY  
PERMIT

Please check the type of activity you are applying for:

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

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

PERSON MAKING APPLICATION

Kim Kaiser

ORGANIZATION MAKING APPLICATION

Yellowstone Health Partnership

PHONE

651-6510

ADDRESS

123 S. 27<sup>th</sup> St. Bldg

MT

59101

EMAIL ADDRESS

KimK@ycchd.org

APPROXIMATE TIME EVENT WILL:

Assemble 7:00 AM Start 8:00 AM Disband 10:00 AM

DATE OF EVENT

Sunday, June 22<sup>nd</sup>

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

Please see attached brochure  
note the attached brochure is a draft - the date, time  
and route map are correct, other information  
regarding registration may change.

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

Please see attached brochure

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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

Fun Run committee will provide clean up

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

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

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

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

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

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APPLICANT SIGNATURE  DATE 3/18/08

APPLICATION APPROVED \_\_\_\_\_ DATE \_\_\_\_\_

APPLICATION DENIED \_\_\_\_\_ DATE \_\_\_\_\_

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

**FOR CITY USE ONLY**

FEE: \_\_\_\_\_

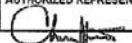
APPLICANT NOTIFIED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

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





Client#: 200		CITYOFBI	
<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>			DATE (MM/DD/YYYY) 04/16/08
PRODUCER <b>Holiness LaBar Insurance</b> A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED <b>City Of Billings</b> <b>%Human Resources Dept</b> <b>P.O. Box 1178</b> <b>Billings, MT 59104</b>		INSURERS AFFORDING COVERAGE INSURER A: <b>Penn-American Insurance Co.</b> INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #
<b>COVERAGES</b> THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.			
INSURANCE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded:250 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PER <input type="checkbox"/> LOC	BINDER764333	04/01/08
			04/01/09
			LIMITS EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$		EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below		WC STATUS: <input type="checkbox"/> OTH: <input type="checkbox"/> ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER		
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS Holder is listed as Additional Insured on the policy for the Montana Family Medicine Residency 5K Fun Run/Walk on 6/22/08 beginning at Deering Clinic and ending at South Park, Billings, MT			
<b>CERTIFICATE HOLDER</b> <b>Yellowstone Health Partnership</b> <b>123 S. 27th Street</b> <b>Billings, MT 59101</b>		<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 	

ACORD 25 (2001/08) 1 of 2

#326264

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9<sup>th</sup>, 2008**

TITLE: Reporter Big Sky Office Street Closure Request  
 DEPARTMENT: Public Works/Engineering  
 PRESENTED BY: Dave Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** Reporter Big Sky Office requests the temporary closure of North 14<sup>th</sup> between 1<sup>st</sup> and 2<sup>nd</sup> Avenue North for additional parking for a Benefit Car Show sponsored by Reporter and Underriner Motors for the American Cancer Society. The closure will be from 7:00 a.m. until 4:00 p.m. on Saturday June 21<sup>st</sup>.

Recommended conditions of approval include; Reporter Big Sky Office:

1. Contacting all businesses and making them aware of the event.
2. Cleaning the area being used.
3. Provide and install adequate traffic barricades directing motorists around closure.
4. Providing certificate of insurance naming City of Billings as additional insured

**ALTERNATIVES ANALYZED:**

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

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

**RECOMMENDATION**

Staff recommends that Council approve the closure named above for the Benefit Car Show.

**ATTACHMENTS**

- E. Right of Way Special Activity Permit Application.
- F. Map showing closure.
- G. Certificate of insurance.



Please check the type of activity you are applying for:

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

Submit this application with attachments to either the: Public Works office, 310 N. Broadway, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Linda Rosin

ORGANIZATION MAKING APPLICATION Reporter Big Sky Office

PHONE 248-7881

ADDRESS 744-1st Ave. No. Billings MT 59101

E-MAIL ADDRESS Linda.R@reporterbigskyoffice.com

APPROXIMATE TIME EVENT WILL:

Assemble 7:00 A.M. Start 8:00 A.M. Disband 4:00 P.M.

DATE OF EVENT June 21, 2008

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

Benefit car show sponsored by Reporter  
Big Sky Office and Underneath Motors,  
for the American Cancer Society.  
Additional parking needed.  
June 21, 2008 - 9

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

Block street (1 Block) No. 14th between  
1st and 2nd Ave. North

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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

Team members from both companies will  
be responsible for all clean up.

P.03/07

4066579262

MAY-14-2008 08:35 AM City of Billings

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

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

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APPLICANT SIGNATURE Anda Lavin DATE 5/14/08

APPLICATION APPROVED \_\_\_\_\_ DATE \_\_\_\_\_

APPLICATION DENIED \_\_\_\_\_ DATE \_\_\_\_\_

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

**FOR CITY USE ONLY**

FILE: \_\_\_\_\_

APPLICANT NOTIFIED BY: \_\_\_\_\_

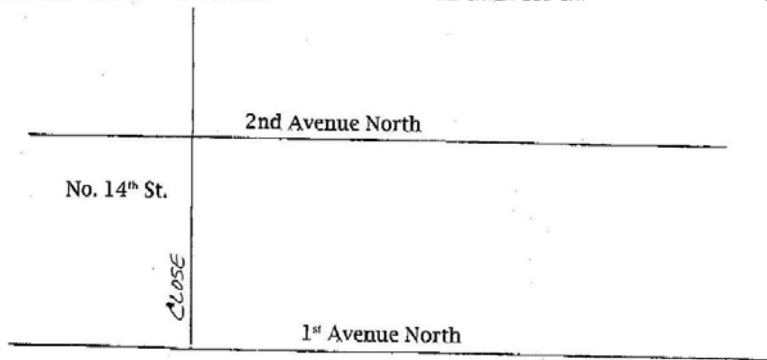
DATE: \_\_\_\_\_

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

P.04/07

4066573252

MAY-14-2008 08:36 AM CITY OF BILLINGS



The request is to close No. 14<sup>th</sup> St. between 1<sup>st</sup> and 2<sup>nd</sup> Avenues North.

Client# 2480		REPORTER	
<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>			
<b>PRODUCER</b> Holness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURED</b> Reporter Big Sky Office, Inc. P. O. Box 30598 Billings, MT 59107		<b>INSURERS AFFORDING COVERAGE</b> INSURER A: The Travelers Indemnity Co. INSURER B: Phoenix Insurance Company INSURER C: INSURER D: INSURER E:	
<b>COVERAGES</b> THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		<b>NAIC #</b>	
<b>INSURANCE</b>	<b>TYPE OF INSURANCE</b>	<b>POLICY NUMBER</b>	<b>POLICY PERIOD</b>
<b>A</b>	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	160463P3547IND07	07/01/07 - 07/01/08
			<b>LIMITS</b> EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
<b>B</b>	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	BA463P354707SEL	07/01/07 - 07/01/08
			<b>LIMITS</b> COMBINED SINGLE LIMIT (Per accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
<b>A</b>	<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	ISFCUP463P3547IND0	07/01/07 - 07/01/08
			<b>LIMITS</b> EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$ \$ \$ \$ NO FINANCIAL LOSS LIMITS OFF- E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PRIOR HISTORY OF PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER			
<b>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS</b> Notice of cancellation for non-payment of premium will always be 10 days. Reporter Big Sky Office, Inc.			
(See Attached Descriptions)			
<b>CERTIFICATE HOLDER</b> City of Billings P.O. Box 1178 Billings, MT 59104		<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE	

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9<sup>th</sup>, 2008**

TITLE: Downtown Billings Association (DBA) Street Closures  
 DEPARTMENT: Public Works/Engineering  
 PRESENTED BY: Dave Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** The DBA requests temporary street closures for its annual events as outlined in the attached document. These annual events are following the same basic outline as in previous years.

Recommended conditions of approval include DBA:

1. Contact all businesses and make them aware of the event 60 days in advance
2. Clean the area to be used and provide and empty waste cans after the event
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide a certificate of insurance naming the City of Billings as additional insured
5. Obtain proper alcohol and noise permits from the Police Department for events that require them

**ALTERNATIVES ANALYZED:**

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

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

**RECOMMENDATION**

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

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

ATTACHMENTS

- A. Letter from DBA outlining events
- B. Certificate of insurance





**Downtown Billings Association**  
2815 2nd Ave N., Billings, MT 59101  
Phone: 259-5060 Fax: 294-5061  
Email: Sherri@downtownbillings.com

## Street Closure Requests

### ALIVE AFTER 5

Thursday, July 17, 2008

One of the Alive After 5's will be hosted by Pug Mahons. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by Pug Mahons) and usually draws a large crowd. We are requesting to close the following street:

N. 30<sup>th</sup> between 1<sup>st</sup> Ave N and 2<sup>nd</sup> Ave N. (1 block) from 3:00 pm to 9:00 pm. Traffic on 1<sup>st</sup> Ave N. and 2<sup>nd</sup> Ave N. will not be affected except they will not be able to turn south onto N. 30<sup>th</sup> Street from 2<sup>nd</sup> Ave N.

### ALIVE AFTER 5

Thursday, July 31, 2008

One of the Alive After 5's will be hosted by The Monte Carlo Casino. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by the Monte Carlo Casino) and usually draws a large crowd. We are requesting to close the following street:

N. 29<sup>th</sup> street between Montana Ave and 1<sup>st</sup> Ave N. (1 block) from 3:00pm to 9:00pm. Traffic on Montana Ave and 1<sup>st</sup> Ave N will not be affected except they will not be able to turn north onto N 29<sup>th</sup> street. from Montana Ave.

For these events, The Downtown Billings Association will provide the necessary barricades for traffic control. We will also arrange for adequate trash cans to control litter as well as clean up. We will send letters before each event to inform emergency personnel of the street closures. If you have any questions or concerns, please call me at 294-5060.

Thank you for your time and consideration and for helping us make Downtown Billings, The HEART of the Magic City.

See you Downtown!

Sherri Sjolseth  
Operations Director  
Downtown Billings Association

P. 004/010

Date: 4/8/2008 3:28:21 PM  
PUGMAHON

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS	
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Certificate holder to be listed as an additional insured per written contract subject to policy conditions and Montana Statutory Law.

Notice of cancellation due to non payment of premium will always be 10 days.

Re: Alive After 5

**Umbrella goes over liquor liability also.**

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MAY-13-2008(TUE) 08:21

DOWNTOWN BILLINGS PARTNERSHIP

(FAX)406 294 5061

P.003/010

Rx Date/Time APR-08-2008(TUE) 14:52

From: Briton Frisbie - Payne Financial Group, Inc.

To:

Page: 2/3

Date: 4/8/2008 3:31:15 PM

P.002

Client#: 1084

PUGMAHON

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 04/08/08
<b>PRODUCER</b> Holness LeBar Insurance Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>INSURED</b> Pug Mahon, Inc. 3011 1st Ave N Billings, MT 59101		<b>INSURERS AFFORDING COVERAGE</b> INSURER A: Travelers Indemnity Co. of America INSURER B: The Travelers Indemnity Co. INSURER C: INSURER D: INSURER E:
		NAIC #

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURANCE TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	<b>CENTRAL LIABILITY</b>	I680909D1985TIA08	02/05/08	02/05/09	EACH OCCURRENCE \$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGES TO RENTED PREMISES (Per occurrence) \$300,000
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MEDICAL (Any and all persons) \$5,000
	GENERAL AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PER <input type="checkbox"/> SUBJECT <input type="checkbox"/> LOC				PERSONAL & ADJ. INJURY \$1,000,000
					OVERALL AGGREGATE \$2,000,000
A	<b>AUTOMOBILE LIABILITY</b>	I680909D1985TIA08	02/05/08	02/05/09	COMBINED SINGLE LIMIT (Per occurrence) \$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per household) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per occurrence) \$
	<input type="checkbox"/> NON-OWNED AUTOS				
	<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY - EA ACC \$
B	<b>EXCESS/UMBRELLA LIABILITY</b>	ISFCUP9010Y944IND0	02/05/08	02/05/09	EACH OCCURRENCE \$2,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$2,000,000
	<input type="checkbox"/> OF OUGHTFUL				\$
	<input checked="" type="checkbox"/> NO DEFENSE \$5,000				\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>				PER STATUTE <input type="checkbox"/> PER POLICY \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? <input type="checkbox"/>				U.S. EACH ACCIDENT \$
	(If yes, describe under SPECIAL PROVISIONS below)				E.L. EMPLOYER - EA EMPLOYEE \$
A	<b>OTHER: Liquor Liab</b>	I680909D1985TIA08	02/05/08	02/05/09	E.L. PROPRIETOR - POLICY LIMIT \$1,000,000

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

RE: Alive After Five

Certificate holder to be listed as an additional insured per written contract subject to policy conditions and Montana Statutory Law.

Notice of cancellation due to non payment will always be 10 days.

Umbrella goes over liquor liability also.

## CERTIFICATE HOLDER

Downtown Billings Association  
 2815 Second Avenue North  
 Billings, MT 59101

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE L&F, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Northrup Allen*

ACORD 25 (2001/08) 1 of 2

#325040

BP1

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Client#: 200

CITYOFBI

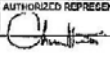
<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 04/30/08
<b>PRODUCER</b> Hoiness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>INSURED</b> City Of Billings %Human Resources Dept P.O. Box 1178 Billings, MT 59104		
<b>INSURERS AFFORDING COVERAGE</b> INSURER A Penn-American Insurance Co. INSURER B INSURER C INSURER D INSURER E		NAIC #

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURANCE TYPE	POLICY NUMBER	POLICY EFFECT DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded:250 GPM: AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PER <input type="checkbox"/> LOC	BINDER764333	04/01/08	04/01/09	EACH OCCURRENCE \$2,000,000 DAMAGE TO CONTENTS \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMMOD AGG \$2,000,000
<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTO				COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
<b>Garage Liability</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EX ACCIDENT \$ OTHER THAN AUTO ONLY: FA ACC \$ AUTO \$
<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE \$ <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPERTY OR PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				W.C. STATE / OTHER LIMIT \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - SA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Holder is listed as Additional Insured on policy for Alive After Five event 7/31/08 at 29th Street and 1st Ave. North, Billings, MT.

<b>CERTIFICATE HOLDER</b> Monte Carlo Casino/Neal LaFever- Owner 2624 1st Ave. N. Billings, MT 59101	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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MAY-13-2008(TUE) 08:22

DOWNTOWN BILLINGS PARTNERSHIP

(FAX)406 294 5061

P.006/010

ACORD CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY) 04/18/2008	
PRODUCER (406)248-8763 HUB International/Flynn Insurance Agency 1643 Lewis Ave., Suite 212 P.O. Box 21055 Billings, MT 59102		FAX (406)248-8791		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Monte Carlo Club P O Box 20711 Billings, MT 59101		INSURERS AFFORDING COVERAGE		NAIC #	
		INSURER A: Capitol Indemnity Corp c/o Big Sky			
		INSURER B:			
		INSURER C:			
		INSURER D:			
		INSURER E:			
COVERAGES					
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSURANCE TYPE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CP00191869	05/22/2007	05/22/2008	EACH OCCURRENCE	\$ 1,000,000
				DAMAGE TO RENTED PREMISES (if a commercial)	\$ 100,000
				MED EXP (Any one person)	\$ 5,000
				PERSONAL & ADV INJURY	\$ 1,000,000
			GENERAL AGGREGATE	\$ 2,000,000	
				PRODUCTS - COMPICT AGG	\$ 2,000,000
AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (On accident)	\$
				BODILY INJURY (Per person)	\$
				BODILY INJURY (Per accident)	\$
				PROPERTY DAMAGE (Per accident)	\$
GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
				OTHER THAN AUTO ONLY: EA ACC	\$
				AGG	\$
EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE	\$
				AGGREGATE	\$
					\$
					\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS	OTH-ER
				E.L. EACH ACCIDENT	\$
				E.L. DISEASE - CA EMPLOYEE	\$
				E.L. DISEASE - POLICY LIMIT	\$
OTHER					
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS Re: General Operations					
CERTIFICATE HOLDER  Downtown Billings Association 2815 2nd Avenue Billings, MT 59101		CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Rene LeVeaux/JR			

ACORD 25 (2001/08)

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MAY-13-2008(TUE) 08:22

DOWNTOWN BILLINGS PARTNERSHIP

(FAX)406 294 5061

P.006/010

ACORD CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY) 04/18/2008	
PRODUCER (406)248-8763 FAX (406)248-8791 HUB International/Flynn Insurance Agency 1643 Lewis Ave., Suite 212 P.O. Box 21055 Billings, MT 59102		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED Monte Carlo Club P O Box 20711 Billings, MT 59101		INSURERS AFFORDING COVERAGE		NAIC #	
		INSURER A: Capitol Indemnity Corp c/o Big Sky			
		INSURER B:			
		INSURER C:			
		INSURER D:			
		INSURER E:			
COVERAGES					
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSURANCE TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENTL AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CP00191869	05/22/2007	05/22/2008	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (if a commercial) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPICT AGG \$ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (On accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - CA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS Re: General Operations					
CERTIFICATE HOLDER Downtown Billings Association 2815 2nd Avenue Billings, MT 59101			CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Rene LeVeaux/JR		

ACORD 25 (2001/08)

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MAY-13-2008(TUE) 08:23

DOWNTOWN BILLINGS PARTNERSHIP

(FAX)406 294 5061

P.007/010

Rx Date/Time  
04/08/2008 15:28 FAX

APR-08-2008(TUE) 14:48

HUB INT'L FLYNN INS AGCY

P.001

001/002

**ACORD CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
04/04/2008

PRODUCER (406)248-8763 FAX (406)248-8791  
HUB International/Flynn Insurance Agency  
1643 Lewis Ave., Suite 212  
P.O. Box 21055  
Billings, MT 59102

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION  
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE  
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR  
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED  
Monte Carlo Club  
P O Box 20711  
Billings, MT 59101

**INSURERS AFFORDING COVERAGE****NAIC #**

INSURER A: Acceptance Insurance Company  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR NO/1 CTR. NUM	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	CQ00037335	06/29/2007	06/29/2008	EACH OCCURRENCE \$ 1,000,000
	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (if an occurrence) \$
	<input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$
	<input checked="" type="checkbox"/> Liquor Liability				PERSONAL & AD&M INJURY \$
	QUAL AGGREGATE LIMIT AMOUNTS PER POLICY <input type="checkbox"/> HYB <input type="checkbox"/> SEC <input type="checkbox"/> LOC				GENERAL AGGREGATE \$ 1,000,000
					PRODUCTS - COMMODITY AGG \$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (if an accident) \$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
	DAMAGE LIABILITY				AUTO ONLY - TA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY - TA ACC \$
	EXCESS/UMBRELLA LIABILITY				OTHER THAN AUTO ONLY - AGG \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				EACH OCCURRENCE \$
	DEDUCTIBLE				AGGREGATE \$
	RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS <input type="checkbox"/> OR \$
	ANY PROPRIETOR/OWNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EACH EMPLOYED \$
	OTHER				E.L. DISEASE - POLICY LIMIT \$

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

**CERTIFICATE HOLDER**

Downtown Billings Association  
2815 2nd Avenue  
Billings, MT 59101

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
Tom Sidor/JR

*Tom Sidor*

ACORD 25 (2001/08)

©ACORD CORPORATION 1988

MAY-13-2008(TUE) 08:23 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 P.006/010  
 Rx Date/Time MAY-07-2008(WED) 14:49 P.001  
 05/07/2008 15:29 FAX HUB INT'L. FLYNN INS AGCY 0001/002

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE RENEWAL 05/07/2008
PRODUCER (406)248-8763 FAX (406)248-8791 HUB International/Flynn Insurance Agency 1643 Lewis Ave., Suite 212 P.O. Box 21055 Billings, MT 59102		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Monte Carlo Club P O Box 20711 Billings, MT 59101		INSURERS AFFORDING COVERAGE INSURER A: Acceptance Insurance Company INSURER B: INSURER C: INSURER D: INSURER E:
		NAIC #

COVERAGES					
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSURED LINE TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	CQ00037335	06/29/2007	06/29/2008	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Liquor Liability				DAMAGE TO CONTENTS PREMISES (See occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
	AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PER OCC <input type="checkbox"/> LOC				COVERED SINGLE LIMIT (See occurrence) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRE/AUTO <input type="checkbox"/> NON-OWNED AUTOS				AUTO ONLY - EX/ACCIDENT OTHER THAN EX/ACC AUTO ONLY
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				EACH OCCURRENCE AGGREGATE
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below
	OTHER				WC STAT- TORT LIMITS F1 EACH ACCIDENT F1 DISEASE - FA EMPLOYER B1 DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 City of Billings is listed as additional insured.

<b>CERTIFICATE HOLDER</b> City of Billings c/o Downtown Billings Association 2815 2nd Avenue Billings, MT 59101	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Tom Sidor/JR
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ACORD 25 (2001/08)

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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**TITLE:** Approval to submit application and acceptance of a 2008 Technology Grant Award in the amount of \$177,077 to purchase a Crime Scene Investigation Vehicle

**DEPARTMENT:** Police Department

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

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**PROBLEM/ISSUE STATEMENT:** The US Department of Justice has notified the City that it has been awarded a 2008 Technology Grant to purchase a Crime Scene Investigation Vehicle. The new vehicle will replace a 1981 Ford Parcel Delivery Van, equipment #1599, that we have been using for the past 25 years. The old Crime Scene Investigation Vehicle will be auctioned at the City auction in early fall. The equipment taken out of the old vehicle will be reused in the new vehicle or in other areas of the department. We are requesting from City Council the approval to submit the application and accept the award.

**FINANCIAL IMPACT:** The Technology Grant will pay \$177,077 toward the purchase of this vehicle. If there are any additional costs, the drug forfeiture fund will be used.

**RECOMMENDATION**

Staff recommends that Council approve submittal of the application and acceptance of a 2008 Technology Grant award in the amount of \$177,077 to purchase a Crime Scene Investigation Vehicle.

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

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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

**TITLE:** Approval to submit application and acceptance of a 2008 Technology Grant Award in the amount of \$205,766 to purchase digital video cameras

**DEPARTMENT:** Police Department

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

**PROBLEM/ISSUE STATEMENT:** The US Department of Justice has notified the City that it has been awarded a 2008 Technology Grant to purchase digital video cameras for approximately one-half of the police vehicles. We are requesting City Council approval to submit the application and accept the award.

**FINANCIAL IMPACT:** The Technology Grant will pay \$205,766 toward the purchase of digital video cameras for approximately one-half of the police vehicles. \$269,000 has been requested in the City's "wish list" for congressional appropriations for next fiscal year. These two amounts are approximately \$6,000 more than our original request and should be sufficient to equip all police vehicles at no cost to the City.

**RECOMMENDATION**

Staff recommends that Council approve submittal of the application and acceptance of a 2008 Technology Grant award in the amount of \$205,766 to purchase digital video cameras.

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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**TITLE:** Resolution for Temporary Suspension of the Camping Ordinance  
**DEPARTMENT:** Aviation and Transit  
**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** Each year the Bureau of Land Management (BLM) conducts large-scale fire cache staging and tanker base operations at the Airport to mobilize fire fighting services during the Summer fire season. This seasonal operation includes the addition of temporary mobile structures, tents, aircraft, ground support equipment, and supplies, as well as campers to accommodate the rotation of fire fighting personnel. This expanded operation is a vital component of the region's fire fighting operations and is set up on the east end of the Airport near the BLM's current leasehold area in the Airport Business Park.

The BLM is requesting an exemption from BMCC Section 24-411, the City's RV and Camper Parking Ordinance for its annual seasonal fire mobilization operation for the period beginning July 1, 2008 through October 31, 2008 as it prepares for the fire season. The Ordinance prohibits parking for camping in anything other than an authorized tourist park, except for a 10-hour rest period in a parking lot in which the owner permits it. The Ordinance does provide for a temporary suspension of the Ordinance for a special event. The Airport also enters into a Letter of Understanding (LOU) establishing the terms and conditions of the BLM's use of the area for this seasonal operation. The Council granted a similar request from the BLM in August 2007.

**ALTERNATIVES ANALYZED:**

- Approve a resolution allowing camper parking in the Airport's Business Park for the BLM's annual seasonal fire mobilization operations.
- Do not approve the resolution.

**FINANCIAL IMPACT:** There is no financial impact anticipated. The BLM pays for any additional costs incurred in setting up the seasonal operation and restoring the location.

**RECOMMENDATION**

Approval of a resolution allowing camper parking in the Airport Business Park, BLM Leasehold area for 48 hours on either side of the period beginning July 1, 2008 through October 31, 2008.

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

**Attachments:**

A:     Resolution

RESOLUTION 08-\_\_\_\_\_

A RESOLUTION OF THE BILLINGS CITY COUNCIL TEMPORARILY SUSPENDING BMCC 24-411 TO ALLOW CAMPING IN THE AIRPORT BUSINESS PARK FOR THE BUREAU OF LAND MANAGEMENT'S ANNUAL SEASONAL FIRE MOBILIZATION OPERATIONS.

WHEREAS, BMCC 24-411: Parking for Camping Purposes, prohibits parking for camping in the City of Billings in anything but authorized tourist parks, but allows a temporary suspension beginning forty-eight (48) hours before and extending forty-eight (48) hours after special events held within the City if a resolution is obtained from the City Council; and

WHEREAS, the Bureau of Land Management (BLM) will conduct its annual seasonal fire mobilization operations at Billings Logan International Airport in the Airport Business Park; and

WHEREAS, the BLM utilizes temporary mobile structures, tents, aircraft, ground support equipment, and supplies, as well as campers to accommodate the rotation of fire fighting personnel during this vital component of the region's fire fighting operations. The BLM has requested that it be allowed to park campers and set up tents at the event site from July 1 through October 31, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA that BMCC 24-411 is hereby temporarily suspended for the period a period of forty-eight (48) hours on either side of July 1 through October 31, 2008, at the Airport Business Park, BLM leasehold, located at Billings Logan International Airport.

