

CITY OF BILLINGS

**CITY OF BILLINGS MISSION STATEMENT:
TO DELIVER COST EFFECTIVE PUBLIC SERVICES
THAT ENHANCE OUR COMMUNITY'S QUALITY OF LIFE**

AGENDA

COUNCIL CHAMBERS

June 23, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Gaghen
ROLL CALL
MINUTES – June 9, 2008
COURTESIES
PROCLAMATIONS – National HIV Testing Day, June 27, 2008
ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, and 6(b) ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

1. A. **Bid Awards**

(1) **SID 1379, King Avenue West Landscaping.** (Opened 6/10/08).
Recommend A-1 Landscaping, \$350,000.

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

(2) **SID 1383, Cherry Hills Road Improvements.** (Opened 6/10/08)
Recommend COP Construction, \$631,634.

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

(3) **W.O. 08-07, High Service Pump Station H1-1 Replacement.**
(Opened 6/10/08) Recommend Star Service, \$747,000.

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

(4) W.O. 08-08 Waste Water Treatment Plant Electrical Improvements 2008. (Opened 6/10/08) Recommend Colstrip Electric, \$209,710.

[\(Corresponding Staff Memo A4\)](#)

(5) W.O. 08-09 Waste Water Treatment Plant Effluent Pipe Replacement and Sludge Drying Bed Expansion. (Opened 6/10/08) Recommend Western Municipal Construction, \$823,000.

[\(Corresponding Staff Memo A5\)](#)

(6) Environmental Control System Replacement Project for Airport Terminal Building. (Opened 6/10/08). Recommend Johnson Controls, \$157,025.

[\(Corresponding Staff Memo A6\)](#)

(7) Billings Operations Center Concrete Aprons, Phase I. (Opened 6/17/08) Recommendation will be made at 6/23/08 meeting.

[\(Corresponding Staff Memo A7\)](#)

(8) City Hall Roof Replacement, Phase III. (Opened 6/17/08) Recommendation will be made at 6/23/08 meeting.

[\(Corresponding Staff Memo A8\)](#)

B. Approval of increase in Downtown Revolving Loan Fund for Randy and Janna Hafer for redevelopment of the Klos Building located at 2720 Minnesota Avenue, \$33,000.

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

C. Change Order #1 for Airport Lower Level Restroom Remodel, D.P.S. Company, \$8,870.

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

D. Change Order #2 Final for W.O. 08-05, King Avenue East Water Main, COP Construction, \$15,332.55.

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

E. Change Order #10 for SID 1379, King Avenue West Utility and Street Improvements, Knife River Corporation, \$300,000; and increase the City Administrator's signing authority on this project by \$50,000.

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

F. Contract for Professional Services for Drinking Water Source Study, HDR Engineering, Inc., \$415,400.

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

G. Contract with Integrated Information Systems for purchase of Public Safety i5 High Availability System, \$51,565; and authorize its addition to the FY2008 Capital Improvement and Technology Replacement Plans.

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

H. Contract with E.F. Johnson for annual maintenance of 800 MHz system, \$517,466.85 over three years.

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

I. Contract with Yellowstone Valley Animal Shelter, Inc. for City of Billings Animal Shelter Operations. (Delayed from 5/27/08)

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

J. Agreement with Guardian Security for Library Guard Service (3-year, renewable annually), first year - \$65,926.

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

K. Landfill Gas Sales Agreement with Montana Dakota Utilities, estimated annual net revenue to the City - \$500,000.

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

L. Agreements for Landfill Use with Bighorn County, Carbon County, Musselshell County, Stillwater County, Treasure County, Town of Columbus, Town of Fromberg, Town of Hysham, Town of Bridger, Town of Joliet, City of Laurel, and City of Red Lodge (7/1/08 – 6/30/09); and **Amendment #2** to the 3-year Landfill Use Agreement with Yellowstone County.

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

M. Approval of Assignment and Transfer of Limited Commercial Aviation Building and Ground Lease from Big Sky Ground Support Industries to Alpine Aviation, Inc., dba Big Sky Ground Support Industries, with no cost to the City.

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

N. Amendment No. 1 with HDR Engineering, Inc. for Process Control Review and Filament Investigation, amount not to exceed \$5,000.

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

O. Access Easement for Foursquare Properties at Miller Crossing Subdivision, with no financial impact to the City.

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

P. Right-of-Way Easement with QWest Corporation for relocation of telephone lines at Billings Logan International Airport, with no financial impact to the City.

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

Q. Approval to send two police officers to Law Enforcement Bicycle Association Bike Instructor Course in Calgary, Alberta, Canada, (8/11-8/16/08), \$4,140 total.

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

R. Street Closures:

(1) Gold Wing Road Riders Motorcycle Light Parade; 9:30 p.m. – 10:40 p.m.; July 14, 2008 – (Part A) Assemble in Faith Evangelical Church's parking lot on Sweetwater Drive, right on Zimmerman Trail, right on Highway 3, turn around in Armory lot, right on Highway 3, left on Zimmerman Trail, ending at Zimmerman Trail and Central Avenue intersection. (Part B) Street Fair, Montana Avenue right lane street closure adjacent to the Depot between N. 23rd and 25th Streets, July 15, 2008, 12:00 p.m. – 6:00 p.m.; and Motorcycle Performance, Montana Avenue full closure between N. 23rd and N. 25th Streets, July 15, 2008, 1:30 p.m. – 3:30 p.m.

[\(Corresponding Staff Memo R1\)](#)

(2) Big Sky State Games 5K Run; 6:00 p.m. – 7:00 p.m.; July 18, 2008 - Start at Daylis Track, north on 3rd Street West, west on Parkhill Drive to 12th Street West, east on Parkhill Drive, south on 3rd Street West, ending at Daylis Track.

[\(Corresponding Staff Memo R2\)](#)

(3) Big Sky State Games Cycling Mountain Bike Race; 6:00 a.m. - 2:00 p.m.; July 20, 2008 – Black Otter Trail.

[\(Corresponding Staff Memo R3\)](#)

(4) Big Sky State Games Triathlon; 6:00 a.m. – 11:00 a.m.; July 20, 2008 – Start at Lake Elmo State Park, right on Riveroak, left on Lake Elmo Drive, right on Meadowlark, left on Cody, right on Wicks, right on Fantan, left on Siesta, left on High Sierra Boulevard, left on Wicks Lane, left on Cody, right on Meadowlark, left on Lake Elmo Drive, left on Riveroak, back to Lake Elmo State Park.

[\(Corresponding Staff Memo R4\)](#)

(5) Viva La Fiesta; 4:00 p.m. on July 25 - 6:00 p.m. on July 27, 2008; South 28th and South 29th Streets at 6th Avenue South.

[\(Corresponding Staff Memo R5\)](#)

(6) Mexican Fiesta; 12:00 p.m. on August 1 – 8:00 p.m. on August 2, 2008; South 29th Street at 6th Avenue South.

[\(Corresponding Staff Memo R6\)](#)

S. Acceptance of donation from United Way to fund airfare for two police officers to attend the Northwest Alcohol Conference in Boise, ID, in July, \$800.

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

T. Resolution of Intent to sell portions of Olympic Park and Shiloh Drain access property and set a public hearing date for July 14, 2008.

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

U. Resolution of Intent to issue Tax Increment Finance Bonds in the amount of \$5 million to be used for improvements to King Avenue East between South Billings Boulevard and Orchard Lane.

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

V. Second/final ordinance expanding Ward I (Annex #08-07) for a 4.76-acre property located on the northeast corner of King Avenue East and Calhoun Lane. Robert Medvec, owner.

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

W. Preliminary Subsequent Minor Plat of Weil Subdivision, Amended Lot 3, Block 3.

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

X. Final Plat of Sunnyside Subdivision, Amended Lot 3B, Block 14.

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

Y. Bills and Payroll

(1) May 23, 2008

[\(Corresponding Staff Memo Y1\)](#)

(2) May 30, 2008

[\(Corresponding Staff Memo Y2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. HOUSING AUTHORITY OF BILLINGS WESTCHESTER SQUARE HOME ALLOCATION REQUEST to fund the construction of three affordable rental housing units at 1546 Westchester Square in the Billings Heights. Community Development Board recommends approval of a \$200,000 funding allocation. (Action: approval or disapproval of Community Development Board's recommendation.)

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

3. REALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS in the amount of \$30,000 to support land acquisition for Volunteers of America's Homeless Veteran's Transitional Housing project, pending award of Veteran's Administration grant. Community Development Board recommends approval (Action: approval or disapproval of Community Development Board's recommendation.)

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

4. PUBLIC HEARING AND RESOLUTION AUTHORIZING FILING OF THE ANNUAL FEDERAL TRANSIT ADMINISTRATION SECTION 5307 GRANT. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

5. PUBLIC HEARING AND RESOLUTION APPROVING AND ADOPTING FOURTH QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2007/2008. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

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

6. (a) PUBLIC HEARING AND RESOLUTION VACATING PORTIONS OF LAKE HILLS SUBDIVISION, 25TH FILING, RIGHT-OF-WAY. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

(b) PRELIMINARY PLAT OF LAKE HILLS SUBDIVISION, 25TH FILING, AMENDED LOTS 1, 2, 3, AND 7 OF BLOCK 65; LOTS 1 – 11 OF BLOCK 62; AND LOTS 1, 2, 6 THROUGH 11, AND 28, BLOCK 63. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

7. PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE #CC-08-01: A variance from the Site Development Ordinance Section 1208 (h)(5) pertaining to the number of curb cuts allowed by regulations for property located between 7th and 9th Avenues North between North 28th and North 29th Streets. Billings Clinic, applicant. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

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

8. PUBLIC HEARING FOR SPECIAL REVIEW #860: A special review to add an outdoor patio lounge to a property with an existing on-premise, all-beverage liquor license located on a 32,493 square-foot parcel currently zoned as Highway Commercial and described as: Lot 1, Block 1, Vaquero Subdivision, Maui Nites Casino, 5435 Midland Road. Manny 422, LLC, John Dehler, owner; Roger Tuhy, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

9. PUBLIC HEARING FOR SPECIAL REVIEW #861: A special review to allow a public parking lot on a 24,000 square foot parcel of land in a Residential Multi-Family zone described as: Lot 4, Block 1, Keller Subdivision and located at 543 Milton Road. First Interstate Bank, owner; Jeff Essman, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

10. PUBLIC HEARING FOR SPECIAL REVIEW #862: A special review to remove the condition of approval for Special Reviews #836 and #841 restricting vehicle access across the west property line to adjacent property on a 2.303-acre parcel of land in a Controlled Industrial zone described as Lot 11A-1, CBH Industrial Park Subdivision and located at 1911 King Avenue West. KRP, LLC, owner; Blueline Engineering, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

11. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #844: A zone change from Residential 9600 to Residential Multi Family Restricted on the west half of Lot 5, Sunny Cove Fruit Farms located south of Rimrock Road near Yellowstone Club Estates. Thomas Romine, owner; Blaine Poppler, agent. On a 2-2 vote, the Zoning Commission forwarded no recommendation. (**Action:** approval or disapproval of proposed zone change request.)
[\(Corresponding Staff Memo 11\)](#)

12. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE. An interim zoning ordinance that amends Section 27-611 Sexually Oriented Businesses, to amend the definition of a sexually oriented business and adopt the revisions as an interim zoning regulation to be effective for a period not to exceed six months. Staff recommends approval. (**Action:** approval or disapproval of proposed zone change request.)
[\(Corresponding Staff Memo 12\)](#)

Council Initiatives

ADJOURN

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for SID 1379 King Avenue West – Landscape Improvements Contract on June 10, 2008. This project consists of landscape improvements to King Avenue West from 31st Street West to Shiloh Road.

ALTERNATIVES ANALYZED:

1. Award the landscape contract for SID 1379 to A1-Landscaping in the amount of \$350,000.00; or
2. Reject all bids and do not award the landscape contract for SID 1379

FINANCIAL IMPACT: Funding from this project will come entirely from Arterial and Gas Tax Funds. Assessments to property owners will not be affected with this contract. Two bids were received and evaluated as follows:

<u>Project Costs</u>	<u>Bid Amount</u>
Engineer's Estimate	\$ 400,000.00
A1-Landscaping	\$ 403,928.50
The Good Earth Works Landscaping	\$ 452,251.00

Due to budgetary constraints, the base bid with deductive alternates in the amount of \$53,928.50 will be awarded. Remaining funds for this project will be used for additional work needed on the project including construction administration. A breakdown of the project funds per the CIP is listed below:

SID 1379 Landscaping Funding

Gas Tax/ Arterial Funds	\$ 400,000.00
Contract Amount (This Memo)	\$(350,000.00)
Remaining Funds	\$ 50,000.00

RECOMMENDATION

Staff recommends that Council award A1-Landscaping's bid for SID 1379 King Avenue West – Landscape Improvements in the amount of \$350,000.00

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: SID 1383 Cherry Hills Road Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: SID 1383 Cherry Hills Road was bid on Tuesday, June 10, 2008. This project will construct water, sanitary sewer, curb and gutter, storm drain and street improvements to Cherry Hills Road between Annandale Road and just east of Clubhouse Way. The storm drain improvements include construction of a pond and channel on Lake Hills Golf Course per the Lake Hills Storm Drain Feasibility Study. This portion of the storm drain will be paid out of storm funds.