APPROVED AND PASSED by the City Council of the City of Billings, Montana this 9th day of June 2008.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
RON TUSSING, MAYOR

ATTEST:

\_\_\_\_\_  
CARI MARTIN, CITY CLERK

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AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

TITLE: Zone Change #838, 2<sup>nd</sup> Reading of Ordinance  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: David Green, Planner I

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting to rezone a portion of a property in a Planned Development (PD) with underlying zoning of Public (P) to an underlying zoning district of Highway Commercial (HC) on a .75 acre parcel of land directly east of 5379 Southgate Drive. The property is legally described as a portion of Lots 1-4 & 15, of amended Lot 15A, Block 2, Southgate Subdivision 1<sup>st</sup> Filing. The subject property is currently undeveloped parkland. The City of Billings is the owner and Bruce McCandless, Assistant City Administrator, is the agent. On May 1, 2008, the pre-application neighborhood meeting for the proposed zoning application was conducted at the Parmly Billings Library 4<sup>th</sup> Floor large conference room. The Zoning Commission conducted a public hearing on May 6, 2008, and forwarded a recommendation of approval on 4-0 vote. The City Council held a public hearing and approved the first reading of the zone change on May 27, 2008.

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

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

**FINANCIAL IMPACT:** Changing the zoning on the property will increase the City's tax base when the property is developed.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #838 and adopt the determinations of the 12 criteria.

Approved by: \_\_\_\_\_ City Administrator \_\_\_\_\_ City Attorney

**ATTACHMENTS:**

A: Ordinance

**ORDINANCE NO. 08-\_\_\_\_\_**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR  
Lots 1-4 & 15, of Amended Lot 15A, Block 2, Southgate Subdivision 1<sup>st</sup> Filing, containing  
approximately .75 acres

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

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

2. DESCRIPTION. A tract of land known as Lots 1-4 & 15, of Amended Lot 15A, Block 2, Southgate Subdivision 1<sup>st</sup> Filing, containing approximately .75 acres and is presently zoned Public within a Planned Development and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Planned Development with underlying zoning of Public** to **Planned Development with underlying zoning of Highway Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Highway Commercial** as set out in the Southgate Amended Planned Development Agreement.

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

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

ATTEST:



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

ZC #838- Parcel directly east of 5379 Southgate Drive

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**AGENDA ITEM:**


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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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**TITLE:** Zone Change #839, 2<sup>nd</sup> Reading of Ordinance  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Nicole Cromwell, AICP, Zoning Coordinator, Planner II

---

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change request from Residential 9,600 (R-96) to Neighborhood Commercial (NC) on Lots 3 through 7 of Block 9, Central Acres Subdivision, 5<sup>th</sup> Filing located at 3133 Central Avenue. The applicant is proposing to construct a small retail center on the northeast corner of the intersection of 32<sup>nd</sup> Street West and Central Avenue. The applicants are Charles Haynes, Ira & Ruth Park and Alan Oster and the agent is Gerald Neumann. A pre-application neighborhood meeting was held at Shiloh Veterinary Clinic on March 29, 2008. The Zoning Commission conducted a public hearing on May 6, 2008, and is forwarding a recommendation of approval on a 4-0 vote. The City Council held a public hearing and approved the first reading of the zone change on May 27, 2008.

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

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

**FINANCIAL IMPACT:** The proposed zone change will increase the City's tax base when the property is developed.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #839 and adopt the determinations of the 12 criteria.

**ATTACHMENTS:** Ordinance

**ATTACHMENT A**

Zone Change #839

**ORDINANCE NO. 08-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR  
Lots 3-7, Block 9 Central Acres, 5<sup>th</sup> Filing, containing approximately  
53,172 square feet

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

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

2. **DESCRIPTION.** A tract of land known as Lots 3-7, Block 9 Central Acres, 5<sup>th</sup> Filing, containing approximately 53,172 square feet and is presently zoned Residential 9,600 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9,600** to **Neighborhood Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood Commercial** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

TITLE: Zone Change #840, 2<sup>nd</sup> Reading of Ordinance  
 DEPARTMENT: Planning and Community Services  
 PRESENTED BY: David Green, Planner I

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential Multi-Family-Restricted (RMF-R) to Residential Professional (RP) on Lot 4A, Block 2, Goodman Subdivision, 4<sup>th</sup> Filing. It is a 67,110 square foot parcel of land on the southeast corner of the intersection of 41<sup>st</sup> Street West and Avenue C. Randall Swenson, Steve Repac and Jeff Muri, are the owners with Engineering, Inc, as agent. A pre-application neighborhood meeting was held at Shiloh United Methodist Church on March 27, 2008. The Zoning Commission conducted a public hearing on May 6, 2008, and is forwarding a recommendation of approval on 4-0 vote. The City Council held a public hearing and approved the first reading of the zone change on May 27, 2008.

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

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

**FINANCIAL IMPACT:** Changing the zoning on the property will increase the City's tax base when the property is developed.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #840 and adopt the determinations of the 12 criteria.

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

**ATTACHMENTS:**

A: Ordinance

ATTACHMENT A

**ORDINANCE NO. 08-\_\_\_\_\_**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR  
Lot 4A, Block 2, Goodman Subdivision, 4<sup>th</sup> Filing, containing approximately 1.54 acres

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

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

2. DESCRIPTION. A tract of land known as Lot 4A, Block 2, Goodman Subdivision, 4<sup>th</sup> Filing, containing approximately 1.54 acres and is presently zoned Residential Multi-Family-Restricted and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential Multi-Family-Restricted** to **Residential Professional** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Professional** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

ZC #840- 41<sup>st</sup> Street West and Avenue C

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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

TITLE: Zone Change #841, 2<sup>nd</sup> Reading of Ordinance  
 DEPARTMENT: Planning and Community Services  
 PRESENTED BY: David Green, Planner I

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential 7,000 (R-70) to Entryway General Commercial (EGC) on Lot 1, Block 5, of Pinnick Subdivision, 3<sup>rd</sup> Filing, less the north 110 feet. The parcel is located on the northeast corner of the intersection of Newman Lane and King Avenue East. This site is a 3.043 acre parcel of land. Christ the King Lutheran Church is the owner, and Kristin Omvig and Jared LeFevre from Crowley, Haughey, Hanson, Toole & Dietrich Law Firm are the agents. A pre-application neighborhood meeting was held at Christ the King Lutheran Church on February 25, 2008. The Zoning Commission conducted a public hearing on May 6, 2008, and is forwarding a recommendation of approval on a 4-0 vote. The City Council held a public hearing and approved the first reading of the zone change on May 27, 2008.

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

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

**FINANCIAL IMPACT:** Changing the zoning on the property may increase the City's tax base if the property is re-developed.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #841 and adopt the determinations of the 12 criteria.

Approved by: \_\_\_\_\_ City Administrator \_\_\_\_\_ City Attorney

**ATTACHMENTS:**

A: Ordinance

**ATTACHMENT A**

**ORDINANCE NO. 08-**\_\_\_\_\_

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR  
Lot 1, Block 5, of Pinnick Subdivision, 3<sup>rd</sup> Filing, less the north  
110 feet, containing approximately 3.043 acres

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

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

2. **DESCRIPTION.** A tract of land known as Lot 1, Block 5, of Pinnick Subdivision, 3<sup>rd</sup> Filing, less the north 110 feet, containing approximately 3.043 acres and is presently zoned Residential 7000 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 7000** to **Entryway General Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Entryway General Commercial** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

ZC #841- 759 Newman Lane

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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TITLE: Zone Change #842, 2<sup>nd</sup> Reading of Ordinance  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Lora Mattox, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** The applicant is requesting to rezone Tract 1 of Certificate of Survey 2350 from Residential 9600 (R-96) to Entryway General Commercial (EGC). The subject property is generally located on the northeast corner of King Avenue East and Calhoun Lane and has 2 single-family residential dwellings. This site is a 4.34 acre parcel of land. Robert M. Medvec is the owner, with Kristin Omvig and Jared Le Fevre from Crowley, Haughey, Hanson, Toole & Dietrich Law Firm, agents. The City Council held a public hearing and approved the first reading of the zone change on May 27, 2008.

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

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

**FINANCIAL IMPACT:** If the zone change is approved, future development of the property could increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission, on a 4-0 vote, recommends that the City Council approve Zone Change #842 and adopt the determinations of the 12 criteria.

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

**ATTACHMENT:**

A: Ordinance

**ATTACHMENT A**

**ORDINANCE NO. 08-\_\_\_\_\_**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR  
Tract 1, Certificate of Survey 2350, containing approximately 4.34 acres

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

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

2. **DESCRIPTION.** A tract of land known as Tract 1, Certificate of Survey 2350, containing approximately 4.34 acres and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

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

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

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

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

ZC #842- 4517 King Avenue East

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

**TITLE:** Zone Change #843, 2<sup>nd</sup> Reading of Ordinance – Pre-application  
Neighborhood Meeting Location  
Amending Section 27-1502(b) of the Unified Zoning Regulations

**DEPARTMENT:** Planning and Community Services

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

**PROBLEM/ISSUE STATEMENT:** Section 27-1502 of the Unified Zoning Regulations regulates how amendments to the official zoning map are processed and how surrounding property owners may be notified. On July 9, 2007, the City Council adopted an amendment to this section to require pre-application neighborhood meetings. The amendment did not specify a maximum distance from a proposed zone change where the meeting should occur. This amendment will require this pre-application meeting within 2-radius miles of the subject property. Most property within the city limits has at least one location within a 2-mile radius that is suitable for a pre-application meeting. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on May 6, 2008, and voted 4-0 to recommend approval to the City Council. The City Council held a public hearing on May 27, 2008, and approved the zone change on first reading.

**ALTERNATIVES ANALYZED:** The City Zoning Commission held a public hearing on the proposed text amendment on May 6, 2008. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendment.

**FINANCIAL IMPACT:** There should be no direct financial impact to the City as a result of the new zoning regulation.

**RECOMMENDATION**

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #843.

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

**ATTACHMENTS:**

A: Ordinance

Zone Change #843

**ORDINANCE NO. 08-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-1502(b); AMENDMENTS TO CHAPTER, APPLICATIONS FOR MAP AMENDMENTS, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC*, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.

**Section 2. DESCRIPTION.** The zoning regulation shall apply to all land within the City of Billings.

**Section 3.** That the Billings, Montana City Code be amended by revising Section 27-1502(b) to add new language to read as follows:

SEC. 27-1502. AMENDMENTS TO CHAPTER.

(b) *Applications for map amendments.* Unless initiated by the city council or board of planning, all applications for official map amendments must be submitted by the owner of such property, the contract purchaser, or the authorized agent of the owner. An application for an amendment affecting the same property shall not be submitted more often than once every twelve (12) months. Each application to amend the official map shall be filed with the zoning coordinator, and each application shall be submitted under the following conditions:

(1) The applicant or his/her authorized agent shall submit the following pre-application information to the planning department to begin the zone change process:

- a. Legal description of the subject parcel(s), along with a map showing the dimensions, acreage and location of the parcel(s);
- b. The names and addresses of the owner(s) and contract purchasers, if any, of the subject property and their agent(s), if any, along with the recorded property owner's signature;
- c. A zone change plan which shall consist of the following:

- i. A written description of the proposed zone change including the area in square footage or acres to be included in the zone change.
- ii. If there are multiple zone changes proposed, the location and area of each specific new zoning district.

(2) The planning department shall provide a list of surrounding property owners within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s) to the applicant or his/her agent based on the submitted information.

(3) The applicant or his/her agent shall conduct a pre-application neighborhood meeting to explain the proposed new zoning and receive comment from the surrounding property owners. The applicant or his/her agent shall notify in writing the persons on the surrounding property owner list as provided in subsection (2) and the planning department of the date, time and location of the pre-application neighborhood meeting. The pre-application neighborhood meeting shall be conducted within 2 radius miles of the subject parcel. The written notification shall be mailed at least seven (7) calendar days prior to the scheduled meeting. The written notification shall include all the materials noted in subsection 27-1502

(b) 1. The pre-application neighborhood meeting shall be conducted at least seven (7) calendar days prior to the submittal of the proposed zone change to the planning department. The applicant shall obtain a roster of the names of the persons that attend the pre-application neighborhood meeting and make a record of the minutes of the meeting.

(4) Once the pre-application neighborhood meeting has been conducted the applicant or his/her agent may submit a zone change application and it shall include but not be limited to the following information:

- a. A legal description of the tract(s) proposed to be rezoned;
- b. A map showing the dimensions, acreage and location of the tract(s) being changed;
- c. The names and addresses of the owner(s) of the land and their agents, if any, along with the recorded property owner's signature;
- d. A certified list of the names, addresses and legal descriptions of the owners of property within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s);
- e. Gummed mailing labels with the names and mailing addresses typed or printed neatly of all of the property owners indicated on the certified list; and
- f. Payment of all applicable fees.

- g. A signed statement affirming the pre-application neighborhood meeting was conducted in conformance with the requirements of Section 27-1502(b) 3, and the zone change application is based on material presented at the meeting. The signed statement shall include a copy of the meeting notice, any written materials provided to the surrounding property owners, a brief synopsis of the meeting results, a roster of the persons attending the meeting and audio or written minutes of the meeting.
- (5) An application for amendment to the official map shall be submitted at least twenty (20) days prior to the date of the public hearing before the city zoning commission.
- (6) An application for a zone change may be withdrawn or amended as follows:

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

**Section 5. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 6. EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading May 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading June 9, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday June 9, 2008**

**TITLE:** New Model Cable TV Franchise Ordinance-Second Reading  
**DEPARTMENT:** City Attorney/City Administrator  
**PRESENTED BY:** Brent Brooks, City Attorney and Tina Volek, City Administrator

**PROBLEM/ISSUE STATEMENT:** With substantial advances in telecommunications law and technology, City staff is proposing that a new, model cable system franchise ordinance be enacted in addition to specific individual cable TV franchise agreements with cable TV providers. This new, general ordinance would establish policies of the Mayor and City Council for granting specific cable TV franchises together with procedures, terms and conditions for granting, modifying, renewing, transferring and regulating where law authorizes such, cable TV franchises. This is a new ordinance and does not repeal an existing ordinance. The first Reading and Public hearing on this ordinance was presented to the Council during the April 28, 2008, Council meeting and was continued until May 27, 2008, meeting at the request of staff to allow final changes to it that were related to the companion franchise ordinance with Bresnan Communications. Minor changes made to the ordinance since the Council's April 28, 2008, were adopted and approved by the City Council during the First reading at its May 27, 2008, meeting.

**ALTERNATIVES ANALYZED:** Staff has analyzed alternatives available to the Mayor and City Council concerning this proposed general cable TV franchise ordinance applicable to current and future cable system providers wishing to enter the City of Billings cable TV market. Those alternatives are as follows:

1. Consider and approve on first and second reading the attached, proposed model Cable System Franchise.
2. Disapprove the model Cable System Franchise and rely upon case by case, specific negotiation with cable system TV providers wishing to enter the Billings market.

**FINANCIAL IMPACT:** There is no direct financial impact to the City by approving or disapproving this Cable System Franchise Ordinance. However, enacting the standards, policies and procedures contained within the proposed attached ordinance would facilitate a more orderly and consistent negotiation, renegotiation or transfer of cable system franchises to existing or new competitors entering such a market.

## **RECOMMENDATION**

Staff recommends that Council consider and adopt the attached Cable System Franchise Ordinance at Second Reading as modified during the May 27, 2008, Council meeting, establishing general policies and procedures applicable to all Cable TV System operators providing Cable TV service to City of Billings.

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

**INTRODUCTION** Numerous advances in the telecommunications law and technology have caused City staff to more closely analyze the need for a general ordinance concerning cable TV system operation standards. With the assistance of the Miller & Van Eaton Law Firm in Washington, D.C., staff has identified several areas as noted in the attached proposed ordinance which would more specifically identify, define and quantify cable TV system operational standards for all providers entering the City of Billings market.

**PROCEDURAL HISTORY** In the past, the Mayor and City Council have individually negotiated and contracted with cable TV system providers in order to bring cable TV service to the City of Billings. Currently one company, Bresnan Communications, provides cable TV service to the City. The franchise under which Bresnan Communications has been operating is now expiring and an individual franchise agreement by way of an ordinance has been submitted to the Mayor and Council for approval, separate from this ordinance.

During the negotiation process with Bresnan Communications to renew its franchise agreement ordinance with the City, it also became apparent that certain general standards for operating any cable TV system within the City of Billings were appropriate and needed. Until now, no such general cable system regulations on the local level have been considered or adopted by the City Council.

## **ALTERNATIVES ANALYSIS**

**Advantages of New Ordinance** The proposed ordinance more specifically defines the terms and policies upon which the Mayor and City Council may grant an individual franchise to one or more competing cable TV system operators. This serves as a general blueprint for individual cable system TV operators to negotiate with the City and enter the Billings city market and provides useful information to potential cable TV system operators as to the important issues for the Mayor and City Council when considering any cable TV system franchise.

The proposed ordinance is much more specific and comprehensive as to standards for new, renewed or transferred cable TV system franchises, makes updated references to federal telecommunications laws, provides certain minimum standards for cable TV system construction, location of cable TV system equipment, repairs of such and coordination of construction with the City.

The proposed ordinance also concerns providing service to City building in the franchise area as well as establishing minimum customer service standards, technical standards and general oversight as to the City's right to inspect books and records of any cable TV system operator and the authority to require cable TV system operators to repair reports as the City reasonably deems necessary to monitor or enforce compliance with the terms of the proposed ordinance.

The proposed ordinance also contains updated and revised provisions concerning insurance and indemnification from the cable TV system franchise operator, performance bonds and revocation of the franchise under certain conditions.

**Disadvantage to Enacting Ordinance** There is no disadvantage to enacting the proposed general ordinance applicable to all cable TV system operators providing service within the City of Billings. There would be some additional work created on the part of City staff to ensure the standards and policies of the new ordinance were met by all cable TV system operators, however, most of these standards are able to be monitored without significant additional effort.

**STAKEHOLDERS** The citizens of the City are stakeholders in that providing this new model ordinance would ultimately give the City authority to provide the highest level of customer service to all subscribers. An additional stakeholder would be any cable TV system operator currently or in the future contemplating operations within the City. This proposed ordinance would more clearly identify the expectations and uniform standards applicable to all competing system operators.

#### **RECOMMENDATION**

Staff recommends that Council adopt the attached model Cable System Franchise Ordinance at Second Reading as modified at First Reading during the May 27, 2008, Council meeting.

#### **ATTACHMENTS**

Attachment A: Cable System Franchise Model Ordinance as modified during First Reading on May 27, 2008.



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA, CITY CODE BE AMENDED BY ADDING A NEW ARTICLE 7-900-1; PROVIDING PROCEDURES, POLICIES, TERMS, AND CONDITIONS FOR GRANTING, MODIFYING, RENEWING, TRANSFERRING, AND REGULATING CABLE FRANCHISES; AND, PROVIDING FOR FEES AND ENFORCEMENT.

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

**Section 1.** That the Billings, Montana, City Code be amended by adding a new Article 7-900-1, to read as follows:

**“ARTICLE 7-900-1  
CABLE SYSTEM FRANCHISE**

**SECTION 7-901.1 PURPOSE**

This Article is adopted for the purpose of establishing the procedures, policies, terms, and conditions for granting, modifying, renewing, transferring, and regulating Cable Franchises.

**SECTION 7-901.2 DEFINITIONS**

For the purpose of this Article, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Any word or phrase not defined in this Section shall have the same meaning as in 47 U.S.C. § 521 et seq. (“Cable Act”) and associated Federal Communications Commission (“FCC”) rules and regulations. Otherwise, words shall have their ordinary and common meaning.

Applicant” shall mean any Person submitting an application within the meaning of this Article; in the case of a Transfer, the Applicant is the transferee.

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“Cable System” shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming, or Video Programming Service, regardless of the transmission technology used and which is provided to multiple Subscribers within the Service Area. Such term specifically includes an open video

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system, as that term is used in the Cable Act, and a system that delivers video using Internet Protocols (“IP Video”), but such term does not include:

(a) a facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) a facility that serves subscribers without using any public way;

(c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541 (c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(d) any facilities of any electric utility used solely for operating its electric utility systems.

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(e) a facility that delivers Video Programming solely via the public Internet.

The term includes wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary to the operation of the Cable System to provide cable services or video programming services.

“Franchise” means the authorization Franchised by the City to a Cable System operator giving the operator the non-exclusive right to occupy, place or use facilities upon, across, beneath or over any public Right-of-Way in the City to provide cable service or video programming service within a Franchise Area. The term Cable Franchise does not include:

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(a). Any other permit or authorization required by applicable law for transacting and maintaining a business within the City;

(b). Any other permit, agreement, or authorization required for using public way or other public property including, by way of example and not limitation, street cut permits, or conduit or pole leases.

“Construction,” “operation,” “repair,” and similar formulations of those terms, means any actions associated with servicing the Cable System such as installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation, tree trimming, and management of the same. Reference to these terms should be construed as broadly as permitted under applicable law.

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“Franchise Area” means the area of the City that a Grantee is authorized to serve by its Cable Franchise. Formatted: Bullets and Numbering

“Grantee” means any Person holding a Cable Franchise. Formatted: Bullets and Numbering

“Gross Revenue” means revenue derived by Grantee, or any affiliate of Grantee from the operation of the Cable System, provided, however, that such phrase shall not include: unrecovered bad debt, to the extent reported as revenue on Grantee’s books. Formatted: Bullets and Numbering

“Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity. Formatted: Bullets and Numbering

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses held by the City in the Service Area and which by their nature entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining a Cable System. Formatted: Bullets and Numbering

Service Area” means the area a Franchise authorizes a Grantee to serve within the City. Formatted: Bullets and Numbering

"Subscriber" means any Person who lawfully receives cable service. Formatted: Bullets and Numbering

L. “Transfer” means any transaction in which:

- (a). The Cable System is sold or assigned;
- (b). There is any change, acquisition, or transfer of control of the Grantee or its direct or indirect parents, whether by merger, consolidation, sale of assets or ownership interests, or by any other means. A Transfer shall be deemed to have occurred whenever there is a change, acquisition or conveyance of control of a general partner, or of more than a twenty percent (20%) ownership in a Grantee or its direct or indirect parents by any entity, or a group of entities acting in concert. However, a Transfer also occurs whenever there is a change in actual working control, in whatever manner exercised, over the affairs of a Grantee or its direct or indirect parents; or
- (c). The rights and/or obligations held by a Grantee under a Cable Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party.

### **SECTION 7-901.3 CABLE FRANCHISE REQUIRED**

Except as provided by applicable law, it is unlawful for a Person, other than City, to construct or operate a Cable System without a valid Cable Franchise.

### **SECTION 7-901.4 GRANT OF CABLE FRANCHISE**

The City may grant one or more Cable Franchises in accordance with and subject to the provisions of the City Charter and this Code. Nothing contained in this Code is, nor should it be construed to be, a contract between the City and a Grantee. Nothing contained in this Code, or in a Franchise issued pursuant to this Code, prohibits, or should be construed to prohibit the City from amending and applying this Code to a Grantee. Terms of a Franchise shall be read consistent with the Code, and shall not be deemed to supersede or waive any provisions of the Code except as specifically stated therein. Any action on a franchise application, whether for a initial franchise, renewal franchise, or transfer shall be taken in accordance with time limits established by federal or state law. The City is not required to follow any procedure that would result in the City failing to meet any such time limits.

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### **SECTION 7-901.5 TRANSFERS OF CABLE FRANCHISES**

- A. Transfers shall not occur without the City's prior written approval, except where a request for approval or sale is subject to a deadline for action under 47 U.S.C. § 537, and the City fails to act by the time required under 47 U.S.C. § 537. The City, among other remedies, may terminate the Franchise if it is transferred without the City's approval. The granting of approval for a Transfer in one instance shall not render unnecessary the City's approval of any subsequent Transfer.
- B. Notwithstanding the foregoing, the City's prior approval is not required for the following:
  - 1. Pledges in trust or mortgages of the assets of, or a grant of a similar security interest in, a Cable System or Cable Franchise to secure the construction, operation or repair of the Cable System; provided that:
    - a. Arrangements are not made that would prevent a Grantee or any successor from complying with the Cable Franchise and applicable law;
    - b. Arrangements do not permit a third party to succeed to the interest of a Grantee, or to own or control the Cable System, without the City's prior consent;
    - c. Any such mortgage, pledge, or security interest will be subject and subordinate to the rights of the City under the Cable Franchise and/or applicable law.

#### **SECTION 7-901.6 CABLE FRANCHISE CHARACTERISTICS**

- A. A Cable Franchise is non-exclusive and does not explicitly or implicitly preclude the City from granting other Cable Franchises or affect the City's right to construct, operate, or maintain its own Cable System. The City may refuse to issue a Cable Franchise to a Grantee that will result in any person obtaining an exclusive right to serve any portion of the City.
- B. All privileges prescribed by a Cable Franchise are subordinate to any prior lawful occupancy of Public Way. The City has the right to designate where a Grantee's facilities may be placed within Public Way.
- C. A Cable Franchise is a privilege held in public trust by the Grantee.
- D. A Grantee shall not require a Subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing cable service. However, nothing prevents a Grantee from entering into an otherwise lawful exclusive consensual arrangement with a building owner or manager of a multiple dwelling unit or commercial Subscriber.
- F. Nothing in any Cable Franchise shall be read to waive any of the City's governmental rights or police powers.