ALTERNATIVES ANALYZED:

1. Award SID 1383 or;
2. Do not award SID 1383.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$884,893.10. The costs of the Improvements are to be paid from the following sources: (1) \$333,000.00 of Special Improvement District bonds hereinafter described; (2) \$180,000.00 cash contribution from the City of Billings utilizing storm funds; and (3) \$371,893.10 of cash contribution by Ron Hill, owner of 16 of the 28 lots in the District. We received five bids for the project as follows:

	Total Bid
Engineer's Estimate	\$646,591.37
COP Construction	\$631,634.00
Knife River	\$659,169.00
H.L. Ostermiller	\$692,899.06
Riverside Sand & Gravel	\$705,351.40
Western Municipal	\$791,533.56

RECOMMENDATION

Staff recommends that Council award SID 1383 to COP Construction in the amount of \$631,634.00.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: WO 08-07 High Service Pump Station H1-1 Replacement
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 08-07 High Service Pump Station H1-1 Replacement on June 10, 2008. The existing H1-1 Pump is one of the main pumps at the water treatment plant that supplies water to the City. However the pump is over 30 years old, isn't efficient and may become unreliable. This project will remove and replace the pump, motor, and associated piping and valves located at the Water Treatment Plant.

ALTERNATIVES ANALYZED:

2. Award the contract for W.O. 08-07 to Star Service in the amount of \$747,000.00; or
2. Reject all bids and do not award contract for W.O. 08-07

FINANCIAL IMPACT: Funding for this project will be out of the 2008 water revenue funds. We received four bids for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 661,000.00
Star Service	\$ 747,000.00
COP Construction	\$ 794,500.00
Williams Brother Construction	\$ 794,500.00
Western Municipal Construction	\$ 808,000.00

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

<u>Work Order 08-07 High Service Pump Station H1-1 Replacement Funding</u>	
2008 Water Revenue	\$ 655,000.00
2008 Water Replacement	\$ 106,940.00
Contract Amount (This Memo)	\$(747,000.00)
Remaining Funds	\$ 14,940.00

RECOMMENDATION

Staff recommends that Council award Star Service's bid for Work Order 08-07 High Service Pump Station H1-1 Replacement in the amount of \$747,000.00

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: WO 08-08 Waste Water Treatment Plant Electrical Improvements 2008
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 08-08 WWTP Electrical Improvements 2008 on June 10, 2008. This project generally consists of demolition and replacement of aging motor control centers at the Waste Water Treatment Plant.

ALTERNATIVES ANALYZED:

3. Award the contract for W.O. 08-08 to Colstrip Electric in the amount of \$209,710.00; or
2. Reject all bids and do not award contract for W.O. 08-08

FINANCIAL IMPACT: Funding for this project will be out of the 2008 Wastewater Revenues. We received two bids for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 356,000.00
Colstrip Electric	\$ 209,710.00
Ace Electric	\$ 290,500.00

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

<u>Work Order 08-08 Waste Water Treatment Plant Electrical Improvements 2008</u>	
2008 Wastewater Revenue	\$ 387,000.00
Contract Amount (This Memo)	\$(209,710.00)
Remaining Funds	\$ 177,290.00

RECOMMENDATION

Staff recommends that Council award Colstrip Electric's bid for Work Order 08-08 WWTP Electrical Improvements 2008 in the amount of \$209,710.00

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: WO 08-09 Waste Water Treatment Plant Primary Effluent Pipe Replacement and Sludge Drying Bed Expansion

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 08-09 WWTP Primary Effluent Pipe Replacement and Sludge Drying Bed Expansion on June 10, 2008. The Primary Effluent Pipe Replacement will replace primary effluent pipe from the Primary Clarifiers, add a new Primary Effluent Junction Box and create redundancy in the effluent piping so clarifiers can be more easily taken off line for maintenance. The Sludge Drying Bed Expansion will increase the Sludge Drying Bed capacity. The existing Sludge Drying Beds don't have enough capacity to keep up with the growing demand of the Street Sweepers and Vactor Trucks to dump their loads to be treated at the Waste Water Treatment Plant prior to proper disposal.

ALTERNATIVES ANALYZED:

4. Award the contract for W.O. 08-09 to Western Municipal Construction in the amount of \$823,000.00; or
2. Reject all bids and do not award contract for W.O. 08-09

FINANCIAL IMPACT: Funding for this project will be out of the 2008 Wastewater Revenues for the Primary Effluent Pipe Replacement and Gas Tax for the Sludge Drying Bed Expansion. We received three bids for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 625,000.00
COP Construction	\$ 1,050,800.00
Williams Brother Construction	\$ 963,800.00
Western Municipal Construction	\$ 823,000.00

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

Work Order 08-09 WWTP P.E. Pipe Replacement and Sludge Drying Bed Expansion

2008 Wastewater Revenue	\$ 367,180.00
2008 Wastewater Replacement	\$ 298,000.00
2008 Gas Tax (Sludge Drying Beds)	\$ 306,120.00
Contract Amount (This Memo)	\$(823,000.00)
Remaining Funds	\$ 148,300.00

RECOMMENDATION

Staff recommends that Council award Western Municipal Construction's bid for Work Order 08-09 WWTP Primary Effluent Pipe Replacement and Sludge Drying Bed Expansion in the amount of \$823,000.00.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Award of Environmental Control System Replacement Project for the Airport Terminal Building

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: The Heating Venting and Air Conditioning (HVAC) and Lighting systems in the Airport Terminal Building are controlled with an Environmental Control system that was installed in 1991. This system automatically controls the boilers, air conditioning and heating units, and lighting systems to maintain a comfortable environment in all areas of the Terminal and is the primary management tool for Building Maintenance. Replacement parts are no longer being made, and software upgrades are not being written for this system. This project will supply and install new system control equipment and software that will bring the system up to the current industry standards. The new equipment will provide greater control of HVAC and lighting systems, which will allow them to be used in a more efficient and user friendly manner. This project was advertised in the *Billings Times*, and on the City's Web site. On June 10, 2008, we received the following bids for this project.

<u>COMPANY</u>	<u>BASE BID</u>	<u>ALTERNATES 1-4</u>	<u>TOTAL</u>
Johnson Controls	\$68,600	\$88,425	\$157,025
ATS Inland NW	\$102,594	\$59,608	\$162,202
ESTIMATE	\$90,000		

The base bid for this project provided the system's backbone and software upgrades, while the alternates provide a phased approach to complete the entire system. Although the total amount of the complete project is higher than the budgeted amount, it is the Airport's desire to accept the alternate items and install the entire system at this time to avoid anticipated increased costs if the alternate items are re-bid at a later date. Due to some very favorable bids on other FY 2008 capital projects, the Airport Capital Budget has additional budget authority available to cover the additional cost of \$67,025 for Alternates 1-4. Also, if the alternate items are not installed at this time, staff will be required to operate both the new and old Environmental Control systems until the changes contained in Alternates 1-4 are completed.

FINANCIAL IMPACT: The total cost of this project is \$157,025. This project was approved in the City's Capital Improvement Program and funding is budgeted in the Airport's Capital Improvement Fund.

RECOMMENDATION

Staff recommends that the City Council award the Base Bid and Alternates 1-4 for the Environmental Control System Replacement Project for the Airport Terminal Building to the lowest bidder, Johnson Controls, for the total cost of \$157,025.

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

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A7

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: BOC Concrete Aprons – Phase I
DEPARTMENT: Administrative Services/ Facilities Management
PRESENTED BY: Saree Couture, Facilities Manager

PROBLEM/ISSUE STATEMENT: When the BOC was originally bid, the large garage door entrances were specified with concrete aprons. The original bid was over the project budget, so these were eliminated and asphalt was installed. In many locations, the asphalt is settling and sinking at entrances. Over a phased approach, we selected the worst areas first and will replace the asphalt with concrete. The first phase will include 10 entrances. Bids were solicited on June 5 and June 12 and opened on June 17, 2008.

ALTERNATIVES ANALYZED: The alternatives examined were to remove and patch the asphalt; however, the process will worsen with water getting under those areas. Ultimately, the problem starts affecting the building slab at these entrances. The concrete aprons were the recommended longer term answer for the large numbers of heavy equipment that use these entrances daily. The phased approach of taking the worst areas first, then replace the others, is a reasonable approach to solving these problems over time, with appropriate surface.

FINANCIAL IMPACT: The funds are budgeted in the FY 2008 Facilities Management budget. The costs are recovered through rent charges to the BOC tenants within that area of the facility.

RECOMMENDATION

A bid award recommendation will be made at the June 23, 2008, council meeting.

Approved By: City Administrator *ep* City Attorney ___

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: City Hall Roof Replacement – Phase III
DEPARTMENT: Administrative Services/ Facilities Management
PRESENTED BY: Saree Couture, Facilities Manager

PROBLEM/ISSUE STATEMENT: The existing 3rd Floor and upper Penthouse roof on the City Hall is about 30 years old. Its age and condition warrant a roof replacement. Bids were solicited on June 5, 2008 and June 12, 2008 and the City received two (2) bids on June 17, 2008; one was not a valid bid. Staff recommends that Council approve a contract with Commercial Roofing, Inc. for \$109,000 base bid, plus Alternates 1 and 2, for a total of \$112,000 to replace the roof and perform some needed maintenance. Because the roofing bid was over the amount estimated, some value engineering was reviewed and a change order deduction of \$11,800 is also recommended. This Change Order will not diminish the integrity of the roof replacement or warranty.

ALTERNATIVES ANALYZED: The City Council may approve the recommended contract award, delay an award for up to 30 days or reject all bids. Delaying or rejecting will probably lead to higher costs when the roof is replaced.

FINANCIAL IMPACT: The funds are budgeted in the FY 2008 Facilities Management budget, both as project budget and some maintenance/operating funds. The costs are recovered through rent charges to City Hall tenants.

RECOMMENDATION

Staff recommends awarding a contract for the City Hall Roof Replacement Phase III to Commercial Roofing, Inc., for a cost of \$ 112,000 and a deductive change order of \$ 11,800.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

SUBJECT: Downtown Revolving Loan Fund Recommendations for Randy and Janna Hafer

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The Downtown Revolving Loan Committee met on February 15, 2008, and approved a loan to Randy and Janna Hafer in the amount of \$75,000 which Council approved on March 10, 2008. On May 30, 2008, the Committee voted by e-mail to approve an increase to the Hafer’s loan in the amount of \$33,000.

Randy and Janna Hafer requested a loan from the Downtown Revolving Loan Fund for the purpose of redeveloping the Klos Building located at 2720 Minnesota Avenue. The Hafers purchased the building and will relocate their firm, High Plains Architects, to the site when construction is complete. Final project costs are approximately \$542,000 on which the Downtown Revolving Loan Fund will loan the lesser of \$108,000 or 20% of total costs. Actual project costs exceeded estimates for the following; contractor costs of approximately \$99,000, building improvement (windows, floors, solar panels, etc.) costs of approximately \$34,000, and construction period interest of approximately \$14,000.

FINANCIAL IMPACT: Subsequent to approval of this loan, the loan fund will have a balance available of approximately \$2,000,000.

RECOMMENDATION

The Downtown Revolving Loan Committee recommends that council approve to increase the loan to Randy and Janna Hafer by \$33,000 for a total loan of the lesser amount of \$108,000 or 20% of total project costs.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT
A-Loan Description

Attachment A

Revolving Loan Fund Loan

Monday, June 23, 2008

The Randy and Janna Hafer loan terms are as follows:

Loan	Not to exceed \$108,000.
Interest Rate	5.75% Adjusted annually.
Term	Amortized over ten years with a balloon payment at maturity.
Payments	Minimum Payments calculated at a rate of 5.75% over a fifteen year term.
Collateral	Third mortgage on the real property and personal guarantees of Randy and Janna Hafer.
Disbursement	The City will disburse funds to the mortgage escrow company upon receipt of the final pay request from the contractor and supporting documentation of construction costs.

This loan is for the purpose of redeveloping the Klos Building located at 2720 Minnesota Avenue.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Approval of Change Order One for the Lower Level Restrooms Remodel for Billings Logan International Airport to DPS Company, LLC

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: The Airport is remodeling the men and women's restrooms on the lower level of the Airport Terminal Building. This project will provide new floor and wall tile, privacy stalls, water closets, and all associated plumbing in these areas. During the course of construction, several unanticipated items were discovered that need to be included in a change order. First, much of the original 1958 galvanized iron plumbing piping, connections and valves were seriously rusted and would no longer provide reliable service. We also found that the existing floor tile is still well adhered to the concrete floor slab, allowing the contractor to install the new flooring on top of it and saving the cost of demolition. In addition to these items, the other major changes included in this Change Order are:

- Add new waste and vent piping
- Add new urinals

FINANCIAL IMPACT: The total cost of Change Order One is \$8,870, which increases the original contract amount from \$55,457 to \$64,327. Due to favorable bids received on this Capital Improvement Program approved project, we are still within our original project budget and have Department capital funds available to cover this Change Order.

RECOMMENDATION

Staff recommends the City Council approve Change Order One, for the Airport Terminal Building's Lower Level Restrooms Remodel, to DPS Company, LLC for the amount of \$8,870.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Work Order 08-05 King Avenue East Water Main Change Order
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Work Order 08-05 was awarded at the March 24, 2008, City Council Meeting. This project involved the construction of water main within King Avenue East between Calhoun Lane and Orchard Lane which completed the loop between Calhoun Lane and Orchard Lane. Change Order No. 1 was approved by the City Administrator on April 28, 2008, to add imported fill to replace any unsuitable material and lower the water under an unknown drain. Change Order No. 2 Final is to reconcile actual construction quantities with bid quantities. The total increase to the project for Change Order No. 1 Final was \$8,840.65 and the increase for Change Order No. 2 Final is \$15,332.55, which combined, exceeds 10% of the original contract amount of \$148,167.00.