#### **SECTION 7-901.7 RATE REGULATION**

The City may regulate rates and charges of each Grantee, and order refunds of unreasonable rates charged, except to the extent that it is preempted from doing so by applicable law. The City shall follow any applicable state or federal procedures for reviewing rates.

#### **SECTION 7-901.8 NO RECOURSE AGAINST CITY**

Every Cable Franchise Franchised pursuant to the provisions of this Code shall provide that, to the fullest extent permitted by Montana law, without limiting such immunities as the City or other Persons may have under applicable law, a Grantee shall not have any monetary recourse against the City or its officials, boards, commissions, public agencies when acting on the City's behalf, or employees for any loss, costs, expense, or damage arising out of the construction, operation or repair of its Cable System, or the activities of the City or any entity authorized by the City to use Public Way or other public property unless the same was caused by the City's criminal acts or gross negligence. Nothing in this section waives claims a Grantee might otherwise have against third parties.

#### **SECTION 7-901.9 ACTS AT GRANTEE'S EXPENSE**

Any act that a Cable Franchise or this Ordinance requires or allows a Grantee to perform, shall be

performed at the Grantee's expense, unless expressly provided for otherwise in the Cable Franchise, this Ordinance, or state law.

#### **SECTION 7-902.1 APPLICATIONS FOR CABLE FRANCHISE GRANTS, RENEWALS OR TRANSFERS**

An application shall be filed with the City for:

- A. Grant of an initial Cable Franchise;
- B. Renewal of a Cable Franchise, except that an application is not required for a proposal for renewal submitted pursuant to 47 U.S.C. § 546(h);
- C. Transfer.

All applications shall be available for public inspection unless otherwise provided by applicable law.

#### **SECTION 7-902.2 APPLICATIONS - FEES**

From and after October 1, 2006, each Applicant for the grant, renewal or Transfer of a Cable Franchise shall reimburse the City for all expenses incurred by it in reviewing the application. Each application shall be accompanied by a check for \$5,000 which shall be credited against amounts owed. The City may submit invoices to an Applicant from time to time to recover its expenses, which invoices shall be paid within thirty (30) days of rendering. Any amounts paid by an Applicant, but not actually expended by the City, shall be returned to the Applicant. Nothing herein prevents an Applicant from claiming that a particular application fee, as applied, violates 47 U.S.C. § 542.

#### **SECTION 7-902.3 APPLICATIONS FOR INITIAL OR RENEWAL FRANCHISE**

An application for an initial or renewal Cable Franchise shall be in a form prescribed by the City Manager, or if there is no form, shall provide the following information and additional information, if any, required by federal or state law.

- A. The names and addresses of Persons authorized to act on behalf of the Applicant with respect to the application;
- B. The name and address of the Applicant and identification of Applicant's ownership and control, including the names and addresses of the ten (10) largest holders of an ownership interest in the Applicant and all Persons in the Applicant's direct ownership chain;
- C. A demonstration of the Applicant's technical ability to construct and/or operate the proposed

Cable System, including identification of key personnel;

- D. A demonstration of the Applicant's legal qualifications to construct and/or operate the proposed Cable System;
- E. A statement prepared by an independent certified public accountant or independent financial institution regarding the Applicant's financial ability to complete the construction and operation of its proposed Cable System;
- F. A description of the Applicant's prior experience in Cable System ownership, construction, and operation;
- G. Identification of Montana cities and counties where the Applicant or its principals have an interest in a Cable Franchise. If there is no Montana city or county, the information shall be provided for systems in other states.
- H. Identification of the proposed Service Area's boundaries;
- I. A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities;
- J. Where applicable, a proposed construction schedule;
- K. A demonstration of how the Applicant will reasonably meet the community's future cable-related needs and interests, including descriptions of the capacity, facilities, and support for public, educational, and governmental use of the Cable System (including institutional networks);

- L. An affidavit or declaration of the Applicant or its authorized officer certifying the truth and accuracy of the information in the Application.

#### SECTION 7-902.4 CABLE FRANCHISE TRANSFER APPLICATIONS

A Cable Franchise Transfer application shall be submitted by the proposed transferee and contain the following:

- A. All information and forms required under applicable law;
- B. All information required by Section 7-902.3 (A)-(G), (L);
- C. Any contracts or other documents that relate to the proposed Transfer, including all documents, schedules, exhibits, or the like referred to therein and all material facts concerning the effect of the Transfer on the financial position of the Cable System and the Grantee;
- D. Any shareholder reports or filings with the Securities and Exchange Commission ("SEC") that discuss the proposed Transfer;
- E. Complete information regarding anticipated impact of the Transfer on Subscriber rates and service;

#### SECTION 7-902.5 APPLICATIONS - LEGAL QUALIFICATIONS

- A. For purposes of this Section, the term "Applicant" refers to the Applicant and any of its affiliates.
- B. In order to be legally qualified to obtain an initial or renewal Cable Franchise or a Transfer of a Cable Franchise:
  - 1. The Applicant shall be willing and able to comply with the provisions of applicable law and to comply with requirements of the Cable Franchise. The Applicant's prior compliance with the requirements of this Ordinance may be considered in determining whether the Applicant is willing and able to comply.
  - 2. The Applicant shall not have had any Cable Franchise revoked by the City within three (3) years preceding the submission of the application. If Grantee challenges a revocation, it may not apply while the appeal is pending, or for three (3) years after the final resolution of the appeal if the revocation is valid.
  - 3. The Applicant shall not have had an application to the City for an initial or renewal Cable Franchise denied on the ground that the Applicant failed to propose a Cable System meeting the cable-related needs and interests of the community.



If Grantee challenges a denial, it may not apply while the appeal is pending, or for three (3) years after the final resolution of the appeal if the denial is valid.

4. The Applicant shall not be issued a Cable Franchise if, at any time during the ten (10) years preceding the submission of the application, the Applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the Applicant cannot be relied upon to deal truthfully with the City and the Subscribers, or to substantially comply with its obligations.
  5. The Applicant shall have the necessary authority under Montana and federal law to operate a Cable System, or show that it is in a position to obtain such authority.
  6. The Applicant shall not be issued a Cable Franchise if it files materially misleading information in its application or intentionally withholds information that the Applicant is required to provide by applicable law.
- C. An Applicant shall be provided a reasonable opportunity to show that a Cable Franchise should be issued even if the requirements of Section 7-902.5(B)(1)-(4) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the Applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the Applicant's principals, or the remoteness of the matter from the construction, operation or maintenance of a Cable System.

#### **SECTION 7-902.6 TIMING AND REVIEW OF APPLICATIONS**

- A. An application may be submitted at any time, except that an application for renewal pursuant to 47 U.S.C. § 546(a)-(g) may only be submitted after the City completes the proceedings required by 47 U.S.C. § 546(a). An application for Transfer shall be submitted at least one hundred twenty (120) days prior to the proposed date of the Transfer.
- B. The City shall deny an application if the Applicant or Grantee fails to provide information required by this Ordinance, and may deny an application if Applicant or Grantee fails to respond to requests for additional information to permit review of its Application in accordance with this Ordinance.
- C. The City shall promptly consider any complete application in accordance with deadlines established by federal or state law.

#### **SECTION 7-902.7 REVIEW OF TIMELY CABLE ACT RENEWAL APPLICATIONS**

Timely requests for renewal under 47 U.S.C. § 546(a) shall be received, reviewed and acted upon in a manner consistent with 47 U.S.C. § 546. The provisions of Sections 7-902.8 and 9 shall not apply

to such renewal requests. Subject to the City Council's review, the City Manager may issue rules for conduct of any such renewal proceedings, and conduct studies and take such other actions necessary to comply with applicable law. An Applicant or Grantee may request the City Council to review any action taken by the City Manager under this section.

#### SECTION 7-902.8 REVIEW OF OTHER INITIAL AND RENEWAL FRANCHISES

- A. When evaluating other initial and renewal Cable Franchise applications, the City shall consider the following and such matters as it is required or entitled to consider under applicable law:
1. Whether the Applicant substantially complied with applicable law and the material terms of any existing City Cable Franchise grant;
  2. The completeness of the application and Applicant's responses to questions regarding the application;
  3. Whether the quality of the Applicant's service under any existing City Cable Franchise, including, without limitation, signal quality, response to customer complaints, and billing practices, is reasonable in light of community needs and interests;
  4. Whether the Applicant has the financial, technical, and legal qualifications to hold a Cable Franchise;
  5. Whether the application satisfies minimum requirements established by the City to meet the community's future cable-related needs and interests, taking into account the cost of meeting such needs and interests;
  6. Whether the Applicant is able and willing to provide adequate public, educational, and governmental use capacity, facilities, or financial support;
  7. Whether granting the application will result in redlining, discrimination in the provision of services, or grant the Applicant an unfair competitive advantage;
  8. Whether the schedule for building out the system is reasonable; and
  9. Whether approving the application would eliminate or reduce competition in the delivery of cable service.

#### SECTION 7-902.9 STANDARDS FOR REVIEW OF TRANSFER APPLICATIONS

- A. In determining whether to grant, deny, or grant subject to conditions an application for a Transfer of a Cable Franchise, the City may consider:

1. The legal, financial, and technical qualifications of the Applicant to operate the Cable System, or in the case of a change in control where the Grantee will not change, whether the change in control may adversely affect the legal, financial, and technical qualifications of the Grantee;
  2. The impact of the Transfer on Subscriber rates or services;
  3. Whether the incumbent Grantee is in compliance with its Cable Franchise and applicable law and, if not, the Applicant's commitment to cure such noncompliance;
  4. Whether the Applicant owns or controls any other Cable System in the City, and whether operation by the Applicant may eliminate or reduce competition in the delivery of cable service in the City;
  5. Whether the City and Subscribers are protected against losses and costs associated with acts and omissions, or obtaining correction of acts and omissions, of the previous Grantee under the Cable Franchise and applicable law; and
  6. Whether operation by the Applicant or approval of the Transfer would adversely affect Subscribers, the public, or the City's interest under the Cable Franchise, or applicable law.
- B. In reviewing a change of control where the named Grantee does not change, the Applicant is the company succeeding to the control of the Grantee.
- C. Requests for approval of a Transfer shall not be unreasonably denied, or conditioned.

#### SECTION 7-902.10 APPROVAL OR DENIAL OF CABLE FRANCHISES

- A. Before deciding whether to grant a Cable Franchise, the City shall hold one or more public hearings or implement other procedures for obtaining public input.
- B. If the City finds that it is in the public interest to issue a Cable Franchise, considering the factors described above, the City shall tender Applicant a Cable Franchise, and the Applicant shall be entitled to exercise all of the Franchise rights provided for therein upon its acceptance of the terms and conditions of such Franchise, in a form prescribed by the City.
- C. If the City finds that it is in the public interest to approve a Transfer, considering the factors described above, the City shall approve the same, subject to appropriate conditions.
- D. It is the policy of the City to promote competition in the provision of cable services, but there is a presumption that a Cable Franchise, or Franchise or franchise to use the public

Rights-of-Way to deliver multichannel video programming services, that would result in redlining on economic or racial grounds, or otherwise give the Applicant an unfair competitive advantage shall not be Franchised.

E. It is the policy of the City that each Franchise Agreement shall require a Grantee to extend service upon request to any entity requesting service within its Service Area, in accordance with the provisions of this Ordinance or service extension policies set forth in the Cable Franchise.

F. If the City denies a Cable Franchise, it shall issue a written decision explaining its denial.

SECTION 7-902.11 NO EFFECT ON 47 U.S.C. § 546(h); CONSISTENCY WITH OTHER LAWS

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Nothing in this Ordinance prohibits a Grantee from submitting a renewal proposal pursuant to 47 U.S.C. § 546(h), which proposal may be Franchised or denied in accordance with the provisions of 47 U.S.C. § 546(h). Nothing in this Ordinance shall be read to require or permit the City to consider any factors that it is prohibited from considering in granting or transferring a franchise under applicable state or federal statutes or regulations.

SECTION 7-903.1 FACILITIES CONSTRUCTION STANDARDS; APPLICATION

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As used in Section 7-003, the term “Facilities” refers to a Cable System, and to the extent located in the Public Way, other systems and all devices, facilities or structures appurtenant thereto used or designed to be used by any entity that owns or controls the system, or by an affiliate, to provide cable services. Nothing in this Section authorizes construction, operation or repair of a Cable System as defined under Section 7-1-002, or any other system without a Franchise from the City.

SECTION 7-903.2 FACILITIES SYSTEM CONSTRUCTION

A. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable federal, state, and local regulations and the National Electric Safety Code and the National Electrical Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

B. Facilities construction, operation and repair shall be performed so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

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SECTION 7-903.3 LOCATION OF EQUIPMENT

A. Except in underground utility districts or as otherwise provided in a Cable Franchise or applicable law, a Grantee may install Facilities overhead where transmission or distribution facilities of the incumbent local exchange carrier or distribution facilities of public utilities providing electric services are overhead. Wherever the owner of the poles on which the

Facilities are located moves its plant from overhead to underground placement in an area, all Facilities in that area must be promptly moved underground.

- B. Where Facilities are not entitled to be placed aboveground under Section 7-903.3(A), or where they must otherwise be moved underground, all Facilities shall be undergrounded in accordance with then-existing City ordinances and requirements of the City Engineer.
- C. On application, the City may waive any requirement in this Section for good cause shown where it is demonstrated that (a) it is technically infeasible to place Facilities underground; (b) reasonable steps have been taken to minimize the impact of the aboveground Facilities; (c) the Facilities are otherwise being constructed in compliance with the Billings City Code.

#### SECTION 7-903.4 REPAIRS

A. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition better than, or equal to the condition of the Public Way existing immediately prior to such disturbance.

B. Any other disturbance or damage to public property or private property caused by Facilities construction, operation or repair shall be promptly repaired at no cost to the entity whose property was damaged. Property shall be restored to its prior condition, except where applicable law imposes a stricter standard for repair.

#### SECTION 7-903.5 RELOCATION – PUBLIC PROJECTS

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Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee at its expense shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when required by the City or any government entity by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements . The Grantee shall in all cases have the right of abandonment of its property, provided that, if property is abandoned, Grantee upon request must provide City title to the property, free and clear of encumbrances.

#### SECTION 7-903.6 UTILITY RELOCATIONS

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Grantee shall promptly protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee as required to enable another person authorized to place facilities in the rights of way (other than a person described in Section 7-903.5 to construct, modify, repair or maintain such facilities, with the cost therefore to be borne in accordance with applicable law.

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## SECTION 7-903.7 TEMPORARY RELOCATION UPON REQUEST

The Grantee shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days.

## SECTION 7-903.8 TREE TRIMMING

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The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System, subject to the supervision of the City. Nothing in this section relieves Grantee of any liability it may have to persons for damage caused to public or private property.

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## SECTION 7-903.9 CONTRACTORS AND SUBCONTRACTORS

Any contractor or subcontractor used by a Facilities owner or Grantee shall be properly licensed under applicable law. Each contractor or subcontractor has the same obligations with respect to its work as the owner or Grantee would have under this Code and applicable law if the work were performed by owner or Grantee. A Facilities owner or Grantee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with its Franchise and applicable law; and shall be responsible for all acts or omissions of contractors or subcontractors inconsistent with its Franchise or applicable law governing the construction, operation or maintenance of the Cable System.

## SECTION 7-903.0010 CONSTRUCTION COORDINATION

- A. A Facilities owner or Grantee shall cooperate in planning, locating, and constructing its Facilities in utility joint trenches or common duct banks with other utilities, including cable and telecommunications providers, and shall comply with any requirements that the City lawfully may adopt regarding the same.

- B. A Facilities owner or Grantee shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole cost and expense, the locations of its underground Facilities upon notification in accordance with applicable law.
- C. Where it appears that a Facilities owner or Grantee is engaging in practices that endanger the public or other facilities in the public Rights-of-Way, the City may order that work to stop until the practices are corrected. Where a Facilities owner or Grantee engages repeatedly in such practices after receiving notice and having had an opportunity to cure, the City may revoke any Franchises or permits issued to the Facilities owner or Grantee.

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#### SECTION 7-903.0011 INTERCONNECTION

Upon the City's request, Grantees or Facilities operators required to provide capacity for public, educational or governmental use (including institutional network capacity) within the City shall negotiate in good faith the terms and conditions of interconnection so that public, educational and governmental signals may be seamlessly exchanged to or from systems. Except to the extent the terms and conditions are subject to regulation by the state or federal governments, or regulation is prohibited by law, the City may establish terms and conditions for interconnection and establish deadlines for completion of the interconnection if the interconnecting parties are unable to agree to terms, but conditions for interconnection established by the City shall not place an undue burden or grant an undue benefit to one operator compared to another.

#### SECTION 7-903.0012 ABANDONMENT

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A Facilities owner or Grantee may abandon any property in public Rights-of-Way that is in place upon written notice to the City and separate notice to the City Public Works Director, unless the City determines, in the exercise of its reasonable discretion exercised within ninety (90) days of the date the required written notices are received, that the safety, appearance, functioning or use of public Rights-of-Way and Facilities in public Rights-of-Way will be adversely affected. Abandonment shall be effected in a manner acceptable to the City Engineer.

#### SECTION 7-904.1 SERVICE - TIME FOR EXTENSION

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- A. A Grantee shall extend service to any Person or to any City building in the Franchise Area upon request, weather permitting:
1. Within seven (7) business days of the request, where service can be provided by activating or installing a standard drop;
  2. Within ten (10) business days if the Person cannot be served through installation of a standard drop, but can be served by activating or installing a drop;
  3. Within ninety (90) days of the request where an extension of one-half mile or less is required; or

4. Within six (6) months where an extension of more than one-half mile is required.
  5. Requests for additional outlets, service upgrades or other connections separate from the initial installation shall be performed within seven (7) business days after an order has been placed.
- B. A Cable Franchise specifying a time for completion of initial construction or rebuild of a Cable System may suspend or modify the requirements of this Section for the period of the construction or rebuild. A Cable Franchise may specify minimum density requirements for Cable System extensions.
- C. A “standard drop” is an aerial drop not exceeding 150 feet. The City Manager may grant an extension of the time limits set forth in this Section where a Grantee shows that, because of exceptional circumstances, the standards could not be satisfied even with due diligence.

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#### **SECTION 7-904.2 SERVICE - MINIMUM CUSTOMER SERVICE STANDARDS**

Each Grantee shall satisfy the customer service standards established by the FCC, and such additional or stricter customer service or consumer protection requirements as the City may adopt from time to time by resolution, or as may apply under applicable law. Provided that, the City will provide each Grantee an opportunity to comment on any proposed additional cable-specific customer service standards before they are adopted. Each Grantee shall maintain accurate records of its performance under the FCC standards and under other customer service and consumer protection standards established or enforced by the City.

#### **SECTION 7-904.3 SERVICE - NO DISCRIMINATION**

A Grantee shall not deny service, levy different rates, or otherwise discriminate against any Person or group on the basis of race, color, creed, national origin, sex, age, conditions of physical handicap, religion, ethnic background, or marital status or on the basis of the income of the residents of the local area in which such Person or group resides.

#### **SECTION 7-904.4 SERVICE - PRIVACY**

A Grantee shall at all times protect the privacy of all Subscribers pursuant to the provisions of 47 U.S.C. § 551. A Grantee shall not condition Subscriber service on the Subscriber's grant of permission to disclose information which, pursuant to applicable law, cannot be disclosed without the Subscriber's explicit consent.



## **SECTION 7-904.5 SERVICE - TECHNICAL STANDARDS**

Any Cable System within the City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76 Subpart K and any other applicable technical standards lawfully adopted by the City.

## **SECTION 7-905.1 OVERSIGHT - BOOKS AND RECORDS**

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- A. The City may inspect and copy at any time during normal business hours such books and records as the City reasonably deems necessary to enforce or monitor compliance with the terms of this Ordinance, or a Cable Franchise or state or federal law governing cable systems. The City may establish reasonable deadlines for the production of the books and records. Books and records requested pursuant to this Section shall be timely produced to the City unless the Grantee obtains a court order that the books and records need not be produced.
- B. Each Grantee shall be responsible for promptly collecting and producing requested books and records to the City at the City Hall. However, if books and records requested pursuant to this Ordinance or a Cable Franchise are too voluminous, or cannot be copied and moved for security reasons or because the requested records contain trade secrets, then a Grantee may produce the records at some other location, provided that: the Grantee shall make necessary arrangements for copying documents selected by the City after its review; and the Grantee shall pay all reasonable travel and additional expenses in connection with such inspection.
- C. The term “books and records” shall include information in whatever format stored, including, without limitation, information stored in electronic form. The term “books and records” includes books and records held by an Affiliate or any person holding any form of management contract for the Cable System.
- D. All proprietary information received by the City from a Grantee and clearly marked as such shall not be publicly disclosed to the extent allowed by the Montana Public Records Law, and other applicable law. The City shall notify a Grantee if any third party seeks access to any document that is marked confidential, and shall withhold disclosure of the document for the maximum period permitted by law to permit the Grantee to seek court protection against the release of the requested documents.

## **SECTION 7-905.2 OVERSIGHT - REPORTS**

- A. The City may require a Grantee to prepare such reports and maintain such records as the City reasonably deems necessary to enforce or monitor compliance with the terms of this Ordinance, or a Cable Franchise or state or federal law governing cable systems. The City may establish reasonable deadlines for the preparation of the reports. Reports requested pursuant to this Section shall be timely produced to the City unless the Grantee obtains a court order that the reports need not be produced.
- B. In addition to any other reports it is required to produce, each Grantee shall file a financial statement certified as true by the chief financial or operating officer of the Grantee, showing in detail the Gross Revenues of the Grantee by revenue category for the year.
- C. In addition to other reports and books and records it may be required to produce, upon

request, the Grantee shall provide accurate maps for its Cable System identifying the location of system components in the Rights-of-Way.

- D. Nothing in this Ordinance shall be read to require a Grantee to violate state or federal law governing Subscriber privacy. However with respect to Subscriber privacy, each Grantee shall be responsible for redacting any information that applicable law prevents it from providing to the City.
- E. Any material misrepresentation made by the Grantee in any report, or in books and records provided to the City shall be treated as a violation of the Grantee's obligations under this Ordinance.

#### **SECTION 7-905.4 OVERSIGHT - TESTING**

Upon request of the City, for good cause as reasonably determined by the City, a Grantee shall perform tests necessary to demonstrate compliance with the requirements of the Cable Franchise and this Ordinance. The request shall also state with reasonable specificity the cause for the requested testing. Tests shall be conducted in accordance with the sound engineering practices, and the results promptly shared with the City. For good cause as reasonably determined by the City, the City may independently test the Cable System. Grantee shall cooperate with such independent tests. Tests shall be conducted in accordance with sound engineering practices, and shall be scheduled to minimize service or operational disruptions. Grantee may observe any tests conducted by the City.

#### **SECTION 7-906.1 FRANCHISE FEE**

- A. A Grantee shall pay the City a Franchise fee as specified in the Franchise agreement, or a fee in lieu of a Franchise fee, in the case of an open video system (collectively referred to in this ordinance as "Franchise fees." Should any person provide cable service without a Franchise issued by the City, it must pay the highest Franchise fee permitted by law.
- B. Should the City not receive a Franchise fee payment on or before the due date or should the Grantee fail to make full payment of the Franchise fee due and owing to the City, the Grantee shall be charged interest from the due date at an interest rate equal to one percent (1%) per month on the unpaid balance.
- C. The City's acceptance of any Franchise fee payment shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of such Franchise fee payment be construed as a release of any claim the City may have for additional sums payable.
- D. The Franchise fee is not a payment in lieu of any tax, fee, or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services), consistent with 47 U.S.C. § 542(g)(2).
- E. In the event of a Transfer, or where a Grantee stops providing Cable Service within the City,

the Grantee shall file a final statement of Gross Revenues within thirty (30) days of the Transfer or stoppage. The statement shall be certified as accurate by an authorized representative on behalf of the Grantee, cover the period from the beginning of the calendar year in which the Transfer or stoppage occurred, identify Gross Revenues by category, Franchise fees paid on Gross Revenues, and Franchise fees owed on Gross Revenues up through the date of Transfer or stoppage. The statement shall be accompanied by a check for the Franchise fee owed through the date of Transfer or stoppage.

**SECTION 7-907.1 ENFORCEMENT/SECURITIES - INSURANCE AND INDEMNIFICATION**

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- A. Each Grantee shall maintain adequate insurance against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the holding of the Cable Franchise, or the construction, operation or repair of the Cable System by the Grantee, its agents, representatives, contractors, subcontractors and employees.
- B. Each Cable Franchise shall contain an indemnification provision that provides, to the extent permitted by applicable law that:
1. The Grantee agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liabilities, judgments, fines, penalties, litigation or administrative hearing costs including reasonable attorneys fees incurred by City arising from claims for property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System. Notwithstanding the foregoing, the Grantee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence solely attributable to the City.
  2. A Cable Franchise may be revoked by the City for failure to maintain the insurance required, or for failure to indemnify the City.

**SECTION 7-907.2 ENFORCEMENT/SECURITIES - LETTER OF CREDIT AND BONDS**

In addition to any securities required by a Franchise, before any Cable System construction, upgrade, or other work in public Rights-of-Way, a Grantee shall obtain any required bonds in amounts and subject to such terms established by the City consistent with its normal practices.