ALTERNATIVES ANALYZED:

- 3. Approve Change Order No. 2 Final for a net increase of \$15,332.55;
- 4. Do not approve Change Order No. 2 Final.

FINANCIAL IMPACT: Funding for Work Order 08-05, King Avenue East Water Main, is being provided from water rehabilitation funds, possibly being reimbursed from the newly formed TIFD.

RECOMMENDATION

Staff recommends that Council approve Change Order No. 2 Final with COP Construction for a net increase of \$15,332.55.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A. Change Order No. 2 Final with COP Construction.

PROJECT: City of Billings W.O. 08-05
King Avenue East Water Main
Billings, Montana

DATE OF ISSUANCE: April 23, 2008

OWNER: City of Billings
510 N. Broadway, 4th Floor
Billings, MT 59101

OWNER PROJ. NO. W.O. 08-05

CONTRACTOR: COP Construction LLC
P.O. Box 20913
Billings, MT 59104

ENGINEER: ENGINEERING, INC.

ENGINEER PROJ. NO. 08012

CONTRACT FOR: All Work in accordance to the Contract Plans and Specifications

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

Purpose of Change Order:

Explanation of Items. Reconcile Contract to Reflect Actual Quantities Installed

Attachments:

CHANGE IN CONTRACT PRICE:

CHANGE IN CONTRACT TIME:

Original Contract Price

Original Contract Time

\$148,167.00

30
days or date

Previous Change Order No. 1

Net change from previous Change Orders

\$8,840.65

0
days

Contract Price prior to this Change Order

Contract Time prior to this Change Order

\$157,007.65

30
days or date

Net INCREASE of this Change Order

Net INCREASE of this Change Order

\$15,332.55

0
days

Contract Price with all approved Change Orders

Contract Time with all approved Change Orders

\$172,340.20

30
days or date

RECOMMENDED:

ACCEPTED:

by: T. R. Paul 5/27/08
Engineering, Inc. Date

by: [Signature] 5/28/08
COP Construction LLC Date

APPROVED:

by: _____
City of Billings Date

by: [Signature] 6/2/08
City Administrator Date
Engineering

PROJECT: City of Billings W.O. 08-05
King Avenue East Water Main

DATE OF ISSUANCE:

April 23, 2008

Bid Item	Description	Unit	Price	Quantity Increase / Decrease	Dollar Amount Increase / Decrease
CHANGE ORDER NO. TWO					
CO2-1	Reconcile Contract to Reflect Actual Quantities Installed				
108	12-inch Gate Valve	EA	\$ 1,600.00	1.00	\$ 1,600.00 \$ -
110	12x12x8-inch Tee	EA	\$ 650.00	(1.00)	\$ - \$ (650.00)
111	12x12x6-inch Tee	EA	\$ 585.00	5.00	\$ 2,925.00 \$ -
113	8-inch Water Main	LF	\$ 34.00	(37.00)	\$ - \$ (1,258.00)
114	8-inch Gate Valve	EA	\$ 1,150.00	(2.00)	\$ - \$ (2,300.00)
115	8-inch Plug and Thrust Block	EA	\$ 350.00	(1.00)	\$ - \$ (350.00)
116	6-inch Water Main	LF	\$ 27.00	158.00	\$ 4,266.00 \$ -
117	6-inch Gate Valve	EA	\$ 900.00	8.00	\$ 7,200.00 \$ -
118	6-inch Plug and Thrust Block	EA	\$ 300.00	5.00	\$ 1,500.00 \$ -
CO1-1	Import Pit-Run Backfill Material	LF	\$ 9.41	255.00	\$ 2,399.55 \$ -
TOTAL NET INCREASE					\$ 15,332.55

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: SID 1379 – Utility and Street Improvements to King Avenue West from S. 31st Street West to Shiloh Road, Change Order #10

DEPARTMENT: Public Works - Engineering

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

PROBLEM/ISSUE STATEMENT: Work under this change order would construct additional utility improvements to facilitate providing sanitary sewer service to the planned King Avenue Lift Station service area. Work would include installing an additional 10-foot diameter manhole that would be utilized by the City in the future as a component of the forthcoming King Avenue Lift Station project. The amount of Change Order No. 10 for the City's contract with Knife River Corporation is not to exceed \$300,000.00.

It is recommended that this manhole be constructed at the present time under SID 1379. Mayor and Council rejected the sole bid for the lift station project at their March 24, 2008 meeting. Although the King Avenue lift station design is currently being modified and the project rebid with the intent of attracting more bidders and a lower price, the SID 1379 Contractor is currently installing sewer main and manholes and is the utility contractor on Shiloh Crossing's Private Contract No. 583. This contractor is well positioned to complete the work required by this change order. All necessary dewatering facilities and construction equipment are on-site and in close proximity to the project area under consideration.

Although it is now necessary to complete additional underground improvements for the lift station under this project, its inclusion within this project was unforeseen and staff is requesting that Council grant the City Administrator extra change order authority since this project has an aggressive construction schedule and decisions and approvals for change orders often need to happen the same day that problems are identified. In addition to staff's request to approve the above change in work, staff is also requesting that Council increase the City Administrator's change order authority by \$50,000 above what would be approved for Change Orders 1-10. At the May 12 City Council meeting, Council approved extending this authority by \$50,000.00 above what had been already been approved for Change Order Nos. 1-8; however, with Change

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Drinking Water Source Study – Professional Services Contract
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Providing for a continued and reliable source of water for the city’s drinking water system is an important issue. To aid in that effort, staff proposes entering into an agreement with HDR Engineering in the amount of \$415,400 to 1) identify ways to reduce the peak and overall water system demands; 2) review the feasibility of developing groundwater as a raw water source; 3) review the feasibility of developing an off-stream raw water storage system; 4) determine the feasibility of developing a riverbed raw water collection system; and 5) explore potential sites for a new west end water treatment facility. Since the money for this project is included in the FY08 budget, the subject agreement needs to be approved prior to the end of the fiscal year.

FINANCIAL IMPACT: There is sufficient money in the O & M portion of the water budget to cover the agreement amount.

RECOMMENDATION

Staff recommends that Council approve the professional services contract with HDR Engineering in the amount of \$415,400 for the Drinking Water Source Study.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

Attachment A – Professional Services Contract

INTRODUCTION

Providing for a continued and reliable source of water for the city's drinking water system is an important issue. To aid in that effort, staff proposes entering into an agreement with HDR Engineering in the amount of \$415,400 to 1) identify ways to reduce the peak and overall water system demands; 2) review the feasibility of developing groundwater as a raw water source; 3) review the feasibility of developing an off-stream raw water storage system; 4) determine the feasibility of developing a riverbed raw water collection system; and 5) explore potential sites for a new westend water treatment facility.

Staff recommends approval of the contract with HDR Engineering covering this work.

BACKGROUND

Soliciting proposals through a RFP and utilizing the city's normal selection process for professional services, HDR Engineering was selected from a field of three consultants for this study. The selection committee consisted of Mike Rubich, Susan Stanley, and Alan Towleron of Public Works and Kim Annin of Aviation & Transit.

The 2006 water and wastewater master plan recommended that the City investigate off-stream storage as a means to better manage the reliability of our raw water supply. The study will look at the feasibility of such storage and identify potential sites as well as other issues related to this type of project. There is also concern about continuing to rely on the Yellowstone River as the sole source of supply for the entire city. The study will investigate the feasibility of using groundwater as a raw water source for our drinking water system. Being able to do this will provide flexibility of supply by reducing the reliance on the river if groundwater is found to be feasible. Such a source could possibly be used for the proposed west end water treatment plant. The study will look at various conservation methods that can help reduce both peak demands as well as overall demands on the system. If successful, such reductions could potentially defer the need for constructing new facilities such as the west end water plant and others. The study will also investigate the feasibility of a riverbed-type intake (Raney collector) for the proposed west end water plant as well as investigate potential sites for the water treatment facility.

RECOMMENDATION

Staff recommends that Council approve the professional services contract with HDR Engineering in the amount of \$415,400 for the Drinking Water Source Study.

ATTACHMENTS

Attachment A – Professional Services Contract

Project: Drinking Water Source Study

In consideration of the mutual promises herein, City of Billings and HDR Engineering, Inc. agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of __11__ pages (Basic Services of Contractor);
- Appendix B consisting of __2__ pages (Methods and Times of Payment);
- Appendix C consisting of __1__ pages (Additional Services of Contractor);
- Appendix D consisting of __1__ pages (Schedule of Professional Fees);
- Appendix E consisting of __1__ pages (Project Schedule);
- Appendix F consisting of __2__ pages (Certificate(s) of Insurance); and

**PART I
SPECIAL PROVISIONS**

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the Deputy Public Works Director of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means HDR Engineering.

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Contractor in accordance with Section 4 for services actually performed under this Contract.

- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2009.

Section 4. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than Four Hundred Fifteen Thousand, Four Hundred DOLLARS (\$415,400.00) in accordance with this Section.
- B. Billings shall pay the Contractor on a Lump Sum Basis in accordance with the task schedule attached hereto as Appendix B and incorporated herein by reference.
- C. Each month, and/or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- D. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- E. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination.

- Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.
 - C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
 - D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
 - E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
 - F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
 - G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
 - 1. Workers' compensation and employer's liability coverage as required by Montana law.
 - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
 - 3. Commercial automobile liability -- \$500,000 per accident.
 - 4. Professional liability in the amount of \$1,500,000 per occurrence.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings:	City Project Engineer: Alan Towleron, Deputy Public Works Director City of Billings Department Public Works 2251 Belknap Avenue Billings, Montana 59101	FAX: (406) 657-8319
Contractor:	Project Manager: Craig Habben HDR Engineering 2913 Millennium Circle	

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Contractor shall not make expenditures other than as provided in line items in the Contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
 - 2. Strikes or Work stoppages.
 - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

PART II

GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Contractor: HDR Engineering, Inc.

City Council or Designee

Name: _____

Title: _____

Date: _____

Date: _____

ATTEST:

IRS Tax ID # 47-0680568

City Clerk

Date: _____

STATE OF MONTANA)
 :SS.

COUNTY OF MISSOULA)

On this _____ day of _____, 2008, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

Notary Public for the State of Montana
Residing at Missoula, Montana
My Commission Expires: _____

Note: Final contract documents will require the Contractor's signature to be notarized.

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.

- J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.
- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Craig Habben working under the Principal-in-Charge, Gary Fuller.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Alan Towleron, Deputy Public Works Director.

Section 3. Scope of Work.

The first phase of the project consists of engineering services for the evaluation of reducing peak water demands to delay the proposed West – End Plant or meeting the demands most cost effectively. The second phase includes a groundwater source evaluation, off-stream storage evaluation, (if necessary) a Ranney Well Collector evaluation and a West-End Water Plant Site evaluation

The scope of work is summarized below.

Project Initiation, Coordination and Project Management

This task will provide for administrative services to conduct and coordinate the project with the Owner, Engineer and subconsultants.

Evaluate Peak Water Demand Shaving and Alternative Treatment Options

The purpose of this evaluation is to develop ideas to delay the construction of the proposed West-End Water Plant or change the treatment needs of the plant to reduce cost. The types of ideas to evaluate include:

- Water conservation methods and options.
- Water loss and leak detection.
- Using irrigation water in new developments and to serve existing high use irrigation areas.

- Wastewater reuse.
- User rate adjustments.
- Aquifer storage of treated water or other treated water options.

A team provided by the consultant and approved by the City will conduct a workshop with the City to brainstorm ideas on peak shaving and alternative treatment options. Immediately following the workshop the consultant team will further evaluate ideas of merit to determine cost effectiveness compared to building the proposed new plant or probability of delaying the proposed plant. After the evaluation is complete the consultant will present and discuss the results with the owner and will prepare a memorandum summarizing the evaluation.

If one or more of the ideas have merit, the City will direct the consultant to further investigate this option(s). Scope will be defined for the further investigation(s) at that time.

Ground Water Source Evaluation

The purpose of this evaluation is to determine if a viable groundwater source is available that could be conveyed to the City and treated as required or stored in a reservoir and then treated. The following items will be reviewed as part of this evaluation:

- Identify potential sources of groundwater (local and distant)
- Review and summary of estimated quantity and quality of sources
- Discuss of water treatment issues
- Discuss of advantages/disadvantages of identified sources
- Estimate costs for development, conveyance and treatment of identified sources
- Discuss issues related to water rights, environmental impacts and permitting.

Off-Stream Storage Study

The purpose of this evaluation is to determine the feasibility of developing a reservoir for off-stream storage. Included in this evaluation:

- Develop a common understanding of the potential project size, project sponsors and users and designated beneficial uses of the project (water supply, recreation, instream flow)
- Screen potential reservoir sites and selection of a short-list of targeted sites for further evaluation

- Evaluate hydrology, water rights, constructability and permitting pathline for each site. If sites appear feasible and viable, recommend approach and costs for additional studies to develop one or more of these sites.

Ranney Well Collector Evaluation

The purpose of this evaluation is to examine the feasibility of installing a Ranney collector well for a raw water intake that is hydraulically-connected to the Yellowstone River. Included in this evaluation is:

- Compile existing hydrogeologic data and evaluation of the feasibility of the alluvial aquifer along the Yellowstone River valley for the construction and supply of ground water to a Ranney collector well.
- Develop a preliminary cost estimate for construction and conveyance.
- Discuss issues related to water rights, environmental impacts and permitting.