**SECTION 7-907.3 ENFORCEMENT/SECURITIES - REVOCATION AND TERMINATION**

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- A. A Cable Franchise issued pursuant to this Ordinance may be revoked or shortened for any material violation of this Ordinance or a Cable Franchise; or for defrauding, or attempting to defraud, the City or Subscribers; or for submission of false or misleading information; or if

the Grantee abandons its Cable System without the City's approval; or willfully refuses to provide services to the City or any part of the City. The following procedures shall apply:

1. Before revoking or shortening the Cable Franchise, the City shall give the Grantee written notice, which notice shall describe the nature of the alleged violation or breach and, except as provided herein, shall provide the Grantee with a reasonable opportunity to cure.
  2. If within thirty (30) calendar days following receipt of written notice from the City to the Grantee the Grantee has not corrected the default, or shown to the City's satisfaction that there was no violation or breach, the City may give written notice to the Grantee of its intent to consider revocation or shortening of the Cable Franchise.
  3. Not sooner than thirty (30) calendar days after notifying the Grantee of its intent to consider revoking the Cable Franchise, the City Council shall hold a public hearing at which the Grantee and the public shall be given an opportunity to be heard.
  4. Following the public hearing the City Council shall determine whether a violation or breach occurred, and whether to revoke or shorten the Cable Franchise based on the evidence presented at the hearing, and any other evidence of record.
  5. If the City Council determines to revoke or shorten a Cable Franchise, it shall issue a written decision setting forth the reasons for its decision.
  6. A copy of such decision shall be transmitted to the Grantee. Grantee may appeal such decision to a court of competent jurisdiction.
- B. Notwithstanding the foregoing, an opportunity to cure shall not be required where the City finds that the defect in performance is due to willful misconduct; or is an adjudicated violation of criminal law; or is part of a pattern of violations where the Grantee has already had notice and reasonable opportunity to cure. With respect to such violations, the City, in lieu of the opportunity to cure requirement of this Section, may provide a written notice of the breach and of its intent to revoke, and, not sooner than thirty (30) days thereafter, conduct the public hearing proceeding required by this Section.

#### **SECTION 7-907.4 ENFORCEMENT/SECURITIES - BANKRUPTCY**

- A. Notwithstanding any other provision of this Ordinance:
1. A Cable Franchise shall automatically terminate by force of law one-hundred-twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding.

2. However, the Cable Franchise may be reinstated if, within the one-hundred-twenty (120) day period:

- a. The assignment, receivership or trusteeship is vacated; or
- b. The assignee, receiver, or trustee has fully complied with the terms and conditions of this Ordinance and the Cable Franchise and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of the Cable Franchise and this Ordinance.

B. Notwithstanding any other provision of this Ordinance:

1. In the event of foreclosure or other judicial sale of any of the Grantee's Cable System facilities, equipment, or property, the City may revoke the Cable Franchise after a public hearing before the City Council, by serving notice upon the Grantee and the successful bidder at the sale.
2. The Cable Franchise shall terminate thirty (30) calendar days after serving such notice, unless:
  - a. The City approves the Transfer of the Cable Franchise to the successful bidder; and
  - b. The successful bidder agrees with the City to assume and be bound by the terms and conditions of the Cable Franchise and applicable law.

**SECTION 7-907.5 ENFORCEMENT/SECURITIES - EFFECT OF REVOCATION OR ABANDONMENT**

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- A. In the event that the City revokes a Cable Franchise Franchised pursuant to the provisions of this Ordinance; or upon expiration of the Cable Franchise; or if the Cable System is abandoned:
1. The City may require the former Grantee to remove the Cable System (or any portion thereof) from the public Rights-of-Way at the former Grantee's sole expense. If the former Grantee fails to do so within a reasonable period of time, the City may have the removal done at the former Grantee's and/or surety's sole expense, except the Grantee may abandon any portion of its Cable System in place with the City's approval pursuant to Section 7-903.0012; and
  2. The City, by City Council resolution, may acquire ownership or effect a Transfer of the Cable System (or any portion thereof):

- a. At fair market value, where the Cable Franchise expires;
- b. At an equitable price where the Cable Franchise terminates or is revoked for cause;
- c. The term “equitable price” shall be interpreted consistent with 47 U.S.C. § 547. Fair market value shall be determined in accordance with 47 U.S.C. § 547(a)(1).

B. Notwithstanding Section 7-907.6(A)(2), if a Cable System or any part thereof is abandoned by a Grantee, the City may require the Grantee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same shall become the City’s property and the City may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit.

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## SECTION 7-907.6 ENFORCEMENT/SECURITIES - REMEDIES CUMULATIVE

All remedies in this Ordinance and the Cable Franchise shall be cumulative unless expressly stated otherwise.”

**Section 2. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 3. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 4. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF BILLINGS

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

ATTEST:

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

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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday June 9, 2008**

**TITLE:** Second Reading of Ordinance Repealing Existing Cable TV Franchise Ordinance and Enacting New Franchise Ordinance with Bresnan Communications.

**DEPARTMENT:** City Attorney/City Administrator

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

**PROBLEM/ISSUE STATEMENT:** The existing 1988 cable TV franchise agreement and ordinance at BMCC Sections 7-901 through 909 has expired and is also based upon outdated federal communications law. The City and Bresnan Communications have negotiated a new, non-exclusive franchise agreement that was scheduled for First reading on April 28, 2008, and Second reading on May 12, 2008. The ordinance was delayed to May 27, 2008, to allow staff to conclude negotiations with Bresnan. New federal communications law and regulations are incorporated as applicable in the new proposed franchise ordinance. Currently Bresnan Communications operates a cable TV franchise in Billings which it assumed from a previous cable tv franchise operator. Because this new ordinance extensively modifies the existing ordinance version, staff recommends that the existing ordinance be repealed in its entirety and the attached draft be considered and approved as a replacement.

Bresnan Communications and the City have been operating on an extension agreement since December, 2007, when the current franchise agreement/ordinance expired and the extension previously approved by the City Council is now expiring. This item was continued from the April 28, 2008, Regular City council meeting upon request by staff in order to finalize the franchise document in negotiation with Bresnan Communications. Those negotiations concluded late Friday May 23, 2008. The attached franchise ordinance contains the changes adopted and approved by the City Council at First Reading during its May 27, 2008, meeting.

**ALTERNATIVES ANALYZED:**

- The Council may approve the proposed new cable TV franchise ordinance with the noted changes and repeal the existing outdated ordinance.
- The Council may disapprove the proposed draft franchise ordinance and retain the existing franchise ordinance.

**FINANCIAL IMPACT:** Currently the City charges an annual franchise fee of 5% of the annual gross revenues of the local cable TV operator, the maximum allowed by federal law. This is planned revenue maintained in the City's General Fund. For FY 2007 the City received approximately \$890,569 in franchise revenue from Bresnan Communications as a result of the cable TV franchise fee assessed through the franchise ordinance. Whether or not the existing franchise ordinance is repealed and replaced with the proposed new, updated franchise ordinance, these fees will continue to be assessed and collected by the City.

**RECOMMENDATION**

Staff recommends that Council approve at Second Reading the proposed new franchise ordinance with changes adopted at First Reading and repeal the existing franchise ordinance.

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

**ATTACHMENT:**

A: Cable TV Franchise Ordinance

## **INTRODUCTION**

The City and Bresnan Communications have negotiated a new, five (5) year, non-exclusive cable TV franchise agreement that is required to be approved and memorialized by enacting an ordinance. Bresnan currently operates a cable TV system under the existing but now expired and outdated franchise ordinance. Bresnan was previously approved as the successor to AT&T by the City Council. The current franchise expired in December, 2007, and was extended twice by agreement of the City Council and Bresnan to allow the existing franchise ordinance to be updated and renegotiated to reflect changes in technology and federal communications law and regulations.

## **PROCEDURAL HISTORY AND BACKGROUND**

Bresnan is the successor to AT&T and purchased the cable TV system assets from AT&T in 2003. The City Council approved a Transfer Agreement in 2004 allowing Bresnan to assume AT&T's franchise agreement obligations until the franchise expired in December, 2007. Since December, 2007, the City Council and Bresnan have twice agreed to temporarily extend the franchise agreement expiration to allow a negotiation and revision of the current franchise to reflect current technology and federal communications law and regulations. The latest extension is expiring and the new proposed ordinance is ready for Council consideration and approval or disapproval.

The proposed new franchise ordinance grants a non-exclusive cable TV franchise to Bresnan and is a binding, contractual agreement between Bresnan and the City. Because the new ordinance extensively modifies and revises the existing ordinance, staff recommends that the existing ordinance be repealed in its entirety and replaced by the attached draft franchise ordinance. The new franchise includes the current best practices from across the country and more clearly defines and describes the obligations of both Bresnan and the City.

## **ALTERNATIVES ANALYSIS**

If the Council approves the proposed new franchise ordinance with Bresnan it will update the existing and expiring agreement to reflect current federal telecommunications laws and regulations and will more clearly describe the obligations of Bresnan and the City.

If the Council rejects the proposed new franchise ordinance, continued negotiations with Bresnan will be required and an additional extension of the current franchise ordinance will be necessary while further negotiations are conducted between Bresnan and City staff. The current assessment and collection of five (5) % gross revenues will continue.

## **STAKEHOLDERS**

All City residents who presently subscribe or may subscribe in the future to Bresnan cable TV are interested stakeholders in and beneficiaries of the revised franchise ordinance.

Also, educational and institutional entities such as School District # 2, Community Channel 7 and similar organizations also benefit from the programming required to be carried by Bresnan in the new franchise ordinance.

The City itself will realize continued revenue and greater input into the cable TV programming if the new franchise ordinance is approved.

**RECOMMENDATION**

Staff recommends that the Council approve the new draft franchise ordinance at Second reading with changes adopted at First Reading and repeal the current franchise ordinance in BMCC sections 7-901 through 909.

**ATTACHMENT:**

A: Cable TV Franchise Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING FOR THE REPEAL OF ARTICLE 7-900, SECTIONS 7-901 THROUGH 7-909 OF THE BILLINGS, MONTANA, CITY CODE, AND DECLARING SAME TO BE NULL AND VOID AND OF NO EFFECT; FURTHER PROVIDING THAT THE BILLINGS, MONTANA, CITY CODE BE AMENDED BY ADDING A NEW ARTICLE 7-900, SECTIONS 7-901 THROUGH 7-909, ESTABLISHING A NONEXCLUSIVE CABLE SYSTEM FRANCHISE AGREEMENT INCLUDING ALL TERMS AND CONDITIONS WITH BRESNAN COMMUNICATIONS, LLC

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

**Section 1.** That Article 7-900, Sections 7-901 through 7-909 inclusive, is hereby repealed and declared null and void and of no effect.

**Section 2.** That the Billings, Montana, City Code be amended by adding a new Article 7-900, to read as follows:

**“ARTICLE 7-900. CABLE SYSTEM FRANCHISE**

**Sec. 7-901. Definition of terms.**

For the purpose of this Article, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

“Basic Cable Service” means any service tier which includes the retransmission of local television broadcast signals and any public, educational, and governmental access programming. “Cable Act” means Title VI of the Communications Act of 1934, as amended.

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“Cable Programming Service” means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

- (a) Video programming carried on the Basic Service Tier;

- (b) Video programming offered on a pay-per-channel or pay-per-program basis; or
- (c) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:
  - (1) consists of commonly-identified video programming; and
  - (2) is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(l)(2) (1993) and 47 C.F.R. 76.901(b) (1993). “Cable Services” shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Cable System” shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Service Area, but such term does not include:

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- (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (b) a facility that serves subscribers without using any public right-of-way;
- (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541 (c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) an open video system that complies with 47 U.S.C. § 653.
- (e) any facilities of any electric utility used solely for operating its electric utility systems.

The term includes wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary to the operation of the Cable System.

“Converter” means an electronic device which converts signals to a frequency viewable on a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all signals included in the service.

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“Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.

“FCC” means the Federal Communications Commission, or successor governmental entity thereto.

“Franchise” means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546) issued by a Grantor, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

“Grantor” means the City of Billings, Montana or any lawful successor or assign.

“Grantee” means Bresnan Communications, LLC, or the lawful successor, transferee, or assignee thereof.

“Gross Revenue” means revenue derived by Grantee, or any affiliate of Grantee from the operation of the Cable System to provide Cable Services, provided, however, that such phrase shall not include: unrecovered bad debt, to the extent reported as revenue on Grantee’s books.

“Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses held by the Grantor in the Service Area and which by their nature entitle the Grantor and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining a Cable System.

“Service Area” means the present boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

“Standard Installation” is defined as any service installation that can be completed using a Drop of one hundred twenty five (125) feet or less.

“Subscriber” means any Person who lawfully receives Cable Service of the Cable System.

“Video Programming” means any programming provided by, or generally considered comparable to programming provided by a television broadcast station.

**Sec. 7-902. Grant of franchise.**

(a) *Grant.* The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System to provide Cable Services in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way a Cable System for the purpose of providing Cable Service. This Grant is not in lieu of any other grant that the City or State may require in connection with the use or occupancy of the Public Ways to provide any other service.

(b) *Other Ordinances.*

This Franchise is subject to the laws and regulations of the City as now existing or as may hereafter be adopted. Provided that, neither party may unilaterally alter the express material rights and obligations set forth in this Franchise. In the event of a conflict between the express material rights of Grantee set forth in this Franchise and any ordinance adopted after the date hereof and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Grantor. Provided further, the right to use the Public Ways is subject to the continuing regulation by the City, the grant of this Franchise is not in lieu of any permits or zoning approvals that may be required, or fees associated with the same; and the grant of the Franchise does not give Grantee the right to maintain its facilities at any particular location in the Public Ways, and instead the Grantee shall have the duty to relocate or remove the same from time to time, as provided in this Franchise or under laws or regulations now existing or hereafter adopted.



(c) Before issuing any other cable franchise or franchise to provide multi-channel video programming services, the City shall conduct a public hearing to determine whether an applicant's proposal meets the future cable-related needs and interests of the community and any impact on the existing provision of Cable Service, except where such a hearing would be inconsistent with applicable laws and regulations. Grantee shall be notified of that hearing, and shall be given an opportunity to appear at the hearing and address issues relevant to the issuance of the franchise, except that nothing in this paragraph requires the City to take any action that would result in a violation of applicable laws and regulations, or that prevent it from acting prior the expiration of any deadline.

(d) *Term.* The Franchise granted hereunder shall be for an initial term of five (5) years commencing on the effective date of the Franchise as set forth in subsection 7-909(g), unless otherwise lawfully terminated in accordance with the terms of this Franchise.

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### **Sec. 7-903. Standards of Service.**

(a) *General.* This Section sets forth minimum standards for service, and does not affect the City's rights as reserved under Section 2. All acts a Grantee is required to perform are at its expense, and at no expense to the City.

(b) *Conditions of occupancy.* The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

(c) *Restoration of public ways.* If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition better than, or equal to, the condition of the Public Way existing immediately prior to such disturbance.

(d) *Relocation for the Grantor.* Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee at its expense shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when required by the Grantor or any government entity by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements. The Grantee shall in all cases have the right of abandonment of its property, , provided that, if property is abandoned, Grantee upon request must provide Grantor title to the property, free and clear of encumbrances.

(e) *Relocation for a third party.* The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a

temporary relocation, and as promptly as possible for a permanent relocation, considering the work to be performed in connection with that relocation.

(f) *Relocation for a Person Authorized to Place Facilities in Rights of Way.* Grantee shall promptly protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee as required to enable another person authorized to place facilities in the rights of way (other than a person described in Sections 7-903(d)-(e) to construct, modify, repair or maintain such facilities, with the cost therefore to be borne in accordance with applicable law.

(g) *Trimming of Trees and Shrubbery.* The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System, subject to the supervision of the City. Nothing in this section relieves Grantee of any liability it may have to persons for damage caused to public or private property.

(h) *Safety Requirements.* Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable federal, state, and local regulations and the National Electric Safety Code and the National Electrical Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

(i) *Underground Construction.* In those areas of the Service Area where all of the distribution facilities of the incumbent local exchange carrier or distribution lines of public utilities providing electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground.

(j) *Required Extensions of the Cable System.* Whenever the Grantee receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least ten ( 10) residential units that would be passed by an extension of 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees for drops charged to all Subscribers.

(k) *Subscriber Charges for Extensions of the Cable System.* No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 7-903(j) above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals ten (10). Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard and non-Standard Installation fees for drops.

(l) *Cable Service to Public Buildings.* The Grantee, shall maintain and continue to provide free services to all public buildings to which it was providing free service as of January 1, 2008, and upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Grantor, fire station(s), police station(s), and K-12 public school(s) existing as of January 1, 2008. For such additional buildings as may be added after January 1, 2008, Grantee shall provide a free outlet of Basic Service upon request, provided that, if the person requesting service is more than 350 feet from the Cable System, the company shall provide free service and an extension upon request, if the person requesting service agrees to pay the additional incremental cost of drop installation beyond the cost for the first three hundred and fifty (350) feet. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to, and used continuously by the general public (students are not treated as part of the general public for purposes of this paragraph).. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in buildings owned or controlled by Grantor in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. Each building may extend the service from the free outlet to other locations, and Grantee shall provide power levels to the building to permit service to be so extended. If additional amplifiers are required in the building, the Grantee may charge its actual cost of the amplifier.

(m) *Emergency Use.* If the Grantee provides an Emergency Alert System ("EAS"), then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System.

#### **Sec. 7-904. Regulation by the Grantor**

(a) *Franchise Fee.*

- A. The Grantee shall pay to the Grantor an annual franchise fee of five percent (5%) of annual Gross Revenue (as defined in subsection 7-901(J) of this Franchise). Each payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation, containing such information as the City may require to determine whether fees are being paid as required, and attested to as accurate by an officer of the grantee.
- B. *Limitation on Franchise Fee Actions.* The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.
- C. Grantor shall have the right to review and copy the books and records of the Grantee, and any person receiving revenues subject to the franchise fee hereunder, and Grantee shall be responsible for obtaining and providing such books and records to the City for its review at City Hall in the City of Billings, or such other location as the parties may agree.

- D. No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise fee or for the performance of any other obligation of Franchisee.

(b) *Rates and Charges.* The Grantor may regulate rates and charges except to the extent preempted from doing so by federal or state law.

(c) *Transfer of Franchise.* The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee as of the Effective Date, without the prior consent of the Grantor, such consent not to be unreasonably withheld. A change of control of Grantee or entities controlling Grantee shall be treated as a transfer. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness, provided that no such instrument permits any person to succeed to the ownership or control of the system without the approval of the City. Without limiting the other provisions of this Franchise, Grantor and Grantee shall comply with any federal regulations governing transfer of cable systems. In deciding whether to grant or deny a request for transfer, the City may consider any factors it may consider under applicable law, including without limitation the financial, technical and legal qualifications of the transferee, whether the Grantee is in compliance with its obligations, and the effect of the transfer on the City or subscribers. City may deny a transfer application for failure of Grantee or Transferee to respond to reasonable requests for information regarding the transfer. A request for approval of a transfer will not be unreasonably withheld.

#### **Sec. 7-905. Books and Records**

(a) The Grantee agrees that the Grantor, upon thirty (30) days written notice to the Grantee, may review and copy such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise, or applicable law, or to carry out any of the City's obligations under the same. Such notice shall reference the Section of the Franchise or applicable law giving rise to the request, so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, , other than revenue information, which must be maintained for at least five (5) years. Grantor agrees that it will not disclose information provided to it which is marked as confidential or proprietary, except as required to do so by Montana public records statutes or by court order. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act, and shall redact any such information.

(b) Upon request, Grantee shall provide the City with maps of its system as built, in hard copy or, if the City requests it, in an electronic format compatible with the City's mapping systems.

(c) Grantor may require Grantee to produce reports reasonably necessary to ensure compliance with the terms of this Franchise, or applicable law, or to carry out any of the City's obligations under the same.

#### **Sec. 7-906. Insurance and Indemnification**

(a) *Insurance Requirements.* The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in

the amount of \$1,500,000 combined single limit for bodily injury and property damage. The Grantor shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Grantor. The Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

(b) *Indemnification.* Grantee shall indemnify, save harmless and defend the City, its mayor and council, appointed boards and commissions, officers and employees, (collectively “City and its agents”) individually and collectively from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgments or liability of any kind (“Losses”) (including but not limited to libel, slander, invasion of privacy, unauthorized use of any trademark, trade name or service mark, copyright infringement, injury, death or damage to person or property) arising out of or in any way connected with the installation, construction, operation, maintenance or condition of the Cable System. The City shall give Grantee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this section, where Grantee is not a party thereto.

#### **Sec. 7-907. Enforcement and Termination of Franchise**

(a) *Violation.* In the event that the Grantor believes that the Grantee has not complied with the terms of the Franchise, or applicable law, the City may commence a proceeding in any court or agency of competent jurisdiction, and take such other actions as are permitted under this section, or other applicable law.

(b) *Liquidated Damages.* Franchisee and City agree to the following liquidated damages for the following violations. The parties agree that the liquidated damage amounts are in 2008 dollars and, upon notice from City, may be increased once every three (3) years by the increase in the U.S. City Average of the Consumer Price Index. Damages accrue from the date of the violation; provided that, nothing herein prevents Franchisee from raising a defense to the imposition of liquidated damages from the date of violation based upon laches, waiver, statute of limitations, or any other similar defense.

- A. For transferring this Franchise without required approval: One Thousand Dollars (\$1,000.00)/day for each violation for each day the violation continues.
- B. For failure to comply with requirements for PEG use of the System for which damages to the City are not readily ascertainable: Two Hundred Fifty Dollars (\$250.00)/day for each violation for each day the violation continues.
- C. For violation of customer service standards: One Hundred Dollars (\$100.00) per violation, except that for violations of customer service standards, such as telephone answering standards, where the operator's compliance is not measured in terms of its response to individual customers, One Thousand Five Hundred Dollars (\$1,500.00) a month for any period during which Franchisee fails to meet applicable performance standards; and
- D. For all other material violations of this Franchise for which actual damages may not be ascertainable: Two Hundred Fifty Dollars (\$250.00)/day for each violation for each day the violation continues.

(c) *Imposition of Liquidated Damages.* The City may impose liquidated damages in accordance with the procedures in this Section. The City shall provide Franchisee written notice describing with reasonable specificity the alleged noncompliance, and provide Franchisee with an opportunity to be heard at a public meeting, to show either that a violation has not occurred or that damages should not be imposed. The written notice shall be provided at least sixty (60) days prior to any hearing on the alleged noncompliance.

(d) *Nature of Liquidated Damages.* These sums are agreed upon as reasonable liquidated damages, developed in accordance with Montana law, and are not penalties.

(e) *Revocation of Franchise.* The City shall have the right to terminate, revoke or shorten the term of this Franchise for the reasons specified in the Cable Ordinance as of the effective date of this Franchise, pursuant to the procedures specified in the Cable Ordinance. Provided that, any amendments to the Cable Ordinance shall provide the same level of due process as is provided under the procedures provided for under the Cable Ordinance as the same existed on the effective date of this Franchise.

(f) *Force Majeure.* Franchisee shall not be deemed in default with provisions of this Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, natural catastrophes, or other events beyond Franchisee's control, provided that Franchisee takes immediate and diligent steps to comply as soon as possible under the circumstances with this Franchise without unduly endangering the health, safety and integrity of Franchisee's employees or property, or the health, safety and integrity of the public, public rights-of-way, public property, or private property.

#### **Sec. 7-908. Public, Educational and Governmental Use**

(a) *Definitions:* "Access, Public, Educational or Government, or PEG" refers to the availability of the System for Public, Education or Government ("PEG") use by various agencies, institutions, organizations, groups, and individuals, including the City and its Designated Access Providers, to acquire, create, and distribute video and non-video communications not under Grantee's editorial control.

(b) *Preservation of Existing Benefits.* Grantee shall continue to provide and maintain pathways and equipment associated with carrying the PEG channels that it was providing prior to and upon the effective date of this Franchise until and unless the City notifies Grantee that such support is no longer necessary.

(c) *Provision of Channel Capacity for PEG Use.* In the event that the Grantee Cable system would transition to an "All Digital" cable network, upon request Grantee shall provide up to one (1) additional digital channel for public, educational or government use on the basic service tier, when the usage triggers described in 7-908(n) are satisfied.

(d) *Management of Channels.* The City shall designate who is responsible for managing the PEG channels provided under this Franchise.

(e) *Availability.*

- A. PEG channels, other than on demand channels provided under Section 7-908(k) shall be viewable by any Subscriber without the need for obtaining any equipment other than the equipment required to receive broadcast channels; and shall be

provided as part of basic service tier, or if there is no basic service tier, as part of the service provided to any Subscriber.

- B. Other PEG channel capacity shall be useable by any Subscriber who is able to use any comparable commercial service, without any additional charges (for example, a Subscriber who is able to order commercial programming on demand shall also be able to obtain the PEG programming on demand).

(f) *Menus.* To the extent technically feasible, PEG programming choices shall be displayed on menus in a manner equivalent to the manner commercial programming choices are displayed. It is the responsibility of the entity that is responsible for managing a PEG channel to timely provide information that it wishes to have displayed on the menu.

(g) *Format.* PEG channel capacity (other than on-demand capacity) shall be provided in analog format until such time as Grantee digitizes all other channels on the basic service tier. PEG links and channels must be designed so that there is no noticeable deterioration in signal quality or programming as received from the PEG programmer. Once Grantee digitizes all other signals on the basic service tier, it shall provide all PEG channels in a digital format, including cablecasting in high definition format any PEG programming provided in high definition format. Channels used should be of a quality equivalent to other channels that were carried on the basic service tier.