West-End Water Treatment Plant Site Feasibility Study

The purpose of this evaluation is to examine West-End Water Treatment Plant Sites including coordination of sites with the other applicable task series of this project. In addition the sites will be evaluated for effectiveness of supplying water into the existing and proposed water distribution system. Included in this evaluation is:

- Determination of required plant site size for ultimate needs.
- Determination of the advantages and disadvantages of plant sites in relation to options developed for source water type and location.
- Evaluation of conveying flow from the alternative plant sites to the water distribution system.
- Cost estimate of facilities corresponding to selected plant site alternates.

DETAIL SCOPE OF SERVICES

The scope of services that will be utilized is presented in the summaries for Tasks 100 through 700. Notice to Proceed for each task will be authorized by the City. The scope of services is organized as follows:

<u>Task Series</u>	<u>Description</u>
100	Project Initiation, Coordination, Deliverables and Management
200	Peak Water Demand Shaving/Alternative Treatment Evaluation
300	Follow up to Task 200
400	Groundwater Source Evaluation

500	Off-Stream Storage Evaluation
600	Ranney Well Collector Evaluation
700	West-End Water Treatment Plant Site Feasibility Study

TASK SERIES 100 – PROJECT COORDINATION AND MANAGEMENT

101– Project Initiation

The purpose of this task will be to establish lines of communication between the City and HDR staff and initiate the project internally.

102 – Project Coordination

Coordinate between the City and project team members.

103 – Project Management

Monitor project status and prepare financial documents.

TASK SERIES 200 – PEAK WATER DEMAND SHAVING/ALTERNATIVE TREATMENT EVALUATION

201 – Water Conservation Workshop

Prior to the Workshop develop ideas currently in practice in other areas or the country and summarize successfulness of these ideas.

A workshop will be conducted with the City to discuss possible water conservation methods and options. The workshop will examine the following:

- **Conservation Planning Process** – Discuss the process utilities go through to determine what type of conservation program is appropriate for their situation.
- **Reasons for Conservation** – Discuss typical reasons utilities implement conservation. Determine the City’s primary conservation reason, which will allow for evaluation of the type and level of the conservation program.
- **Common Conservation Measures and Incentives** – Discuss common conservation measures and incentives, as well as their typical savings and costs.
- **Measure Analysis** – Discuss how conservation measures can be analyzed to determine savings and costs for the City’s service areas. This will cover analysis principles in general, as well as how the analysis could be performed.
- **Implementation Issues** – Discuss various issues related to program implementation.

- **Tracking Issues** – Discuss various issues related to tracking the success of the program.

202 – Peak Demand and Alternative Treatment Workshop

Consultant team and City will brainstorm alternative ideas to delay construction of the proposed West-End treatment plant, or change the treatments needs of the plant to reduce the cost.

203 – Cost Estimating and Alternatives Development

Immediately following the Water Conservation and Peak Demands/Alternative Treatment workshops the Consultant team will evaluate options discussed in the workshop. A shortlist of options will be developed including advantages and disadvantages as well as estimates of implementation costs.

204 – Present Findings

Consultant team will present findings to City.

205 – Produce Memorandum

Consultant team will provide a memorandum summarizing potential options developed from the workshop and the review meeting with the City.

TASK SERIES 300 – FOLLOW UP TO PEAK WATER DEMAND SHAVING/ALTERNATIVE TREATMENT EVALUATION

301 – Task to be determined

One or more options developed in Task 200 will be further evaluated for feasibility of implementation as an alternative to the current timeline or treatment approach to the proposed West-End Water Plant.

TASK SERIES 400 – GROUND WATER SOURCE EVALUATION

401 – Initial Meeting to Establish Project Goals

A meeting will be held with the City to establish project goals and to assist in further defining the project scope. Topics to be covered in the meeting will include details of tasks 402, 403, and 404 described below. One of the goals of the meeting will be to help define study area boundaries from a local and regional perspective.

402 – Compile Hydrogeologic Information

Review existing information relevant to groundwater resources within the study area proximal to Billings West-End to verify the limited research completed during the formulation of the Billings Master Plan. A preliminary evaluation of groundwater availability based on the existing information will be completed using well logs, water rights information, published geologic and hydrogeologic reports of the area and internal knowledge base of existing resources and anecdotal information from individuals knowledgeable about local water resources. The scope of work for this task includes:

- Records from various agencies will be obtained and compiled to identify information regarding local hydrogeology, well construction, pump test information (testing and results), and water rights within the study area. Data will include information from shallow intervals to the Madison Limestone. Sources available for this information include the Montana Bureau of Mines and Geology (MBMG), Groundwater Information Center (GWIC), Montana Board of Oil and Gas Conservation (MBOGC), Montana Department of Natural Resources (DNRC), United States Geological Society (USGS). In addition, City of Billings consultant reports will be review for potential information regarding water resources or hydrogeologic information.
- Information on well logs and water rights will be compiled for easy review and evaluation.
- Preliminary Evaluation - Existing literature specific to or overlapping, the study area will be obtained and reviewed. A list of references will be prepared and the documents stored for easy reference.
- Individuals knowledgeable about local groundwater conditions will be contacted to obtain their opinions regarding potential high-yield groundwater sources and other information that might not be available in literature or databases. These individuals may include groundwater researchers, local water well drillers, regulatory agency personnel (Montana Department of Environmental Quality (DEQ), MBOGC, MBMG, etc.) and/or geological consultants. Information that may be obtained from these individuals includes hydrogeological observations from deep borings; areas of higher or lower yield bedrock or unconsolidated deposits, and geological observations.

403 – Research for Regional Groundwater

A general assessment of potential groundwater availability for the region will be completed. Potential groundwater sources that will be evaluated include:

1. Shallow alluvial groundwater sources specifically the Yellowstone Valley and nearby tributaries including Rock Creek and Clarks Fork.
2. Deeper bedrock sources, including the Madison Group and the Tensleep Sandstone.

The potential ground water sources will be analyzed to determine:

- Amount of ground water available
- Reliability of ground water supply
- Ground water quality
- Potential interference with existing well sources or interconnected surface water sources
- Ability to obtain water rights
- Treatment requirements
- Costs and methods of well field construction
- Costs and methods of conveyance to Billings
- Potential issues of mixing water in the distribution system from two separate sources

404 – Prepare Report

A draft report will be prepared that summarizes the results of the investigations described above and includes recommendations. A final report will be issued that incorporates the comments from the City on the draft report.

405 - Project Meeting

One project meeting will be held to discuss the project findings and to obtain input on the report.

TASK SERIES 500 – OFF STREAM STORAGE EVALUATION

501 – Kick Off Meeting to Develop Project Goals

A meeting will be held with members of the City to identify project goals and to answer the following questions:

- Is there a desire to partner with other water users that might share the costs and benefits? Who might be partners on this project?
- Should this project attempt to meet regional water demands or just the future demand of the City?
- What beneficial uses could or should the reservoir meet other than water storage supply? Irrigation? Recreation? Instream flow?