(h) *Grantee's Responsibilities.*

- A. In addition to providing and maintaining the links that were in place as of the Effective Date of this Franchise, Grantee shall provide and maintain links to any location listed in its prior Franchise. The Grantee shall also provide and maintain links to the new program origination locations in accordance with the following. The links shall be designed to serve as a program origination point, and as a playback center for programming on any PEG channel.
  - 1. to one additional location at its cost, so long as the location is within 2640 cable bearing strand feet of the then-existing cable distribution network and any required land-owner permission is obtained,
  - 2. to additional locations where the Grantee's then-existing cable distribution network is already in place (Dehler Field being such a location)
  - 3. at the incremental cost of extending the nearest available fiber to the location, where (1) and (2) do not apply.
- B. The obligations under this Section include the responsibility to provide equipment necessary to place the signal on the system, and to route signals to the appropriate PEG channel, all without any noticeable PEG signal deterioration. Grantee is not responsible for any production equipment.
- C. If Grantee makes changes to its System that necessitate modifications to PEG facilities and equipment, including but not limited to the links, Grantee shall provide any



additional facilities or equipment necessary to implement such modifications within thirty (30) days of the date that the System changes are made, so that PEG facilities and equipment may be used and operated as intended.

(i) *Other Capital Support for PEG.*

- A. Grantee may be required to pay up to \$0.85 per subscriber per month for such support, beginning sixty (60) days after adoption of a resolution adopted by the City after at a public meeting. A separate resolution from this ordinance must be adopted to invoke this fee. This charge would be passed through to subscribers as a PEG fee, at Grantee's option.
- B. Grantee shall provide a lump sum amount of \$50,000, with one-half due within thirty (30) days of the effective date of this Agreement, and one-half due on the anniversary of the effective date.

(j) *Channel Location.* Grantee agrees to use reasonable efforts to locate PEG channels so that they are grouped with the majority of channels a Subscriber receives as part of the lowest level of service offered on the System. Grantee shall pay reasonable expenses associated with a change in the PEG channel positions, up to Three Thousand Dollars (\$3000.00) per change. Grantee shall also provide up to two (2) 15-second slots per day, on the channel previously occupied by a PEG channel, mixed over morning, afternoon, evening and late night time slots, for thirty (30) days after a change in channel positions, subject to restrictions on ad inserts in Grantee's contract with the applicable programmer. Grantee shall not change the channel position for the government channel designated by the City, without the City's consent unless the change is required by federal law. City consent will not be unreasonably withheld or delayed.

(k) *Video on demand.* As of the adoption of this resolution, Grantee has only recently begun to offer local video on demand content. Grantee is willing to make Billings a test bed for local video on demand programming, and Grantor agrees to use its best efforts to implement PEG video on demand in Billings. Grantor agrees to work cooperatively with Grantee in this effort, and to explore and develop operational and technical procedures for submitting, storing, adding, removing and tagging such programming, in a manner that is financially and technically feasible for both parties.

(l) *No Charge for Use.* The facilities, equipment and channel capacity provided for PEG Use shall be available at no charge from Grantee to users, to the City or to any entity responsible for managing a PEG channel. In the event separate resolution is enacted per Section 7-908(i)A above, the City recognizes that Grantee intends to pass those costs on to users, at its discretion.

(m) *Support Not A Franchise Fee.* The parties agree that any cost to the Company associated with providing any support for PEG use required under this Franchise shall not constitute a Franchise fee within the meaning of 47 U.S.C. § 542, and shall be deemed to fall within one or more of the exceptions listed in 47 U.S.C. § 542(g)(2).

(n). Satisfying any one of the following triggers shall entitle the City to the additional channel provided for in this section.

- A. If all PEG channels are being programmed at least eighty (80) hours per week over a

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consecutive sixteen (16) week period.

B. If all channels designated for a particular use (*e.g., educational use*) are being programmed at least eighty (80) hours per week over a consecutive sixteen (16) week period, an additional channel shall be provided for that particular use upon request by the City.

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C. If the City desires a governmental channel and there is no designated governmental channel, the City can show that there is a regular conflict over a consecutive sixteen (16) week period between programming it would carry and programming being carried on PEG channels.

The term “repeat program” means the running time of any program to the extent that it is shown more than four (4) times during the test period. Repeat programs are counted only to a maximum of twenty-five percent (25%) of total hours for purposes of the tests in paragraphs 1 and 2 above.

#### **Sec. 7-909. Miscellaneous Provisions**

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(a) *Actions of Parties.* In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

(b) *Entire Agreement.* This Franchise constitutes the entire agreement between the Grantee and the Grantor. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

(c) *Governing Law.* This Agreement shall be governed by the laws of the State of Montana unless expressly preempted by federal law. Venue for any litigation shall be in Yellowstone County, Montana.

(d) *Notice.* Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Grantor or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Grantor shall be addressed as follows:

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

The notices or responses to the Grantee shall be addressed as follows:

Sean O'Donnell

Regional Vice President and General Manager, Montana Operations  
Bresnan Communications  
1860 Monad Road  
Billings, Montana 59102  
(406) 238-7710

with a copy to: Robert Bresnan  
  
Senior Vice President  
  
Bresnan Communications, LLC  
  
One Manhattanville Road  
  
Purchase, NY 10577

The Grantor and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

(e)*Descriptive Headings.* The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

(f)*Severability.* If any non-material Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.”

**Section 3. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 4. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 5. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF BILLINGS

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

ATTEST:

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

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




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**AGENDA ITEM:**


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**CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, June 9, 2008**

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TITLE: Preliminary Minor Plat of Chalice Acres Subdivision  
 DEPARTMENT: Planning and Community Services  
 PRESENTED BY: David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** On May 1, 2008, the subdivider applied for preliminary minor plat approval of Chalice Acres Subdivision, which contains four lots on approximately 3.06 acres for residential development. The subject property is located west of the intersection of Kingston Avenue and Bench Boulevard. There are 3 existing homes on the subject property. The owners are Gene & Joy Culver and Engineering, Inc. is the agent.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on June 19, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plat

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

**RECOMMENDATION**

Staff recommends the City Council conditionally approve the preliminary minor plat of Chalice Acres Subdivision, approve the requested variance, and adopt the Findings of Fact as presented in the staff report to the City Council.

Approved by: City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

**ATTACHMENTS**

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

## **INTRODUCTION**

On May 1, 2008, the subdivider applied for preliminary minor plat approval of Chalice Acres Subdivision, which contains four lots on approximately 3.06 acres for residential development. The subject property is located west of the intersection of Kingston Avenue and Bench Boulevard. There are 3 existing homes on the subject property. Proposed Lots 1-3 have the existing homes on them and proposed Lot 4 is vacant. The subject property received special review to allow 7 four-plex multifamily dwellings on proposed Lot 4, on February 25, 2008, approved under Special Review #856. The existing northern parcel, Tract 1 of Certificate of Survey 1531, went through a zone change to rezone from Residential 7,000 (R-70) to Residential 6000 (R-60) on March 10, 2008, Zone Change #834. The owners are Gene & Joy Culver and Engineering, Inc. as agent. The subject property is zoned R-60.

## **PROCEDURAL HISTORY**

- On January 31, 2008, a pre-application meeting was conducted for the proposed subdivision.
- On May 1, 2008, an application for a preliminary minor subdivision was submitted to the Planning Division.
- On June 9, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed minor subdivision.

## **BACKGROUND**

General location:	West of the intersection of Kingston Avenue and Bench Boulevard		
Legal Description:	Tract 1 of Certificate of Survey (COS) 1531, and Tract 2 of COS 193		
Subdivider/Owner:	Gene and Joy Culver		
Engineer and Surveyor:	Engineering Incorporated		
Existing Zoning:	R-60		
Existing land use:	Proposed Lots 1-3 have existing homes on them and proposed Lot 4 is vacant		
Proposed land use:	Residential	Multi-Family	Condominium development on Lot 4.
Gross area:	3.06 acres		
Net area:	2.83 acres		
Proposed number of lots:	4		

Lot size: Max: 1.98 acres  
Min.: .24 acres

Parkland requirements: .218 acres of parkland required for the proposed Multi-Family Condominium development. The subdivider will provide a cash-in-lieu payment for parkland.

### **ALTERNATIVES ANALYSIS**

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

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize the effects on public health and safety before the final plat approval the SIA must identify a sidewalk along Bench Boulevard, to be constructed at a future time, but it is included as part of the cash contribution for Bench Boulevard. The amount of the cash contribution shall be determined by the City Engineering Division. *(Recommended by the Engineering Division)*
3. To minimize the effects on public health and safety and to inform prospective buyers the following language shall be added in the SIA under Conditions That Run With The Land:

The water system inside the private property lines are a private system and the Billings Heights Water District will not be responsible for any maintenance, repairs, or water quality issues that the State of Montana DEQ may require beyond the property line. The service lines and all appurtenances inside the property line are the responsibility of the developer. Once the subdivision is filed, service lines and all appurtenances become the responsibility of the Homeowners Association, if one is created, less the District supplied master meters. *(Recommended by the Billings Heights Water District)*



4. To minimize effects on public health and safety and to ensure the installation of utilities on the site the SIA in Section III. B. shall be written as shown below:

**B. Utilities**

1. Water and Sanitary Sewer Services:

The subdivider will install at their expense private water and sanitary sewer service to Lot 4 within the subdivision. Lots 1 and 3 have existing sanitary sewer stubs from the sewer main in Bench Boulevard with Lot 1 already connected to the sewer service. Lot 3 is not connected to the service stub. Lot 2 shall receive sewer service by tying into the public main within Bench Boulevard.

*(Recommended by City Public Works Department)*

5. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
6. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
7. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

**VARIANCES REQUESTED**

The subdivider is requesting a variance from Section 23-406.B.1 of the City of Billings Subdivision Regulations, which specifies that the right-of-way dedication for principle arterial streets shall be a 65-foot half-width for a 130-foot total width. The Engineering Division requested from the subdivider a half-width dedication of 40-feet along Bench Boulevard. The future street plan for this portion of Bench Boulevard includes a 40-foot half-width right-of-way dedication. The proposed variance will not be detrimental to the public and will not cause an increase in public costs.

**STAKEHOLDERS**

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. The Planning Division has received no public comments or questions regarding the proposed subdivision.

**CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

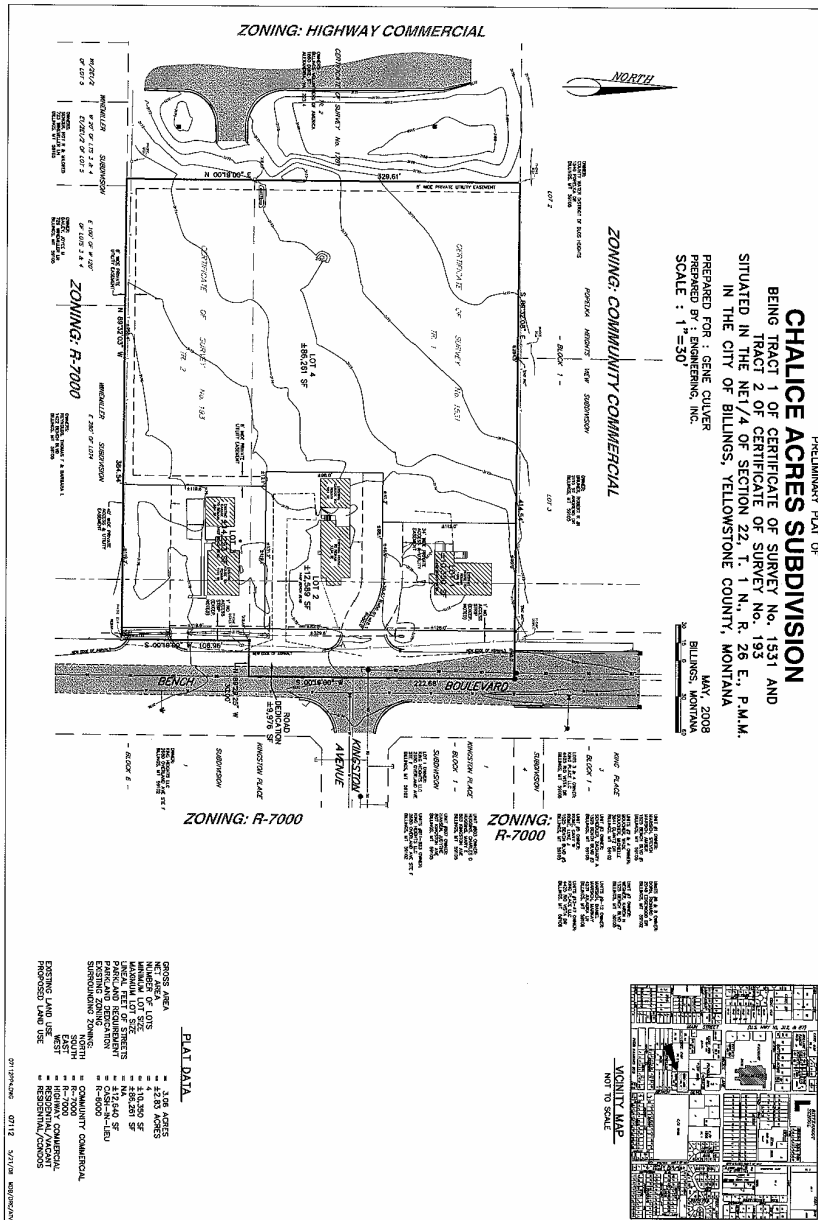
**RECOMMENDATION**

Staff recommends the City Council conditionally approve the preliminary minor plat of Chalice Acres Subdivision, approve the requested variance, and adopt the Findings of Fact as presented in the staff report to the City Council.

**ATTACHMENTS**

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

# **ATTACHMENT A** Preliminary Plat of Chalice Acres Subdivision



## **ATTACHMENT B**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for the preliminary minor plat of Chalice Acres Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

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

**1. Effect on agriculture and agricultural water user facilities**

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property.

**2. Effect on local services**

- a. **Utilities** –Water to the subject property will be extended from a water line that is in Bench Boulevard at the time of lot development. Sanitary sewer will be extended from a line also within Bench Boulevard. Condition #4 requires that the SIA Section III.B, be reworded to reflect which lots are already connected to public services and which lots will need to be connected to the public services. These services will be installed at the time of development of proposed Lot 4. This is a private development and all water lines inside property lines will be the responsibility of the private owners for all maintenance and upkeep, as required by Condition #3.
- b. **Stormwater** –As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Division.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for solid waste from this development.
- d. **Streets** – Access to each lot will be via individual driveways and easements from Bench Boulevard. As depicted on the Functional Classification Map, Bench Boulevard is a principal arterial proposed for 130 feet in width. The required right-of-way dedication is 65-feet; however, a variance has been requested by the subdivider to provide a 40-foot half width. As discussed within this report, the City Engineering Division requested the 40-foot half width and is supportive of this variance.

There are no required street improvements at this time. However, the Engineering Division did review the plat and is requesting that additional information be added to the SIA, Section III A.1, regarding future sidewalks and the cash contribution required for Bench Boulevard, as required by Condition #2.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St Andrews (Station #6).
- f. **Parks and Recreation** – As part of this plat, the subdivider is required to provide .218 acres of parkland. The subdivider is proposing a cash-in-lieu contribution to the Parks Department for the required parkland dedication. This subdivision is required to contribute to parkland because they are proposing to develop multi-family condominiums on proposed Lot 4. The applicant went through the special review process to gain approval for 7 four-plex buildings on proposed Lot 4 to be sold as condominiums, Special Review #856. Section 23-1002.B. BMCC requires parkland dedication for subdivision that provide for multi-family and condominium developments, in this case required dedication is 11%.
- g. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #5. The location of the mail boxes shall be reviewed and approved by the post office.

### **3. Effect on the natural environment**

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official. Once the building locations and sizes are finalized, further geotechnical studies will be required to determine specific design level geotechnical recommendations.

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

The proposed subdivision should not affect wildlife or habitat. There are no known endangered or threatened species on the property. However, there is a statement in the SIA, that lot owners should be aware that interactions with wildlife could occur and that any damage to property is the lot owner's responsibility.

### **5. Effect on the public health, safety and welfare**

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

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

An Environmental Assessment is not required, as this is a minor plat.

**C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)**

**1. Yellowstone County-City of Billings 2003 Growth Policy**

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

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)

*The proposed subdivision is consistent with the surrounding neighborhood with some commercial uses near by and a mix of multi-family and single family also in the area.*

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element Goal, Page 6)

*The subject property is compatible with the mixed uses, multi-family, single family and commercial, within the surrounding neighborhood.*

- Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)

*The subject property is located in an urbanized portion of the city and development of proposed Lot 4 is considered infill development.*

**2. Urban Area 2005 Transportation Plan Update**

Bench Boulevard is classified as a principle arterial street, which requires a 65-foot wide half width of right-of-way for each side of the street for a total of 130-feet in width per Table 23-406.B.1, BMCC. The City Engineering Division has asked for a 40-foot wide half width of right-of-way to be consistent with street widths to the north of this development. Therefore, the subdivider is dedicating the requested 40-feet along Bench Boulevard with the plat. No improvements are required for Bench Boulevard at this time.

**3. Heritage Trail Plan**

The Heritage Trail does not identify a trail corridor within this subdivision. However, in the Heritage Trail Plan, Bench Boulevard is identified as an arterial on street bikeway and eventually should be striped with a bike lane and provide a separated trail along the roadway.

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

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

The property will be served by public water and sewer services from Bench Boulevard so it will conform to sanitary requirements. In the SIA Section II.B, the wording shall be changed to wording recommended by condition #4. The language is as follows:

**B. Utilities**

**1. Water and Sanitary Sewer Services:**

The subdivider will install at their expense private water and sanitary sewer service to Lot 4 within the subdivision. Lots 1 and 3 have existing sanitary sewer stubs from the sewer main in Bench Boulevard with Lot 1 already connected to the sewer service. Lot 3 is not connected to the service stub. Lot 2 shall receive sewer service by tying into the public main within Bench Boulevard.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the R-60 zoning district. Required lot coverage and setbacks for existing structures meet current existing code.

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

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

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

Access to the lots will be via private drives and easements from Bench Boulevard.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Chalice Acres Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, June 9, 2008

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Ron Tussing, Mayor



**ATTACHMENT C**  
Mayor's Approval Letter

June 9, 2008

Gene and Joy Culver  
3208 Rugby Drive  
Billings, MT 59102

Dear Property Owner:

On June 9, 2008, the Billings City Council conditionally approved the preliminary plat of Chalice Acres Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize the effects on public health and safety before the final plat approval the SIA must identify a sidewalk along Bench Boulevard, to be constructed at a future time, but it is included as part of the cash contribution for Bench Boulevard. The amount of the cash contribution shall be determined by the City Engineering Division. *(Recommended by the Engineering Division)*
3. To minimize the effects on public health and safety and to inform prospective buyers the following language shall be added in the SIA under Conditions That Run With The Land:

The water system inside the private property lines are a private system and the Billings Heights Water District will not be responsible for any maintenance, repairs, or water quality issues that the State of Montana DEQ may require beyond the property line. The service lines and all appurtenances inside the property line are the responsibility of the developer. Once the subdivision is filed, service lines and all appurtenances become the responsibility of the Homeowners Association, if one is created, less the District supplied master meters. *(Recommended by the Billings Heights Water District)*

4. To minimize effects on public health and safety and to ensure the installation of utilities on the site the SIA in Section III. B. shall be written as shown below:

B. Utilities

1. Water and Sanitary Sewer Services:

The subdivider will install at their expense private water and sanitary sewer service to Lot 4 within the subdivision. Lots 1 and 3 have existing sanitary sewer stubs from the sewer main in Bench Boulevard with Lot 1 already connected to

the sewer service. Lot 3 is not connected to the service stub. Lot 2 shall receive sewer service by tying into the public main within Bench Boulevard.  
(Recommended by City Public Works Department)

5. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. (Recommended by the United States Postal Service)
6. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
7. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact David Green with the Planning Division at 247-8654 or by email at [greend@ci.billings.mt.us](mailto:greend@ci.billings.mt.us)

Sincerely,

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Ron Tussing, Mayor

pc: David Capser, Engineering Incorporated

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

TITLE: Final Plat of Brookshire Subdivision  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** The final plat for Brookshire Subdivision is being presented to Council for approval. On March 24, 2008, the City Council conditionally approved five lots on approximately 8.87 acres for commercial and residential multi-family development. The subject property is located on the southwest corner of the intersection of Central Avenue and Brookshire Boulevard. The property was annexed and rezoned from Residential 9600 to Neighborhood Commercial, Residential Professional, and Residential Multi-Family Restricted by the City Council on September 24, 2007. The subdivider is Hanser Capital and the representing agent is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

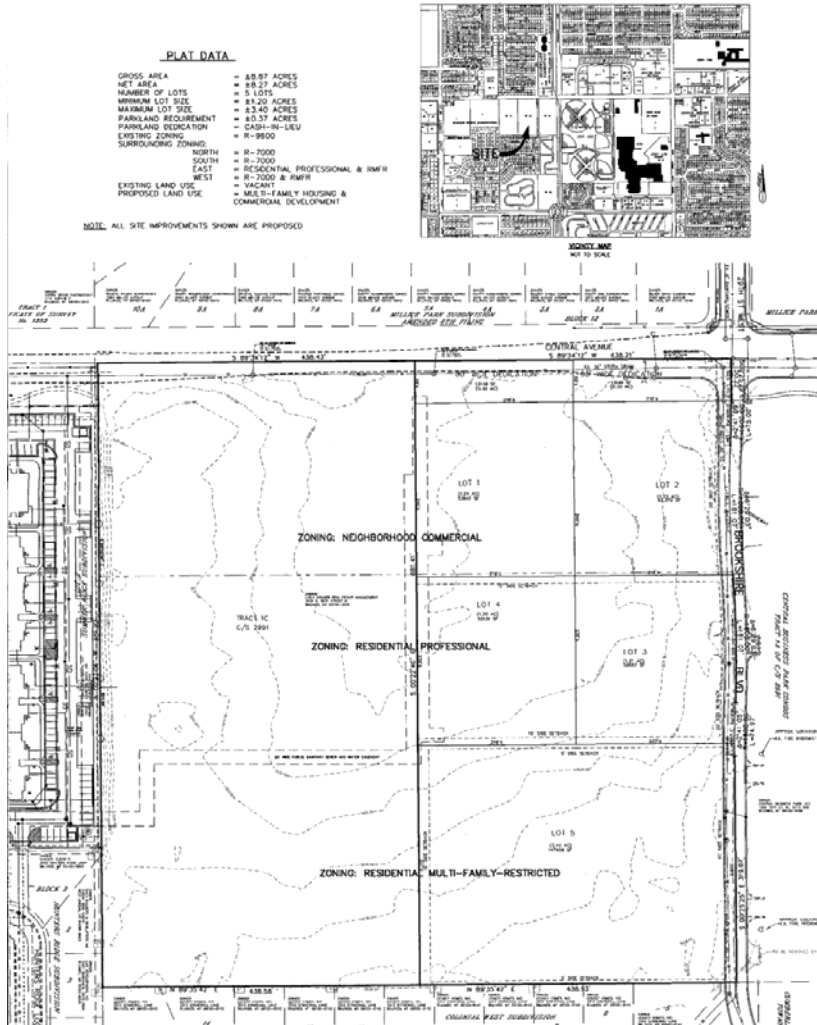
A: Plat

## ATTACHMENT A

### BROOKSHIRE SUBDIVISION BEING TRACT 1B OF CERTIFICATE OF SURVEY No. 2991 SITUATED IN THE NW 1/4 OF SECTION 12, T. 1 S., R. 25 E., P.M.M. YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : HANSEN CAPITAL  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1" = 50'

FEBRUARY, 2008  
BILLINGS, MONTANA



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JUNE 9, 2008**

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

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

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

Parking	\$ 2,006.40	- Reserved parking and parking validations uncollected from the Sheraton Hotel.
Police	\$ 2,318.94	- Security charges of \$2,250 for Police protection. It was agreed with the customer for them to pay half. Also, \$68.94 was voided from towing charges of customers that have gone out of business.
Parks/Rec	\$ 1,653.95	- Landscaping charges for the MT District Little League. After discussion with the customer, it was decided the customer could not pay.
Solid Waste	\$14,471.56	- Bad debts from landfill usage, residential pickup and dumpster lease. These charges were turned over to the collection agency of CBB Collections and they were unsuccessful in collecting. One large bad debt from Blount Construction amounted to \$12,166.80.

**FINANCIAL IMPACT:** The \$6,122.78 of canceled warrants and checks will be reverted back to affected funds. Employees were notified and given the opportunity to pay the stop payment fee and have the check reissued. Employees are still responding so checks that are re-issued will not be cancelled.

The \$20,450.85 of uncollectible bad debts will be eliminated.

**RECOMMENDATION**

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

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

**ATTACHMENTS**

A- Outstanding Warrants to be Cancelled by City Council

9780 pat

**VOIDED CHECKS TO COUNCIL- JUNE 2008**  
**PAYROLL Checks Outstanding Thru 4-30-07**

<u>Number</u>	<u>Date</u>	<u>Name</u>	<u>Amount</u>
306686	5/26/2006	Bjornstead, Cameron C.	\$ 8.96
307960	7/21/2006	Feurstein, Vincent R.	13.31
308008	7/21/2006	Wichman, Shawn A.	8.06
311830	2/16/2007	Eccles, Doris J.	18.47
306345	4/28/2006	Schaak , Donald	<u>53.93</u>
			<b><u>\$ 102.73</u></b>

**VOIDED CHECKS TO COUNCIL- JUNE 2008**  
**FLEX Checks Outstanding Thru 4-30-07**

<u>Number</u>	<u>Date</u>	<u>Name</u>	<u>Amount</u>
43185	5/3/2006	Ruckman, Marilyn	\$ 5.00
43188	5/3/2006	Skillestad, Ryan	8.69
43494	5/17/2006	Patricia Denson	15.00
43594	5/24/2006	Brewington, Ralph	24.07
43716	5/31/2006	Brewington, Ralph	32.07
43953	6/14/2006	Brewington, Ralph	72.80
43955	6/14/2006	Hobby, Eugene	281.22
43964	6/14/2006	Sjolseth, Dean	9.50
44203	6/28/2006	Brewington, Ralph	11.76
44491	7/19/2006	Brewington, Ralph	33.70
44496	7/19/2006	Martin, Ronald	79.47
44574	7/24/2006	Hinkel, David	20.86
44689	8/2/2006	Wegner, Ronald	15.00
44848	8/16/2006	Melvin, Jesse	10.34
44886	8/16/2006	Falcon, Christine	380.14
44887	8/16/2006	Bishop, Travis	15.00
44916	8/16/2006	Chaney, Matthew	3.96
45074	9/6/2006	Rookhuizen, Herman	45.80
45218	9/15/2006	Knisely, Mary Jane	31.08
45423	10/11/2006	Martin, Ronald	136.41
45448	10/11/2006	Schaubel Nikki	17.48
45492	10/13/2006	Solberg, Tim	4.49
45659	11/1/2006	Williams, Kenneth	7.97
45670	11/3/2006	Sjolseth, Dean	29.50
45713	11/8/2006	Mertz, James	45.91
45894	11/27/2006	Biggins, Sean	25.00
45975	12/1/2006	Hart, Lawrence	27.26
46228	12/27/2006	Cochran, William	10.85
46269	1/2/2007	Beaudry, Candis	.55
46275	1/2/2007	Beckett, Brenda	30.00
46395	1/22/2007	Walker, Dianna	34.45
46570	1/26/2007	O'Connell, Timothy	321.54
46577	1/26/2007	Smith, Terry	16.69
47027	2/12/2007	Mumford, David	38.78
47053	2/14/2007	Kuntz, Dellon	30.00

47064	2/14/2007	Guy, Michael	512.08
47748	3/12/2007	Jochems, Marvin	60.00
47981	3/21/2007	Taylor, Dellon	63.45
48283	4/4/2007	Pulver, Don	619.79
48375	4/6/2007	Fox, Ronda	20.00
48574	4/18/2007	Smidt, Terry	138.53
			<u>\$ 3,286.19</u>

**VOIDED CHECKS TO COUNCIL- JUNE 2008**  
**HEALTH Checks Outstanding Thru 4-30-07**

<u>Number</u>	<u>Date</u>	<u>Name</u>	<u>Amount</u>
181938	5/16/2006	Nugent, Steve	\$ 8.69
182877	6/13/2006	Desert Sky Chiropractic	20.00
186672	10/3/2006	Dvorak, Kari	1.52
189082	12/12/2006	Gilluly Michael J.	20.00
189121	12/12/2006	Judith L. Starr EDD LCPC	45.00
191184	2/13/2007	Heights Family Practice	175.03
192372	3/20/2007	Paradise Valley Medical Clinic	217.91
193329	4/24/2007	Timmons, Lora M.	52.57
			<u>\$ 540.72</u>

**VOIDED CHECKS TO COUNCIL- JUNE 2008**  
**ACCOUNTS PAYABLE Checks Outstanding Thru 4-30-07**

<u>Number</u>	<u>Date</u>	<u>Name</u>	<u>Amount</u>
685844	5/19/2006	JEAN CAITLIN	\$ 7.50
685862	5/19/2006	MARY WINGER	5.00
686941	6/23/2006	ERIC SPAHN	5.00
687016	6/23/2006	MORNING STAR EXPEDITIONS	10.00
687568	7/14/2006	CHARLOTTE FALCON	5.16
687644	7/14/2006	LAW, ED	5.00
688360	8/4/2006	HOLLY STERN	25.00
688474	8/4/2006	YELLOWSTONE VALLEY FARMERS'	300.00
689348	8/28/2006	DELGADO, BETTY	5.00
689777	9/15/2006	HATCH, A BETTY	14.71
690275	9/29/2006	GRIMM, MARY JANE	22.93
690756	10/13/2006	DAIMON DELEON	107.50
690834	10/13/2006	LABANE, MERCEDES	105.88
692153	12/1/2006	BUILDING CODES BUREAU	31.00
692286	12/1/2006	SCHAAK, DONALD	5.00
693982	2/2/2007	FERN HEGLE	55.00
694656	2/23/2007	MEHLHAFF, TAMMY	5.00
694984	3/9/2007	COONEY, KIMBERLY	5.00
695568	3/23/2007	MCCLEARY, LORIE	5.00
695958	4/6/2007	EATON, JACOB	18.46
696391	4/20/2007	HURLOCKER, RICH	5.00
696680	4/27/2007	KIMBERLY IRON	25.00
			<u>\$ 773.14</u>

**VOIDED CHECKS TO COUNCIL- JUNE 2008**



**BOND & COUPON Checks Outstanding  
Thru 4-30-07**

<u>Number</u>	<u>Date</u>	<u>Name</u>	<u>Amount</u>
28478	7/1/2004	CITIGROUP GLOBAL MKTS, INC	\$ 390.00
28473	7/1/2004	SALOMON SMITH BARNEY	515.00
28592	1/1/2006	SALOMON SMITH BARNEY	515.00
			<u><b>\$ 1420.00</b></u>
		<b>TOTAL</b>	<u><b>\$ 6,122.78</b></u>

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Z<sub>1</sub>

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

---

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$380,435.42 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 9, 2008, are on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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Z<sub>2</sub>

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

---

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,489,060.33 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 16, 2008, are on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

---

TITLE: W.O. 02-08, Milton Lane School Route Resolution Ordering Construction  
 DEPARTMENT: Public Works - Engineering  
 PRESENTED BY: David D. Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** On April 28<sup>th</sup>, 2008, Council passed a Resolution of Intent for this project and established a Public Hearing date of May 27, 2008. At the May 27<sup>th</sup> City Council Meeting/Public Hearing, the Council moved to delay action until additional information was gathered. In order to proceed with construction of the project Council must pass a resolution ordering construction of the improvements after conducting the public hearing.

**FINANCIAL IMPACT:** The proposed project is funded through multiple sources, including direct property assessments for a total project cost of \$480,500, as follows:

Estimated Assessed Costs	\$ 67,000
CTEP	\$125,000
Storm Drain	\$ 50,000
CDBG (for Storm Drains)	\$ 52,500
Gas Tax Funds	\$186,000

Funding for the proposed project has already been authorized in the Capital Improvement Plan and is identified in the Fiscal Year 2008 budget.

**RECOMMENDATION**

Staff recommends that Council pass a resolution ordering construction of the improvements identified in Work Order 02-08, Milton Lane School Route.

**ATTACHMENT**

A. Resolution Ordering Improvements

## **INTRODUCTION**

The purpose of this project is to provide school route sidewalks along Milton Lane from the east side of Bench Elementary School to Lake Elmo Drive. The project will entail completion of the street section, curb & gutter, sidewalks, installation of storm drain improvements, enhanced crosswalks, and school frontage improvements.

## **PROCEDURAL HISTORY**

### Completed Items

- November 14, 2005 – Council approved using CDBG funds for storm drain for Milton Lane
- June 6, 2006 – CTEP Project Specific Agreement approved by Council
- September 20, September 27, and October 4, 2007 – RFP advertisement dates
- October 19, 2007 – Proposals received by Engineering Division
- November 14, 2007 – Selection committee meeting
- February 11, 2008 – Award of Contract for Professional Services
- April 28, 2008 – Creation of sidewalks assessment project by Council
- May 27, 2008 – Public Hearing was held, and action on Resolution of Ordering Improvements was delayed

### Future Items

- June 9, 2008 –Resolution of Ordering Improvements (**this memo**)
- June 2008 –Design completed, advertising for construction contract and contract award
- July 2008 – Construction begins
- September 2008 – Construction complete

## **BACKGROUND**

The properties on the north side of Milton Lane have sidewalk, curb & gutter existing. The improvements to these properties will be based on the condition of the facilities. Bench Elementary School is located on the north side of Milton Lane, but it will receive further upgrades to its sidewalk to enhance the school crossings. The properties on the south side of Milton Lane have no sidewalk, curb & gutter. The pavement will be widened to the new improvements.

The proposed project uses funding allocations from various sources. The properties will be assessed for the extra pavement width, sidewalk, and curb & gutter. Of this assessment, CTEP funds will pay for 50% of the sidewalk and the curb & gutter. CDBG and Storm Drain funds will be used to pay for the storm drain improvements with this project. The Gas Tax funds will be used for the remainder of the construction and engineering costs.

## **RECOMMENDATION**

Staff recommends that Council pass a resolution ordering construction of the improvements identified in Work Order 02-08, Milton Lane School Route.

## **ATTACHMENT**

- A. Resolution Ordering Improvements

RESOLUTION NO. 08 - \_\_\_\_\_

A RESOLUTION RELATING TO W.O. 02-08, MILTON LANE SCHOOL ROUTE; ORDERING THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

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

Section 1. Passage of Resolution of Intention. This Council, on April 28, 2008, adopted Resolution No. 08-18704 (the "Resolution of Intention"), pursuant to which this Council declared its intention to order in certain sidewalks, curb, gutter and street improvements, designated as W.O. 02-08 (the "Project") of the City, under Montana Code Annotated, Title 7, Chapter 14, Part 41, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of sidewalk, curb and sidewalk, curb and gutter improvement bonds drawn on the Project (the "Bonds"), the creation and administration of the Project, and the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

Section 2. Notice and Public Hearing. Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with law, and on June 9, 2008, this Council conducted a public hearing on the ordering in of the Project and the making of the Improvements.

Section 3. Order. It is hereby ordered that the following improvements shall be constructed, reconstructed, repaired, or replaced:

See Exhibit "A" attached hereto.

Section 4. Affected Properties. All properties which will be required to pay any portion of the costs of the improvements identified herein are identified in Exhibit "B" attached hereto.

## Section 5. Reimbursement Expenditures.

5.01. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

5.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provisions contained in Section 1.150-2(j) (2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated aggregate principal amount of \$67,000 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the city’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

5.05. Reimbursement Allocations. The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be

evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

Section 6. Property Owner Option to Construct Improvements. Notice of passage of this Resolution shall be mailed to all affected property owners and said owners shall have thirty (30) days from the date of said Notice in which to install the ordered improvements at their cost and expense. In the event the owners do not take said action within the said thirty (30) day period, the City will install the improvements and will assess the costs thereof, all costs of administration and engineering and all bond issuance costs against the real property.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 27<sup>th</sup> day of May 2008.

THE CITY OF BILLINGS:

BY \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

BY \_\_\_\_\_  
CITY CLERK



**Location of Work**  
**Work Order 02-08**  
**Milton Lane School Safe Route**  
**Exhibit "A"**

Sidewalk, curb ramps, driveway approaches, pavement widening, and curb and gutter will be constructed with this Special Improvement District. The properties included in this district are those along Milton Lane from Lake Elmo Drive to the easterly property line of Bench Elementary School.

<b>Work Order 02-08</b> <b>Milton Lane School Safe Route</b> <b>Exhibit "B"</b>						
Tax Code	SID #	SID Pay-off	Delinquent	WO 02-08 Assessment	SID Pay-off + Delinquent + WO 02-08 Assessment	Estimated Market Value
A13246				\$ -	\$ -	\$ 125,339.00
A13247	9702	\$ 68.35		\$ 1,238.51	\$ 1,306.86	\$ 118,302.00
A13248	9702	\$ 46.40		\$ 861.58	\$ 907.98	\$ 72,560.00
A13250	9702	\$ 72.95		\$ 969.27	\$ 1,042.22	\$ 114,102.00
A14783				\$ 3,473.67	\$ 3,473.67	\$ 74,417.00
A14784				\$ 4,278.00	\$ 4,278.00	\$ 81,808.00
A14785				\$ 3,159.07	\$ 3,159.07	\$ 64,356.00
A14786				\$ 3,122.02	\$ 3,122.02	\$ 64,390.00
A14787				\$ 3,200.22	\$ 3,200.22	\$ 26,334.00
A14788				\$ 3,112.17	\$ 3,112.17	\$ 68,632.00
A14791				\$ 6,034.02	\$ 6,034.02	\$ 59,222.00
A31131				\$ 6,722.07	\$ 6,722.07	\$ 320,141.00
A31134				\$ 2,853.63	\$ 2,853.63	\$ 22,322.00
A31135				\$ -	\$ -	\$ 63,986.00
D05335				\$ 23,084.07	\$ 23,084.07	\$ 1,629,142.00
D05338A				\$ 4,891.64	\$ 4,891.64	\$ 39,693.00
Average		\$ 62.57	\$ -	\$ 4,187.50	\$ 4,199.23	\$ 184,046.63
Median		\$ 68.35	\$ -	\$ 3,140.55	\$ 3,140.55	\$ 70,596.00
Low		\$ 46.40	\$ -	\$ -	\$ -	\$ 22,322.00
High		\$ 72.95	\$ -	\$ 23,084.07	\$ 23,084.07	\$ 1,629,142.00

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, June 9, 2008**

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**TITLE:** Public Hearing and Resolution Approving the Disposal of City Property, Approval of Right-of-Way Easement and Right-of-Way Agreements for the Airport Road Project MT 009

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** The Montana Department of Transportation (MDT) has requested to purchase portions of City owned property and to secure right-of-way easements on adjoining property managed by the Airport for the right-of-way and construction to widen the Airport road from Main Street to the Airport entrance at North 27th Street. MDT has also agreed to compensate the Aviation and Transit Department for the Airport property that will be disturbed and displaced during the construction process.

MDT has supplied the City with a Right-of-Way Agreement, two (2) Easements, and two (2) Bargain and Sale Deed documents, one deed for the land purchased with Federal Grant Funding and one deed for the City owned land. The Airport is seeking official approval from the Federal Aviation Administration (FAA) to release the portion of land purchased with Federal funds. The FAA Area District Office in Helena has determined that this sale is reasonable and benefits the Airport because of the new road and Airport access. However, before final transfer can take place, a 30-day notice must be placed in the Federal Register, which is awaiting FAA posting. MDT had initial concerns that the July bid date for the total project would be missed due to the delay by the FAA. After discussing the situation with the MDT, staff there is willing to accept Council approval with the Mayor's execution of the Right-of-Way Agreement, approval of the Easements, and approval of the Deed documents with contingent execution of the Easements and Deeds when the FAA has finally cleared the sale of the property purchased with Federal funds. The MDT would then continue with the July bid for construction. If the Agreement is not approved and signed, the project will be delayed until an acceptable agreement is reached. The documentation for these items is available for viewing at the office of the City Clerk.

**FINANCIAL IMPACT:** The Right-of-Way Agreement encompassing the sale and easement of City property to the MDT will provide the City's Aviation and Transit Department with \$184,400 in compensation; however, \$23,775 must be returned to the FAA as reimbursement for the portions of land purchased with Federal funds.

**RECOMMENDATION**

Staff recommends that City Council approve the Resolution to Dispose of City Property, approve the Right-of-Way Easements, approve the acceptance of the MDT's Right-of-Way Agreement, and authorize the Mayor to immediately execute the Right-of-Way Agreement with contingent authorization to execute the two (2) Bargain and Sale Deeds and two (2) Right-of-Way Easements when the FAA has finalized approval of the transfer of the land purchased with Federal funds.

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

**Attachments:**

A:      Resolution

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, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings owns and desires to sell the real property generally described as approximately 11 acres adjacent to the existing Highway 3 Corridor, beginning at the east end of the Airport property, west to approximately the Airport Operations Building, Billings, Montana for future Highway 3 right-of-way; and

WHEREAS, the real property to be disposed of is more particularly described on **Exhibit A** attached and made a part hereof, and

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

WHEREAS, a public hearing required by Section 22-902 of the Billings Montana City Code was held on the 9th day of June 2008.

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

That the City Staff is authorized to proceed with the sale of the real property described above, under the requirements of Section 22-902 of the Billings, Montana City Code.

APPROVED by the City Council of the City of Billings this 9th day of June 2008.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
RON TUSSING, MAYOR

ATTEST:

\_\_\_\_\_  
CARI MARTIN, CITY CLERK

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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

**TITLE:** Public Hearing and Resolution for Fees Associated with Various Applications and Services Provided by the Planning Division

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

**PROBLEM/ISSUE STATEMENT:** The Planning Division is presenting an updated fee schedule to the City Council for approval. The Division is proposing a 10% increase in most of its fees, and is proposing several new fees (See Attachment A). A Subdivision Pre-Application Meeting fee and a Master Site Plan Review fee are new fees proposed. Subdivision Pre-Application meetings are currently free to applicants. Planning staff has found that many hours of preparation, meeting time and follow up with applicants is often involved. Staff also has found that some applicants request multiple meetings on one property before an application is ever submitted. The Pre-Application Meeting fee would be charged per meeting for all customers. The proposed Master Site Plan Review fee follows a new process developed in conjunction with the ICC Building Division Operations Appraisal. The Planning Division proposes to manage a Master Site Plan Review that would require Master Site Plan approval prior to building permit approval for certain residential and commercial projects.

The Division is proposing these fees and fee increases to offset the costs of providing application processing and permit review. While several new fees were added in 2006 and several fees were increased, most of the Division's fees have not increased since 2003. This proposed increase reflects a 2% per year increase over the last five years. Attachment B provides a comparison between current fees and the proposed fees with minor and major subdivisions.

**FINANCIAL IMPACT:** Should the City Council approve the new fee schedule, services rendered by the Planning Division will more accurately reflect the costs to provide services, resulting in additional revenues for the Planning Division.

**RECOMMENDATION**

Staff recommends that the City Council approve the resolution for fees associated with various applications and services provided by the Planning Division.

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

**ATTACHMENTS**

A. Fee Table

B. Subdivision Fee Comparison

C. Resolution

### Planning Division Fees

Last Fee Amendments Adopted December 2006  
Last Overall Fee Increases Adopted October 2003

#### Proposing 10% increase in most existing fees and several new fees for Fiscal Year 2009

##### SUBDIVISION FEES

		<u>2003 Approved</u>	<u>2006 Approved</u>	<u>FY2009 Propo:</u>
<b>Pre-Application Meetings</b>				<b>NEW FEE - \$:</b>
Preliminary Major Plat	6 to 40 lots	\$1500.00	NO CHANGE	<b>\$1,650.00</b>
	41 to 200 lots	\$3,500.00	NO CHANGE	<b>\$3,850.00</b>
	Over 200 lots	\$4,500.00	NO CHANGE	<b>\$4,950.00</b>
Preliminary Minor Plat		\$550.00	NO CHANGE	<b>\$605.00</b>
Preliminary Subsequent Minor Plat			\$550.00	<b>\$605.00</b>
Final Major Plat	6 to 40 lots	\$400.00	NO CHANGE	<b>\$440.00</b>
	41 to 200 lots	\$600.00	NO CHANGE	<b>\$660.00</b>
	Over 200 lots	\$900.00	NO CHANGE	<b>\$990.00</b>
Final Minor Plat		\$250.00	NO CHANGE	<b>\$275.00</b>
Final Subsequent Minor Plat			\$250.00	<b>\$275.00</b>
Expedited Plat			\$400.00	<b>\$440.00</b>
Exempt Plat		\$200.00	NO CHANGE	<b>\$220.00</b>

		<u>2003 Approved</u>	<u>2006 Approved</u>	<u>FY2009 Proposed</u>
Corrections or Vacations of Recorded Final subdivision plats or supporting documents			\$200.00	<b>\$220.00</b>
Corrections or Adjustments to Plats, Conditions, and supporting documents after preliminary plat approval				
	Minor Adjustments		\$200.00	<b>\$220.00</b>
	Major Adjustments	as below		
	Major subdivisions affecting:			
	6 to 40 lots		\$1,000.00	<b>\$1,100.00</b>
	41 to 200 lots		\$3,000.00	<b>\$3,300.00</b>
	Over 200 lots		\$4,000.00	<b>\$4,400.00</b>
	Minor subdivisions		\$400.00	<b>\$440.00</b>
<b><u>ANNEXATIONS</u></b>				
	Residential \$200		\$800.00	<b>\$880.00</b>
	Commercial \$600			
Deposit for annexation application posting signs (to be refunded after sign is returned)				<b>NEW FEE</b>
<b><u>URBAN PLANNING AREA CHANGE</u></b>			\$500.00	<b>\$550.00</b>
<b><u>ZONING FEES</u></b>				
Zone Change	Residential	\$650	<b>NO CHANGE</b>	<b>\$715.00</b>
	Commercial	\$900	<b>NO CHANGE</b>	<b>\$990.00</b>
Special Review	Residential	\$650	<b>NO CHANGE</b>	<b>\$715.00</b>
	Commercial	\$900	<b>NO CHANGE</b>	<b>\$990.00</b>
Variance	Residential	\$325	<b>NO CHANGE</b>	<b>\$358.00</b>
	Commercial	\$400	<b>NO CHANGE</b>	<b>\$440.00</b>



		<u>2003 Approved</u>	<u>2006 Approved</u>	<u>FY2009 Proposed</u>
Planned Unit Development	<5 acres	\$750.00	NO CHANGE	<b>\$825.00</b>
	>5 acres	\$1200.00	NO CHANGE	<b>\$1,320.00</b>
Deposit for zoning application posting signs (refunded after sign returned) \$45.00				NO CHANGE
Medical Corridor Review			\$600	<b>\$660.00</b>
Temporary Use Permit	Initial review	\$150.00	NO CHANGE	<b>\$165.00</b>
	Annual review	\$100.00	NO CHANGE	<b>\$110.00</b>
Zoning Clarification	Written	\$25.00	NO CHANGE	<b>\$28.00</b>
	On-site visit	\$50.00	NO CHANGE	<b>\$55.00</b>
Zoning Compliance Review (Add County FY09)			<b>\$41.00(2007)</b>	NO CHANGE
<b>Master Site Plan Review (City Only)</b>			NEW FEE	<b>\$800.00</b>
Signs	County	\$1.00/sq. ft.	NO CHANGE	<b>\$3.00/sq.ft.</b>
	City	\$1.00/sq. ft.	\$3.00/sq. ft.	NO CHANGE
<b>Resubmittal and Amendment Charges for zoning applications:</b>				
For all Zone Change applications resubmitted within 1 year of a withdrawal request made after the legal advertising			\$500.00	<b>\$550.00</b>
For all Special Review applications resubmitted within 1 year of a withdrawal request made after the legal advertising			\$500.00	<b>\$550.00</b>
For all Variance applications resubmitted within 1 year of a withdrawal request made after the legal advertising			\$500.00	<b>\$550.00</b>

**ATTACHMENT B  
SUBDIVISION FEE COMPARISON**

Fee Increase Comparison for Major and Minor Subdivisions

<b>Minor Subdivision</b>	<b>Current Fees</b>	<b>Proposed Fees</b>
Pre-Application Meeting:		\$200
Preliminary Minor Plat Application:	\$550	\$605
Final Minor Plat Application:	\$250	\$275
<hr/>		
Total:	\$800	\$1,080 (+26%)

<b>Major Subdivision</b>	<b>Current Fees</b>	<b>Proposed Fees</b>
Pre-Application Meeting:		\$200
Preliminary Major Plat Application: (41-200 Lots)	\$3,500	\$3,850
Final Major Plat Application: (41-200 Lots)	\$600	\$660
<hr/>		
Total:	\$4,100	\$4,710 (+13%)

**ATTACHMENT C  
RESOLUTION**

RESOLUTION NO. 08-\_\_\_\_\_

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA PURSUANT TO  
ORDINANCE NO. 4314, AMENDED BY ORDINANCE NO. 4494 FOR FEES  
ASSOCIATED WITH VARIOUS APPLICATIONS AND SERVICES PROVIDED BY  
THE CITY/COUNTY PLANNING DEPARTMENT.

WHEREAS, Ordinance No. 4314, amended by Ordinance No. 4494 provides that  
applications fees shall be established by Resolution;

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

1. FEES. The following fees are hereby established and are payable upon application:

Planned Unit Development	<5 acres	\$825.00
	>5 acres	\$1,320.00
Medical Corridor Review		\$660.00
Zone Changes		
Residential		\$715.00
Commercial		\$990.00
Special Review		
Residential		\$715.00
Commercial		\$990.00
Variance		
Residential		\$358.00
Commercial		\$440.00
For all Zone Change applications resubmitted within 1 year of a withdrawal request made after the legal advertising		\$550.00
For all Special Review applications resubmitted within 1 year of a withdrawal request made after the legal advertising		\$550.00

For all Variance applications resubmitted within 1 year of a withdrawal request made after the legal advertising		\$550.00
Deposit for zoning application posting signs		\$45.00
Annexation		\$880.00
Deposit for annexation application posting signs		\$45.00
Urban Boundary Change		\$550.00
Pre-Application Meeting		\$200.00
Preliminary Major Plat	6 to 40 lots	\$1650.00
	41 to 200 lots	\$3,850.00
	Over 200 lots	\$4,950.00
Preliminary Minor Plat		\$605.00
Preliminary Subsequent Minor Plat		\$605.00
Final Major Plat	6 to 40 lots	\$440.00
	41 to 200 lots	\$660.00
	Over 200 lots	\$990.00
Final Minor Plat		\$275.00
Final Subsequent Minor Plat		\$275.00
Expedited Plat		\$440.00
Exempt Plat		\$220.00
Corrections or Vacations of Recorded Final subdivision plats or supporting documents		\$220.00
Corrections or Adjustments to Plats, Conditions, and supporting documents after preliminary plat approval		
	Minor Adjustments	\$220.00
	Major Adjustments	as below
Major subdivisions affecting:		
	6 to 40 lots	\$1,100.00
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	41 to 200 lots	\$3,300.00
	Over 200 lots	\$4,400.00
Minor subdivisions		\$440.00
Temporary Use Permit	Initial review	\$165.00
	Annual review	\$110.00
Zoning Clarification	Written	\$28.00
	On-site visit	\$55.00
Master Site Plan Review		\$800.00
Signs		\$3.00/square foot

Resubmittal and Amendment Charges for zoning applications:

2. EFFECTIVE DATE. The fees established herein shall become effective upon passage of this resolution and remain in effect thereafter until changed by resolution.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2008

THE CITY OF BILLINGS

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

ATTEST:

\_\_\_\_\_  
Cari Martin, City Clerk

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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**TITLE:** Public Hearing and Resolution Setting Mill Levy Rates  
**DEPARTMENT:** Administration – Finance Division  
**PRESENTED BY:** Patrick Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** This resolution establishes the city property tax mill levy rates for General, Transit, Library, and Public Safety I for fiscal year 2009. These mill levy rates have remained the same since 2001.

The mill levy rates for general obligation debt service funds for PRPL and Streets, Ballpark, and Public Safety II will be established when the City has received the certified taxable valuation information from the Montana Department of Revenue.

**RECOMMENDATION**

Staff recommends that the City Council approve the resolution setting the mill levy rates for fiscal year 2009.

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

**ATTACHMENT**

A- A Resolution Making the Annual All-Purpose Mill Levy and Mill Levies for Library Operating, Transit Operating, Public Safety Funds for the Fiscal Year 2008-2009.

RESOLUTION NO.08 \_\_\_\_\_

A RESOLUTION MAKING THE ANNUAL ALL-PURPOSE MILL LEVY AND MILL LEVIES FOR LIBRARY OPERATING, TRANSIT OPERATING, AND PUBLIC SAFETY FUNDS FOR THE FISCAL YEAR 2008-2009.

WHEREAS, pursuant to law, the City of Billings is required to make annual mill levies.

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

1. That an All-Purpose Annual Mill Levy in the amount of 74 Mills is hereby imposed on all taxable property within the City of Billings, Montana, for the Fiscal Year **July 1, 2008 through June 30, 2009.**

2. That additional Mill Levies in the amounts stated are hereby imposed on all taxable property within the City of Billings, Montana, to provide payment for the following:

- A. 10.00 Transit Operating Fund
- B. 5.00 Library Operating Fund
- C. 20.00 Public Safety Fund

3. That upon passage of this Resolution, the City Clerk shall certify that same to the County Treasurer of Yellowstone County, Montana, who shall collect said taxes in the manner as provided by law.

4. That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED by the City Council this 9<sup>th</sup> day of June, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

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




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JUNE 9, 2008**

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**SUBJECT:** Public Hearing and Resolutions Setting Annual Assessments for Fiscal Year 2009

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The following annual assessment resolutions have been completed by the Finance Division and the assessments are ready to spread on the tax files.

Park Maintenance District	Light Maintenance District
Fire Hydrant Maintenance	Street Maintenance
Storm Sewer	Arterial Construction
Business Improvement District	Solid Waste
Tourism Business Improvement District	

Park maintenance districts and light maintenance districts rates are calculated by estimating the expenses for maintenance and recovering actual expenditures. Street maintenance and Storm rates remain the same as FY 08. Arterial construction rates increased by 10% for FY 09. The Fire Hydrant Maintenance, and Solid Waste rates will remain the same. No change in the TBID rate per occupied Hotel/Motel room night.

**RECOMMENDATION**

Staff recommends that a public hearing be held and that the City Council approve the resolutions on June 9, 2008.

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

**ATTACHMENTS**

A-Park Maintenance Annual Assessment Resolution  
 B-Light Maintenance District Annual Assessment Resolution and Exhibit A



C-Fire Hydrant Maintenance Annual Assessment Resolution  
D-Street Maintenance Annual Assessment Resolution  
E-Storm Sewer Annual Assessment Resolution and Exhibit A  
F-Arterial Construction and Exhibit A  
G-Business Improvement District Annual Assessment and Exhibit A  
H-Solid Waste Annual Assessment and Exhibit A  
I-Tourism Business Improvement District

## RESOLUTION 08 \_\_\_\_\_

A RESOLUTION LEVYING AND ASSESSING ALL PROPERTY WITHIN PARK MAINTENANCE DISTRICTS AN AMOUNT EQUAL TO THE COST OF MAINTAINING THE IMPROVEMENTS IN SAID PARK MAINTENANCE DISTRICTS WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND FINAL ADOPTION.

WHEREAS, certain Park Maintenance Districts within the City have been created and constructed, and

WHEREAS, certain improvements within those Park Maintenance Districts require maintenance, and

WHEREAS, M.C.A. Section 7-12-4162 provides that the City may levy and assess the costs of maintenance against said districts.

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

1. **MAINTENANCE OF IMPROVEMENTS.** Certain improvements including trees, shrubs, grass and care thereof require maintenance with certain Park Maintenance Districts.

2. **MAINTENANCE DISTRICT BOUNDARIES.** The boundaries of the park maintenance districts are established by resolution and are on file in the City Clerk's office.

3. **ASSESSMENT METHOD.** The entire maintenance costs shall be assessed against the entire district, each lot or parcel of land within said district to be assessed for that part of the whole costs which its area bears to the area of the entire district exclusive of streets, avenues, alleys and public places all as provided in M.C.A. Section 7-12-4162.

4. **COST OF MAINTENANCE.** The City Council estimates that the cost of maintenance for the fiscal year 2009 for the following Park Maintenance Districts is:

PARK MAINT. DISTRICT	NUMBER	FY 09 ASSM'T RATE
HARVEST PARK	PMD 4001	\$ 0.029957 / sq ft
OLYMPIC PARK	PMD 4002	\$ 0.018803 / sq ft
PARKLAND WEST	PMD 4003	\$ 0.005213 / sq ft
GREGORY HILLS	PMD 4004	\$ 0.010193 /sq ft
HIGH SIERRA	PMD 4005	\$ 0.004069/ sq ft
FOREST PARK	PMD 4006	\$ 0.003485/ sq ft
WOODLAND COMMERCE	PMD 4007	\$ 0.007064 / sq ft
TERRA WEST SUB'D	PMD 4008	\$ 0.011227 / sq ft

ASPEN GROVE SUB.	PMD 4009	\$ 0.009634 / sq ft
LAKEVIEW SUBD	PMD 4010	\$ 0.001670/ sq ft
MT AVE PMD	PMD 4011	\$ 0.048595 / sq ft
CIRCLE 50 PMD	PMD 4012	\$ 0.005097 / sq ft
N BROADWAY	PMD 4013	\$ 0.025952 / sq ft
RUSH SUB	PMD 4014	\$ 0.006085 / sq ft
HOWARD HEIGHTS	PMD 4015	\$ 0.003993 / sq ft
MISSIONS UNITED	PMD 4016	\$ 0.001950 / sq ft
SOUTHGATE	PMD 4017	\$ 0.005502/ sq ft
FRANCES' PARK	PMD 4018	\$ 60.11 / lot
ROLLINGS HILLS	PMD 4019	\$ 200.00 / lot
DOKKEN PARK	PMD4020	\$ 400.00 / lot
LUTHERAN PARK	PMD 4022	\$ 85.14/ lot
RIMROCK WEST PARK	PMD 4023	\$ 100.00 / lot
WALDEN GROVE PARK	PMD 4024	\$ 0.021728 / sq ft
REHBERG ESTATE SUB	PMD 4025	\$ 0.010623 / sq ft
UINTA PARK SUB.	PMD 4026	\$ 71.183036 / lot
IRONWOOD SUB 1ST, 2ND, 3RD FIL	PMD 4027	\$ 0.006232 / sq ft
VINTAGE ESTATES	PMD 4028	\$ 17.50 / lot
COTTONWOOD GROVE SUB	PMD 4029	\$ 0.001830/ sq ft
KINGS GREEN SUB	PMD 4030	\$ 190.00 / lot
COPPER RIDGE SUB	PMD 4031	\$ 331.71 / lot
RIVERFRONT POINTE SUB	PMD 4032	\$ 28.77 / lot
FALCON RIDGE SUB	PMD 4033	\$ 123.08 / lot
JOSEPHINE CROSSING SUB	PMD 4036	\$ 0.003180 / sq ft
TERRA WEST MONAD STREETSCAPE	PMD 4038	\$ 111.84/lot

5. **DISPOSITION OF COLLECTIONS.** The monies collected from the tax shall be paid into the respective Park Maintenance Funds.

6. **NOTICE OF HEARING.** On Monday, June 9, 2008 at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

7. **CERTIFICATION.** The City Clerk is hereby directed upon final passage and approval of this Resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Treasurer and a copy to the Yellowstone County Assessor.

8. EFFECTIVE DATE. This Resolution shall be effective upon adoption.

The foregoing Resolution No. - \_\_\_\_\_ was ADOPTED by the City Council and APPROVED  
on the 9th day of June, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

RESOLUTION 08 \_\_\_\_\_

A RESOLUTION LEVYING AND ASSESSING ALL PROPERTY IN CERTAIN LIGHTING MAINTENANCE DISTRICTS WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND ADOPTION.

WHEREAS, certain lighting maintenance districts have been created within the City of Billings, and

WHEREAS, State Law provides for assessment for maintenance costs annually, and

WHEREAS, M.C.A. 7-12-4332 provides that the City shall pass a resolution levying and assessing maintenance costs.

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

1. DISTRICTS AND ASSESSMENTS. The lighting maintenance districts and assessments to defray one hundred percent (100%) of all the costs of maintenance and lighting are hereby levied and assessed as listed and described on EXHIBIT "A" attached hereto and by this reference said exhibit is made a part hereof.

2. PERIOD OF ASSESSMENT. That said assessment is to defray costs for the fiscal year 2009.

3. DISPOSITION OF COLLECTIONS. That the assessments as collected shall be placed in the respective lighting maintenance funds and shall be used to defray the costs of maintenance and lighting as provided by law.

4. NOTICE OF HEARING. On Monday, June 9, 2008, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

5. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this Resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

6. EFFECTIVE DATE. This resolution shall be effective upon adoption.

The foregoing Resolution No. \_\_\_\_\_ was ADOPTED by the City Council and APPROVED on the 9th day of June 2008.

CITY OF BILLINGS:

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

ATTEST:

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

***Exhibit A***

District Number	FY 09 Assessment
8	6,900
9	7,000
10	20,100
13	225,000
14	82,500
17	15,000
18	3,500
95	10,600
97	164,400
99	20,300
100	31,500
107	21,800
109	53,700
113	7,450
114	11,500
115	2,900
116	7,300
117	39,000
118	2,600
119	1,700
121	30,600
122	2,200
123	4,300
124	12,100
125	5,000
126	2,300
127	9,100
128	6,500
129	4,200
130	1,700
131	11,000
133	2,700
134	7,100
135	6,400
136	5,500
137	5,400
138	9,100
139	3,100
143	7,400
144	300
145	6,000
146	4,300

147	5,800
149	27,700
150	9,700
151	8,000
152	49,000
153	7,000
154	15,900
155	6,400
157	12,200
158	10,300
159	13,800
160	8,500
161	13,200
162	700
163	23,600
164	4,900
165	11,300
167	3,000
171	7,300
172	6,900
173	15,000
174	12,300
175	3,900
176	530
178	3,400
179	6,700
180	4,550
181	20,700
182	7,800
183	15,500
184	4,600
185	1,700
186	13,950
187	2,700
188	3,600
189	2,900
190	16,000
191	5,700
192	3,900
193	9,400
194	7,000
195	6,050
196	2,700
197	1,440
198	1,600
200	2,730

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201	6,500
202	17,200
203	350
204	10,500
205	420
206	4,400
207	4,900
208	12,000
209	7,200
210	3,050
211	1,520
212	1,520
213	1,150
214	5,900
216	1,800
217	9,000
220	7,000
221	100
222	2,700
223	2,430
224	23,400
225	10,600
226	7,140
227	15,200
228	9,800
229	5,100
230	12,600
231	7,200
232	30,500
233	18,900
234	9,100
235	11,600
236	4,320
237	5,100
238	200
239	1,300
240	6,300
241	7,500
242	1,100
244	1,500
245	1,100
246	4,100
247	14,000
248	28,500
249	33,000
250	3,950

251	48,500
252	6,800
253	23,500
254	5,550
255	4,050
257	17,200
258	33,000
259	28,000
261	6,600
262	35,200
263	15,000
264	3,500
265	3,700
266	700
269	800
270	12,300
271	9,500
272	30,100
273	2,200
274	1,470
276	8,050
277	9,300
278	5,000
279	900
280	16,000
281	3,200
283	8,500
285	3,500
286	2,700
287	3,000
288	6,000
289	4,000
290	1,400
292	7,050
293	2,750
294	5,900
295	1,300
296	13,000
297	2,450
298	2,200
299	3,800
300	3,800
301	18,000
302	6,050
303	18,500
320	2,400

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RESOLUTION 08-\_\_\_\_\_

A RESOLUTION LEVYING AND ASSESSING PROPERTIES  
WITHIN THE CITY OF BILLINGS THE PROPERTY SAFETY  
WATER SUPPLY SERVICE CHARGE, PROVIDING FOR  
NOTICE, HEARING AND ADOPTION.

WHEREAS, Billings, Montana City Code provides for assessment for property safety water supply service charge annually; and

WHEREAS, said Billings, Montana City Code provides that the City Council shall fix, levy, and assess said charge on or before the second Monday in August.

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

1. SERVICE CHARGE FOR FISCAL YEAR 2009. The Property Safety Water Supply Service Charge for the fiscal year 2009 is hereby fixed, levied and assessed against each and every parcel of real and personal property within the City. Each parcel shall pay to the City that portion of the total Property Safety Water Supply Service Charge imposed annually as hereinafter provided, as the total taxable value of each parcel bears to the total taxable value within the City. The assessment is **\$0.0127104** per taxable value dollar, provided, however:

- (a) Parcels of real property which have no taxable value shall pay an annual charge of \$20.00 per parcel.
- (b) All parcels having taxable value shall pay at least a minimum annual charge of \$1.00 per parcel.

2. NOTICE OF HEARING. On Monday, June 9<sup>th</sup>, 2008 at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk published notice hereof twice, on May 22<sup>nd</sup> and May 29<sup>th</sup> 2008, in the Billings Times.

3. CERTIFICATION The City Clerk is hereby directed upon passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

4. EFFECTIVE DATE. This resolution shall be effective upon adoption.  
ADOPTED and APPROVED by the City Council on the 9<sup>th</sup> day of June, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

RESOLUTION 08-\_\_\_\_\_

**A RESOLUTION DETERMINING AND FIXING THE METHODS OF ASSESSMENT IN EACH DISTRICT, FIXING THE RATE OF ASSESSMENT FOR COSTS OF STREET MAINTENANCE WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND ADOPTION**

WHEREAS, the City, by Resolution, has defined the boundaries and established street maintenance districts as provided by State Law, and

WHEREAS, it is necessary to determine, levy and assess the properties within the districts.

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

1. METHOD OF ASSESSMENT. The City hereby determines that each lot or parcel of land within both Street Maintenance Districts One (1) and Two (2) shall be assessed for that portion of the whole cost which each lot or parcel of land in the respective district bears to the total area of the respective district exclusive of streets, avenues, alleys and public places.

2. ASSESSMENT DISTRICT ONE (1). Each lot or parcel within portions of the Central Business District, being District One (1), is hereby assessed **\$0.038892** per square foot of area for fiscal year 2009 .

3. ASSESSMENT DISTRICT TWO (2). Each lot or parcel within the balance of the City, being District Two (2), is hereby assessed **\$0.006393** per square foot of area for fiscal year 2009.

4. MAXIMUM ANNUAL CHARGE. The maximum annual charge for any tract, parcel or lot which is undeveloped and unimproved shall be Nine Hundred Seventy Four Dollars (\$974.00).

5. LOTS AND PARCELS ASSESSED. A list which describes each lot or parcel of land assessed within the respective district, with the name of the owner thereof, and the amount levied thereon set is available as a printed document in the office of Public Works at the Parnly Billings Library Building, Billings, Montana.

6. EXCLUDED PROPERTIES. All properties, currently within the 12-year assessment term, 1988 through 1999, originally assessed for previous sidewalk, curb and gutter improvements, shall be

excluded from the curb and gutter repair portion of this additional Street Maintenance District assessment during this 12-year term. The curb and gutter repair portion of the new additional Street Maintenance Districts assessment is \$0.000625 per square foot of area. The exemption will include properties within a current assessment term who have previously paid their assessment off. Any party who would have been included in one of these City programs but elected to have their repairs done privately may make special application for an exclusion to the City Engineer's Office.

7. EXEMPTION. Street Maintenance District assessments shall not be paid by the City General Fund, Public Safety Fund, Library Fund or MET Transit Fund

8. COLLECTION OF ASSESSMENTS. Said special assessments shall be placed upon the assessment rolls and collected in the same manner as other taxes.

(NOTE: THE FOLLOWING PARAGRAPH WAS ADDED PER COUNCIL REQUEST.)

9. CURB AND GUTTER POLICY. The portions of the City Council's Proposed Curb, Gutter and Sidewalk Policy that applies to curb and gutter replacement/repair **ONLY** are incorporated herein:

"All curb and gutter repair and replacement is paid by the city curb and gutter program. Improvements to existing streets including the widening of those streets and the installation of curbs and gutters would have a cap placed on property owner assessments. The cap on assessments is based on the appraised value of the property (as follows:) (1) if the assessment is less than 5% of the property value, then the homeowner is responsible for the entire assessment; (2) if the assessment is more than 5% of the property value but less than 10%, the city curb and gutter program pays one-half of the assessment amount in excess of 5%; and (3) if the assessment is more than 10% of the property value, then the curb and gutter program pays one-half of the amount of the assessment between 5 and 10% and all of the assessment in excess of 10%."

"Home/property owners currently paying assessments will be exempt from paying fees to the annual curb and gutter program, until they have paid their assessment. Upon full payment of their assessment, they will be entered into the city-wide assessment program. Those owners who elected to pay assessments in full or contract to perform repairs without involvement in the city program, will need to submit proof of payment to the City Finance Office and will receive the same exemption."

10. NOTICE OF HEARING. On Monday, **June 9, 2008**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings,

Montana, the City Council will hear objections to the final adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

11. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

12. EFFECTIVE DATE. This resolution shall be effective upon final adoption.

The foregoing Resolution No. \_\_\_\_\_ was ADOPTED by the City Council and APPROVED this  
9<sup>th</sup> day of June, 2008 CITY OF BILLINGS:

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

Ron Tussing , MAYOR

ATTEST:

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

Cari Martin, CITY CLERK

RESOLUTION 08 \_\_\_\_\_

A RESOLUTION LEVYING AND ASSESSING STORM SEWER FEES  
FOR PROPERTIES WITHIN THE CITY OF BILLINGS, PROVIDING FOR  
NOTICE, HEARING AND FINAL ADOPTION

WHEREAS, the Billings, Montana City Code did establish the rate table for Storm Sewer assessments; and

WHEREAS, extension of these charges have been made on individual properties to be assessed annually.

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

1. ANNUAL STORM SEWER FEE FOR FISCAL YEAR 2009. That for the purpose of defraying the cost of upgrading, repairing and maintaining the City Storm Sewer System an annual storm sewer fee is imposed for the fiscal year 2009, upon all lots or portions of lots as identified in the city's property tax record files. Rates are hereby levied and assessed as listed and described on EXHIBIT "A" attached hereto and by this reference said exhibit is made a part hereof.

2. EXEMPTION. Storm Sewer Fee assessments shall not be paid by the City General Fund, Public Safety Fund, Library Fund, or MET Transit Fund.

3. DISPOSITIONS OF COLLECTIONS. Monies collected from assessments shall be paid into the Storm Sewer Fund, of Billings, Montana.

4. NOTICE OF HEARING. On Monday, **June 9, 2008**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice on May 22, 2008 and May 29, 2008, in the Billings Times.

5. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

6. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the 9<sup>th</sup> day of **June, 2008**

CITY OF BILLINGS:

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

ATTEST:

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



*Exhibit A*

	Storm Sewer Fee		
	ZONE	RATE	
	VACANT	977.00	Cap
	AT RATE	0.00124	
	P	0.00210	
	R-96	0.00367	
	R-80	0.00399	
	R-70	0.00421	
	R-70R	0.00421	
	RMH	0.00472	
	R-50	0.00506	
	PD	0.00578	
	R-60	0.00631	
	R-60R	0.00631	
	RP	0.00684	
	RMF-R	0.00714	
	RMF	0.00739	
	NC	0.00814	
	ELC	0.00814	
	MCPZD	0.00840	
	CC	0.00869	
	EGC	0.00892	
	PZD	0.00882	
	HC	0.00892	
	CI	0.00949	
	HI	0.01056	
	CBD	0.01264	
	ELI	0.00892	
	EMU	0.00869	

RESOLUTION 08 - \_\_\_\_\_

A RESOLUTION LEVYING AND ASSESSING ARTERIAL  
CONSTRUCTION FEES FOR PROPERTIES WITHIN THE CITY OF  
BILLINGS, PROVIDING FOR NOTICE, HEARING AND FINAL ADOPTION

WHEREAS, the Billings, Montana City Code did establish the rate table for Arterial Construction Fee assessments; and

WHEREAS, extension of these charges have been made on individual properties to be assessed annually.

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

1. ANNUAL ARTERIAL CONSTRUCTION FEE FOR FISCAL YEAR 2009. That for the purpose of paying the cost of construction and/or reconstruction of arterial roadways and depreciation and replacement of arterial roadways to provide safe facilities on which citizens and visitors may travel, including the principal and interest on all revenue bonds to be issued for that purpose, as authorized by MCA Title 7 Chapter 7 Part 44 or Title 7 Chapter 13 Part 43, as amended, an annual arterial construction fee assessment is imposed for the fiscal year 2009, upon all lots or portions of lots as identified in the city's property tax record files. Rates are hereby levied and assessed as listed and described on EXHIBIT "A" attached hereto and by this reference said exhibit is made a part hereof.

2. EXEMPTION. Arterial Construction Fee assessments shall not be paid by the City General Fund, Public Safety Fund, Library Fund, or MET Transit Fund.

3. DISPOSITIONS OF COLLECTIONS. Monies collected from taxes shall be paid into the Municipal Arterial Construction System Fund, of Billings, Montana.

4. NOTICE OF HEARING. On Monday, June 9, 2008, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk published notice hereof twice, on May 22 and May 29, 2008, in the Billings Times.

5. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

6. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the 9<sup>th</sup> day of **June, 2008**

CITY OF BILLINGS:

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

ATTEST:

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

*Exhibit A*

**Arterial Construction Fee**

<b>ZONE</b>	<b>RATE</b>	
<b>VACANT</b>	1087.00	Cap
<b>AT RATE</b>	0.00138	
<b>P</b>	0.00233	
<b>R-96</b>	0.00408	
<b>R-80</b>	0.00444	
<b>R-70</b>	0.00468	
<b>R-70R</b>	0.00468	
<b>RMH</b>	0.00525	
<b>R-50</b>	0.00563	
<b>PD</b>	0.00644	
<b>R-60</b>	0.00702	
<b>R-60R</b>	0.00702	
<b>RP</b>	0.00761	
<b>RMF-R</b>	0.00793	
<b>RMF</b>	0.00823	
<b>NC</b>	0.00906	
<b>ELC</b>	0.00906	
<b>MCPZD</b>	0.00935	
<b>CC</b>	0.00967	
<b>EGC</b>	0.00992	
<b>PZD</b>	0.00981	
<b>HC</b>	0.00992	
<b>CI</b>	0.01056	
<b>HI</b>	0.01175	
<b>CBD</b>	0.01407	
<b>ELI</b>	0.00992	
<b>EMU</b>	0.00967	

RESOLUTION 08 \_\_\_\_\_

A RESOLUTION LEVYING AND ASSESSING PROPERTIES FOR THE PURPOSE OF PROVIDING AND MAINTAINING THE COMMON AREA IMPROVEMENTS MADE IN DOWNTOWN, CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND ADOPTION.

WHEREAS, Billings, Montana City Code provides for assessment for public improvements and maintenance, including but not limited to public sidewalk sweeping, security, public sidewalk snow removal, litter control, graffiti removal, and abatement of other services that are requested by the downtown property owners.

WHEREAS, said Billings, Montana City Code provides that the City Council shall fix, levy, and assess said charge on or before the second Monday in August.

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

1. SERVICE CHARGE FOR FISCAL YEAR 2009. The Business Improvement District assessment for the fiscal year 2009 is hereby fixed, levied and assessed against each and every parcel of real property within the B.I. D. Each parcel shall pay to the City that portion of the total Business Improvement District assessment imposed annually. The assessment is a calculation based on square footage, taxable market value, and building square footage. See Exhibit A

2. NOTICE OF HEARING. On Monday, **June 9, 2008**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk published notice hereof twice, on May 22<sup>th</sup> and May 29<sup>th</sup> 2008, in the Billings Times.

3. CERTIFICATION The City Clerk is hereby directed upon passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

4. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the 9<sup>th</sup> day of **June, 2008**.

CITY OF BILLINGS:

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

ATTEST:

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

**Business  
Improvement  
District**

*Exhibit A*

Tax Code	Total Assessment
A00258	\$609.93
A00260	\$400.37
A00261	\$1,626.67
A00262	\$2,003.95
A00263	\$871.59
A00264	\$4,918.55
A00269	\$899.05
A00270	\$171.56
A00271	\$10,121.73
A00351	\$1,928.69
A00352	\$3,578.46
A00360	\$3,625.20
A00362	\$265.63
A00363	\$498.81
A00364	\$1,629.46
A00365	\$1,164.85
A00366	\$3,262.51
A00367	\$620.42
A00367A	\$241.23
A00367B	\$231.77
A00367C	\$934.26
A00368	\$3,306.02
A00372	\$1,743.93
A00373	\$526.80
A00374	\$528.20
A00375	\$2,299.85
A00376	\$982.75
A00611	\$850.32
A00612	\$399.92
A00613	\$399.92
A00614	\$399.92
A00615	\$399.92
A00616	\$357.40

A00617	\$202.76
A00618	\$2,181.71
A00620	\$7,044.37
A00624	\$5,515.76
A00630	\$2,616.65
A00630A	\$404.48
A00631	\$232.74
A00632	\$205.65
A00633	\$407.11
A00634	\$523.12
A00635	\$639.31
A00636	\$705.87
A00636A	\$1,273.99
A00637	\$1,252.52
A00638	\$524.21
A00639	\$543.49
A00640A	\$159.93
A00640B	\$78.16
A00640C	\$112.85
A00640D	\$162.53
A00640E	\$87.12
A00640F	\$722.64
A00640H	\$119.94
A00640I	\$110.17
A00640J	\$105.47
A00640K	\$117.78
A00640L	\$69.23
A00640N	\$127.54
A00640O	\$103.68
A00640P	\$87.18
A00640Q	\$80.88
A00640R	\$73.45
A00640S	\$91.73
A00640T	\$73.22
A00640U	\$59.48
A00640V	\$89.49
A00641	\$637.30
A00642	\$1,808.11
A00643	\$956.75
A00644	\$795.49
A00645	\$1,212.64
A00647	\$829.22
A00648	\$412.10



A00648A	\$402.88
A00649	\$483.05
A00650	\$592.85
A00651	\$1,129.39
A00762	\$670.31
A00763	\$296.76
A00765	\$453.95
A00766	\$548.82
A00768	\$218.46
A00769	\$198.90
A00770	\$360.76
A00774	\$850.63
A00775	\$479.20
A00776	\$702.81
A00777	\$492.57
A00778	\$769.03
A00780	\$378.09
A00781	\$776.76
A00782	\$376.03
A00783	\$1,112.53
A00786	\$525.72
A00787	\$4,482.42
A00788	\$408.08
A00789	\$1,615.23
A00792	\$643.14
A00794	\$2,411.89
A00795	\$2,960.70
A00796A	\$480.24
A00796B	\$338.52
A00796C	\$142.49
A00796D	\$255.50
A00796E	\$144.28
A00796F	\$236.79
A00796G	\$164.27
A00796H	\$67.71
A00796I	\$65.60
A00796J	\$68.19
A00796K	\$44.44
A00796L	\$61.37
A00796N	\$59.95
A00796O	\$67.71
A00796P	\$65.60
A00796Q	\$68.19

A00796R	\$44.44
A00796S	\$61.37
A00796T	\$59.95
A00801A	\$160.54
A00804	\$10,203.78
A00806	\$872.05
A00807	\$242.77
A00808	\$269.03
A00809	\$243.84
A00810	\$991.62
A00811	\$374.14
A00812	\$284.26
A00813	\$484.14
A00814	\$701.56
A00815	\$706.28
A00816	\$1,465.15
A00817	\$970.63
A00818	\$295.39
A00819	\$292.50
A00819A	\$388.74
A00820	\$387.25
A00821	\$283.17
A00822	\$328.28
A00823	\$444.54
A00824	\$672.32
A00825	\$347.29
A00826	\$1,149.68
A00827	\$260.97
A00828	\$566.47
A00830	\$373.20
A00831	\$288.16
A00832	\$708.30
A00832A	\$403.26
A00833	\$946.62
A00834	\$681.26
A00835	\$1,219.82
A00836	\$1,145.23
A00838	\$831.71
A00839	\$2,786.92
A00840	\$1,226.41
A07366	\$951.27
A07367	\$470.76
A29916	\$1,158.21

A29917	\$1,965.80
A33292	\$815.26
I00064	\$914.21
I00078B	\$95.32
I00140	\$77.77
I00140A	\$10.37
I00153	\$184.56
I00154	\$849.36
I00648	\$143.63
I00649	\$127.41
I00650	\$172.30
I00651	\$62.22
I00797	\$5,961.17
I00808	\$23.43
I00841	\$255.39
Total	\$160,430.75

RESOLUTION 08- \_\_\_\_\_

**A RESOLUTION LEVYING AND ASSESSING RESIDENTIAL AND  
COMMERCIAL COLLECTION AND DISPOSAL FEES AND LANDFILL  
USE FEES IN ACCORDANCE WITH RESOLUTION NO. 86-15491**

WHEREAS, it has become necessary in the operation of City services to assess the fees for collection and disposal of refuse, and

WHEREAS, said fees are established and should apply until changed by subsequent resolution.

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

1. RESIDENTIAL AND MOBILE HOME COLLECTION AND DISPOSAL FEES. Residential fees are hereby assessed at \$79.00 per annum for unit occupied by one family. Residential fees for a mobile home located in a mobile park are hereby assessed at \$73.00 per annum for unit occupied by one family. Residential carry out service, where available, will be assessed at \$158.00 per annum. Residential landfill fees for newly annexed property not yet receiving City collection service are hereby assessed at \$18.50 per annum for unit occupied by one family.

2. LANDFILL FEES. Landfill use fees that are not covered by other agreements or assessments are hereby assessed as follows. All fees will be based on net weight, unless the landfill scale is inoperable then volume fees will apply: A minimum charge of \$4.00 will apply to all transactions.

**A. Pickup/Small Trailer**

Pickups or equivalent sized trailers hauling any material except those with special fees shall be assessed minimum fees as follows:

Pickup truck/small trailer                      \$4.00

Vehicles with *side boards* over one (1) foot high or loaded with heavier materials will be charged at the per ton rate in Paragraph B unless the landfill scales are inoperable, then the vehicle will be charged by the cubic yard rated on the capacity of the vehicle.

**B. Compactible Material**

Compactible material such as demolition, wood, household debris, tree removal refuse, and all other refuse not covered by special fees or special use agreements shall be charged at the following rates:

Per Ton Charge                                      \$11.50

Loose Garbage	\$1.45	per cubic yard of rated capacity
Compacted Garbage	\$3.75	per cubic yard of rated capacity

**C. Non-Compactible Material**

Asphalt, rocks, concrete, dirt, gravel, timbers, and other non-Compactible material will be charged at \$11.50 per ton or \$16.00 per cubic yard based on the rated capacity of the vehicle.

**D. Special Waste**

Special Waste such as contaminated soil, sludges, and treated timbers will be accepted on a case-by-case basis dependent upon testing and approval. If accepted, landfill fees will be \$23.00 per ton or \$32.00 per cubic yard based on the capacity of the vehicle.

**E. Special Fees**

1. Dead animals such as sheep, cows, and horses will be charged at the following rates:

Horse	\$75.00/each	
Cow	\$50.00/each	
Colt, Sheep, Pig, etc.		\$20.00/each
Large quantities	\$75.00/ton	

2. Whole tires will be charged at the following rates:

Car or Light Truck (up to 17")	\$2.00/each
Large Truck (17" to 24")	\$5.00/each
Equipment Tire (grader size)	\$17.50/each
Large Amounts	\$75.00/ton or \$17.50 per cubic yard
Cut tires	\$11.50/ton or \$1.45/per cubic yard

3. Asbestos will be charged at \$60.00 per ton or \$30.00 per yard or \$7.50 per bag. The minimum charge shall be \$90.00.
4. Barrels with one end off will be charged at \$5.00. If both ends are cut off, they will be assessed per paragraph A or B above. All barrels that contained pesticides or herbicides must be triple rinsed.
5. Residential refrigeration units will be subject to a \$10.00 Freon recovery fee unless accompanied by written certification that the Freon has been recovered. Commercial units must have certification that the Freon has been removed.

F. City of Billings *residents hauling non-business waste* in a vehicle no larger than a 3/4 ton pickup truck, or equivalent sized trailer, will not be charged. All commercial waste not charged through other assessments will be charged per the above paragraphs.

3. COMMERCIAL COLLECTION AND DISPOSAL FEES PER ANNUM. Commercial collection service is available subject to Solid Waste Division approval of container type, size, placement, and serviceability. Commercial collection and disposal fees are hereby assessed as follows:

Container Size	K. City Owned Container PER WEEK FREQUENCY OF COLLECTION						
	1	2	3	4	5	6	Saturday*
2 Yards	\$509	\$838	\$1,167	\$1,496	\$1,825	\$2,220	\$658
3 Yards	\$555	\$930	\$1,305	\$1,680	\$2,055	\$2,505	\$750
4 Yards	\$602	\$1,024	\$1,446	\$1,868	\$2,290	\$2,796	\$844
6 Yards	\$753	\$1,266	\$1,779	\$2,292	\$2,805	\$3,421	\$1,026
8 Yards	\$845	\$1,450	\$2,055	\$2,660	\$3,265	\$3,991	\$1,210

Container Size	L. Customer Owned Container PER WEEK FREQUENCY OF COLLECTION						
	1	2	3	4	5	6	Saturday*
1 Yard	\$283	\$566	\$849	\$1,132	\$1,415	\$1,755	\$566
2 Yards	\$329	\$658	\$987	\$1,316	\$1,645	\$2,040	\$658
3 Yards	\$375	\$750	\$1,125	\$1,500	\$1,875	\$2,325	\$750
4 Yards	\$422	\$844	\$1,266	\$1,688	\$2,110	\$2,616	\$844
6 Yards	\$513	\$1,026	\$1,539	\$2,052	\$2,565	\$3,181	\$1,026
8 Yards	\$605	\$1,210	\$1,815	\$2,420	\$3,025	\$3,751	\$1,210
30 Gal Can Ea	\$61	\$122	\$183	\$244	\$305	\$378	\$122
Compactor containers will be assessed at 2.5 times the above rates.							
Above fees are for customer-owned containers.							
* Saturday service without 6 times per week pick-up will be assessed double the 1 time per week rate.							

90 Gallon Barrel                      \$156  
300 Gallon Barrel                    \$346

\* The above include use of the City of Billings' container with one pickup per week only. This service not available in all areas.

Hand Load/Loose - Special Service - In addition to can or container service.  
\$242.00 per annum for each minute of special service per pick-up.

Commercial customers will be provided 2 courtesy pickups over and above their current scheduled service each fiscal year. Any additional service will be billed at the actual hourly rates as follows (minimum 1 hour):

Compacter truck, 1 Man                      \$75.00                      Compacter truck, 2 Men                      \$105.00.

Tax supported funds, which will include the General Fund, Public Safety, Library and Transit Funds, will not be charged for garbage.

Drop Box/Roll Off

Customer-owned Container                      \$93.00 per pull plus disposal:

Non-Compacted	\$11.50/ton or \$1.45 per cubic yard rated capacity
Compacted	\$11.50/ton or \$3.75 per cubic yard rated capacity

City-owned Container – \$93.00 per pull plus disposal plus lease fee if applicable.

30 cubic yards – cash only / one time	\$165.00
---------------------------------------	----------

Commercial landfill fees for newly annexed property not receiving City collection service will be assessed at the current disposal rate times the size and frequency of their service.

PASSED by the City Council and APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2008.

CITY OF BILLINGS

By: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

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

## Garbage Collection Rates

City	Residential Per year	Commercial 3yd 1/wk	Landfill Fee	Ton or Cubic Yard	Comments
<b>Billings</b>	\$ 79.00	\$ 555.00	\$ 11.50	Ton	Container provided (3 yard)
<b>Bozeman</b>	\$ 131.50-215.25	\$ 936.36	\$ 36.77	Ton	Residential based on container size; Container provided (3 yard)
<b>Casper</b>	\$ 144.00	\$ 756.00	\$ 38.00	Ton	Container provided (3 yard)
<b>Great Falls</b>	\$ 93.00-111.00	\$ 583.20	\$ 27.75	Ton	Container provided (3 yard)- Senior rate 77.40. Residential based on size
<b>Helena</b>	\$ 157.08	\$ 963.00	\$ 51.35	Ton	Container provided (3 yard)
<b>Spokane</b>	\$ 284.16-384.24	\$ 2,575.45	\$ 98.00	Ton	Container provided (3 yard)
<b>Missoula</b>	\$ 220.20	\$ 1,019.40	\$ 12.30	Cubic Yard	Container provided (3 yard),BFI Recycle
<b>Rapid City</b>	\$ 159.12-177.84	private	\$ 45.00	Ton	Residential based on container size
<b>Boise</b>	120.00-144.00	private	\$ 3.00-6.00	Cubic Yard	\$1.00/mo recycle discount, add'l mo. charge for wheeled residential container: Commercial container provided
<b>Cheyenne</b>	142.80-189.60	\$ 780.00	\$ 40.00	Ton	Residential depends on manual or automated collection;Container provided (3 yard)



RESOLUTION 08 \_\_\_\_\_

A RESOLUTION LEVYING AND ASSESSING PROPERTIES FOR THE PURPOSE OF PROMOTING TOURISM, CONVENTION, TRADE SHOWS AND TRAVEL TO THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND ADOPTION.

WHEREAS, Billings, Montana City Code provides for assessment for promoting tourism, convention, trade shows, and travel to the City of Billings.

WHEREAS, said Billings, Montana City Code provides that the City Council shall fix, levy, and assess said charge on or before the second Monday in August.

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

1. SERVICE CHARGE FOR FISCAL YEAR 2009. The Tourism Business Improvement District assessment for the fiscal year 2009 is hereby fixed, levied and assessed against each and every parcel of real property within the T.B.I. D. Each parcel shall pay to the City that portion of the total Tourism Business Improvement District assessment imposed annually. The assessment is (.75) per occupied Hotel/Motel room night.

2. NOTICE OF HEARING. On Monday, **June 9, 2008**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk published notice hereof twice, on May 22<sup>nd</sup> and May 29<sup>th</sup> 2008, in the Billings Times.

3. CERTIFICATION The City Clerk is hereby directed upon passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

4. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the 9<sup>th</sup> day of June, 2008

CITY OF BILLINGS:

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

ATTEST:

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

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JUNE 9, 2008**

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**SUBJECT:** Public Hearing and Approval of the Resolution Approving and Adopting the Budget for FY 2009

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** This resolution provides for the formal adoption of the budget. The proposed budget has been available for review since May 2, 2008. Five (5) public presentations have been made regarding the proposed budget. Section 2 of this resolution allows the City Administrator to amend this budget for Debt Service Funds, Federal and State Grants Special Assessment and donations accepted and approved by the City Council. The City Council authorizes issuing debt and acceptance of grants and donations, other than donations which are handled per administrative order. Approving budget amendments to allow these expenditures is therefore redundant. This delegation of authority is allowed by State Statutes.

**RECOMMENDATION**

Staff recommends that City Council conduct a public hearing and approve the resolution approving and adopting the Budget for the City of Billings for fiscal year 2008-2009.

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

**ATTACHMENTS:**

A-Resolution Approving & Adopting the Budget for the City of Billings, Montana, for FY 2008-2009

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

**A RESOLUTION APPROVING AND ADOPTING THE BUDGET FOR  
THE CITY OF BILLINGS, MONTANA FOR FISCAL YEAR 2008-2009**

WHEREAS, the City Administrator of the City of Billings has regularly and lawfully submitted to the City Council of the City of Billings, Montana, the budget for Fiscal Year 2008-2009; and

WHEREAS, the proper notice was published stating that said City Council has completed the PRELIMINARY MUNICIPAL BUDGET for said Fiscal Year, and that said budget has been placed on file and is open to inspection in the office of the City Clerk; and that said City Council would meet for the purpose of annually determining, approving and adopting the budget, and any taxpayer might appear and be heard.

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

Section 1: That the Revenue Budget for Fiscal year 2008-2009, as detailed in the Budget Report, and as amended by the City Council, and the Expenditure Budget for Fiscal year 2008-2009 as detailed in the budget report and as amended by the City Council and further detailed on EXHIBIT "A", be, and the same is hereby finally determined, approved, and adopted.

Section 2: That the City Administrator is authorized to amend this budget for the expenditure of additional funds from the following: Debt Service Funds, Federal, State Grants, special assessments and donations accepted and approved by the City Council.

PASSED AND APPROVED by the City Council this 9th day of June, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

Exhibit A

<b>Fund/Department</b>	<b>Original Proposal</b>	<b>Additions 6/9/2008</b>	<b>Deletions 6/9/2008</b>	<b>Final Budget</b>
<b>General Operating Fund:</b>				
Mayor & City Council	240,880			240,880
City Administrator	687,759			687,759
Human Resources	505,606			505,606
City Attorney	1,131,760			1,131,760
Municipal Court	1,068,621			1,068,621
Finance	1,201,561			1,201,561
Code Enforcement	279,616			279,616
Public Works Engineering	2,113,233			2,113,233
Parks, Recreation & Public Lands	3,717,812			3,717,812
Non-Departmental	19,762,612	815,392	34,000	20,544,004
Council Contingency	65,000			65,000
<b>Total General Fund</b>	<b>30,774,460</b>	<b>815,392</b>	<b>34,000</b>	<b>31,555,852</b>
<b>Public Safety Fund:</b>				
Police	17,414,231			17,414,231
Fire	14,050,614			14,050,614
<b>Total Public Safety Fund</b>	<b>31,464,845</b>	<b>-</b>	<b>-</b>	<b>31,464,845</b>
<b>Special Revenue Fund:</b>				
Tax Increment	43,007			43,007
Street Gas Tax	5,629,425			5,629,425
Building Inspection	1,770,032			1,770,032
Transportation Enhancement	780,800			780,800
Street & Traffic Operating	5,720,797			5,720,797
Fire Programs	46,819			46,819
EOC 911 Grant	768,485			768,485
City/County Planning	1,284,653			1,284,653
City Attorney Grants	216,742			216,742
Municipal Drug Court Grant	148,700			148,700
Police Programs	605,479			605,479
City County Library	3,116,325			3,116,325
Development Services Grants	1,551,885			1,551,885
Park Programs	52,536			52,536
Downtown Revolving Loan Program	1,900,000			1,900,000
Cemetery Improvement	10,000			10,000
Animal Shelter Donations	31,000			31,000
Street Maint. Districts	3,533,302			3,533,302
Fire Hydrant	1,705,441			1,705,441
Street Light Districts	2,106,972			2,106,972
Storm Sewer Operating	3,832,060			3,832,060
Park Maintenance District	548,594			548,594
Arterial Street Fees Operating	2,953,506			2,953,506
Amend Park	9,500			9,500
<b>Total Special Revenue Fund</b>	<b>38,366,060</b>	<b>-</b>	<b>-</b>	<b>38,366,060</b>

<i>Exhibit A cont.</i>				
<u>Fund/Department</u>	<u>Original</u>	<u>Additions</u>	<u>Deletions</u>	<u>Final</u>
	<u>Proposal</u>	<u>6/9/2008</u>	<u>6/9/2008</u>	<u>Budget</u>
<b>Debt Service Fund:</b>				
Special Improvement Debt	3,356,276			3,356,276
Series 2000 Parks Debt	142,393			142,393
Series 2004A Street Debt	367,746			367,746
Tax Increment Debt	-			-
Storm Sewer Debt	997,443			997,443
Sidewalk, Curb & Gutter Debt	503,274			503,274
Series 2007A Baseball				
Field/Stadium Debt	788,206			788,206
Series 2007B Baseball	214,741			214,741
Field/Stadium Debt				
<b>Total Debt Service Fund</b>	<b>6,370,079</b>	<b>-</b>	<b>-</b>	<b>6,370,079</b>
<b>Capital Projects Fund:</b>				
Urban Renewal Land Development	90,071			90,071
Sidewalk Construction	761,421			761,421
Special Improvement Districts	6,308,571			6,308,571
2000 G.O. Bond Construction	227,463			227,463
Public Works Street GO Bond	-			-
Capital Replacement	1,974,914			1,974,914
Tax Increment South	4,500,000			4,500,000
<b>Total Capital Project Fund</b>	<b>13,862,440</b>	<b>-</b>	<b>-</b>	<b>13,862,440</b>
<b>Enterprise Fund:</b>				
Water	39,338,027			39,338,027
Wastewater	17,532,051			17,532,051
Parking	2,031,894			2,031,894
Solid Waste	11,175,667			11,175,667
Golf Course	-			-
Airport	15,255,785			15,255,785
Transit	9,047,357			9,047,357
<b>Total Enterprise Fund</b>	<b>94,380,781</b>	<b>-</b>	<b>-</b>	<b>94,380,781</b>
<b>Internal Service Fund:</b>				
Motor Pool	1,195,960			1,195,960
Central Services	127,458			127,458
Information Resources	1,847,365			1,847,365
Health/Life Insurance	9,192,555			9,192,555
Central Telephone	347,716			347,716
Radio Communications	261,848			261,848
Property Insurance	1,721,157			1,721,157
Facilities Management	1,491,452			1,491,452
Public Works Administration	869,484			869,484
<b>Total Internal Service Fund</b>	<b>17,054,995</b>	<b>-</b>	<b>-</b>	<b>17,054,995</b>

<b>Permanent Fund</b>		<i>Exhibit A cont.</i>			
Cemetery Perpetual Care	15,475				15,475
<b>Total Permanent Fund</b>	<b>15,475</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>15,475</b>
<b>Total All Funds</b>	<b>232,289,135</b>	<b>815,392</b>	<b>34,000</b>	<b>233,070,527</b>	

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, June 9, 2008**

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**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward I:  
Annexation #08-07

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** On May 27, 2008, the City Council approved the annexation of a 4.76-acre property located on the northeast corner of King Avenue East and Calhoun Lane. The request for annexation was submitted by Robert Medvec, 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 I will be conducted at this meeting. The second reading of the ordinance will be conducted on June 23, 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 I.

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

**ATTACHMENT**

**A.** Ward Ordinance and Exhibit 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 I 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:

A tract of land situated in the SW1/4 of Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:  
Tract 1, Certificate of Survey No 2350, Recorded November 18, 1985, under Document No. 1372518, Records of Yellowstone County.  
Including all adjacent right-of-way of Calhoun Lane.  
Containing 4.765 gross acres and 4.345 net acres.  
(# 08-07) 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 9<sup>th</sup> day of June, 2008.

PASSED by the City Council on the second reading this 23<sup>rd</sup> day of June, 2008.

THE CITY OF BILLINGS:

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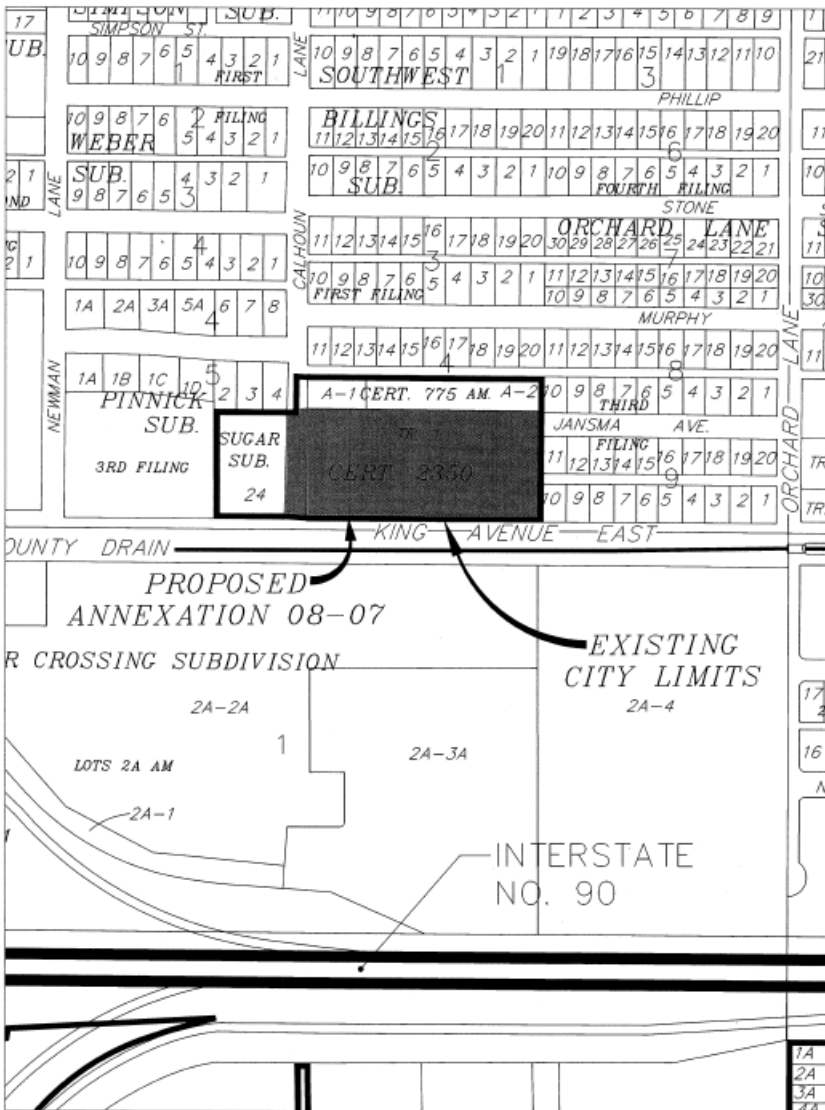
Ron Tussing, MAYOR

ATTEST:

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

(AN 08-07)

# EXHIBIT A



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