- Does the City already have a short-list of potential candidate storage sites in mind that could short-circuit a formal evaluation procedure?

Based on the results of this task, a project goal statement will be developed that describes the approximate range in size of the potential project, the project sponsors and the beneficial uses of the stored water. Up to two project alternatives will be selected (alternatives that roughly describe the preferred reservoir size, project sponsors and beneficial uses of the water) for further consideration at specific potential sites.

502 – Compile and Review Previous Studies

Previous studies will be compiled that evaluate potential water storage sites in the Yellowstone Valley. The Calamity Jane project evaluation reports will be obtained from Reclamation and DNRC. These studies will be summarized and used as applicable.

503 – Conduct a Site Screening and Develop a Short-List of Potential Reservoir Sites

A meeting will be held with the City to develop a list of potential reservoir storage sites. Basic information will be compiled for each site including:

- Hydrology
- Topography
- Geology
- Environmental Characteristics
- Land Ownership
- Advantages/Disadvantages

The previously researched studies will also be included in the screening as applicable. This information will be organized spatially and displayed on maps to identify the pertinent characteristics. Based on the results of this screening analysis, a short-list of three to five identified sites will be selected for further consideration in subsequent tasks described below.

Based on recent interest in the Calamity Jane project, additional attention and review will be committed to this project to determine its feasibility for development based on current needs.

504 - Field Visit

A field visit will be conducted to the three to five project sites identified above. The purpose of the field visit will be to familiarize the project team with the site locations and

to observe relevant features that may affect constructability, project permitting and feasibility.

505 – Hydrologic Analysis

A hydrologic analysis will be conducted using existing gaging data to determine the monthly total runoff available from the contributing basin that would be the water supply for the storage project in the addition to the Water Reservation from the Yellowstone River. Hydrologic modeling is not anticipated at this time.

506 – Water Rights Analysis

We will assume that the City water reservation will be the water right permitting path line for the project. We will contact the DNRC to determine the amount of water that can be accessed under the City water reservation and how this reservation may be utilized for a reservoir storage project that withdraws storage water from either the mainstream Yellowstone River or its tributaries. We will compile a list of existing rights and water users on the mainstream Yellowstone River and tributaries within the study area and evaluate the availability of storage water for each of the short-listed storage sites.

507 – Reservoir Constructability

A preliminary evaluation will be completed to ascertain some of the reservoir constructability details for the short-listed sites identified above. Constructability will be evaluated based on geologic data and professional engineering judgment. Engineering analysis beyond preliminary feasibility on specific project components is not part of the scope for this phase of work. This scope item will be limited to the extent that compiled data is already available and engineering judgment can be used to make conclusions about the type of project that may be constructed at potential sites.

508 – Evaluate Permitting Requirements

The permitting requirements for each site will be summarized. A list of permits and permitting studies required for each site and a projected sequence and time frame for completing the permits would be created. Preliminary consultations will be conducted with State and Federal agencies to obtain input on permitting requirements.

509 – Report Preparation

A draft report will be prepared that describes the results of the investigations. The report will conclude with recommendations for design studies, and permitting and agency consultation necessary for proceeding with a water storage project if one or more alternatives appear to be viable and feasible. A final report will be submitted that incorporates comments from the City.

510 – Meetings

A total of four one-day meetings are anticipated with City staff during the course of the project. A kick-off meeting (Task 501) and a site screening meeting (Task 502) are the first two meetings to be conducted. One additional meeting will be conducted prior to preparing the draft report to go over the project results and obtain input. The fourth project meeting will be conducted to review the City's input on the draft report.

If at any point during the process it becomes obvious that off stream storage is not a viable source, the above task series will be stopped and a document produced reflecting the work that has been completed and a summary produced on why an off stream storage source is not viable.

TASK SERIES 600 – RANNEY WELL COLLECTOR EVALUATION

601 – Hydrogeologic Characterization

Existing hydrogeologic information (including well logs, regional hydrogeologic reports, geophysical surveys and other available information) will be compiled. This information will be used to develop a technical summary of the nature, depth and transmissivity of the unconsolidated sediments underlying the north bank of the Yellowstone River. If the existing subsurface data is not sufficient to make a determination of the feasibility of the project, recommendations will be provided for additional subsurface explorations.

602 – Evaluate Feasibility, Prepare Preliminary Design Recommendations and Preliminary Cost Estimate

The design information requirements for construction of a Ranney collector well will be summarized. Based on the results of the hydrogeologic characterization, other preliminary design and construction information will be summarized as needed to develop a preliminary engineering design. This information will be used to evaluate the feasibility of installing a Ranney collector well. If feasible, the available information will be used to develop preliminary engineering design information and costs.

Recommendations will be prepared for additional data collection and design services if the project appears feasible.

603 – Identify Permitting and Water Right Requirements

The permitting and water right requirements will be identified assuming that the project will involve a transfer of the City's existing surface water right to a Ranney collector that would operate in hydraulic continuity with surface water.

604 – Report Preparation

A draft report will be prepared incorporating all of the project data, evaluations, results, and recommendations obtained in the previous subtasks. A final report will be issued incorporating comments from the City.

605 - Meeting

One project meeting will be held to discuss the project findings and to obtain input on the report.

If at any point it becomes obvious a Ranney well collector is not feasible the investigation will be stopped and a report put together to summarize the results to that point.

TASK SERIES 700 – WEST-END WATER TREATMENT PLANT SITE FEASIBILITY STUDY

701 – Determine Treatment Plant Size

Determine layouts for a conventional sedimentation and membrane treatment plant process including ancillary treatment and piping components. Determine layout for on-site water storage and pump facilities to at least two zones. Treatment plant requirements should be projected out at least 100 years and include a buffer zone.

702 – Determine Potential Locations for Water Treatment Plant Site

Based on the alternatives developed in previous tasks, select general locations for a treatment plant. Based on these general site locations an evaluation of existing land ownership and land use will be conducted to narrow the potential site locations.

703 – Water Treatment Plant Sites Comparison

Evaluate sites based on economical and non-economical factors. Economical comparison will include costs for getting water to the distribution system and any upgrades to the distribution system needed for the associated plant site location.

704 – West-End Water Treatment Plant Site Memorandum

Provide draft memorandum of the plant site comparisons and recommendations. Provide internal review. Review memorandum with the City. Incorporate review comments and provide final memorandum.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

Billings shall authorize payment to the Engineer for services performed under Appendix A of this Agreement. Partial payment shall be due the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer per the tasks below.

i.	Task Series 100 - Project Initiation, Coordination, and Management	\$10,000
i.	Task Series 200 - Peak Water Demand Shaving Alternative Treatment Evaluation	\$35,000
i.	Task Series 300 – Task Series 200 Follow Up	\$40,000
7.	Task Series 400 – Groundwater Source Evaluation	\$49,800
7.	Task Series 500 – Offstream Storage Evaluation	\$172,400
i.	Task Series 600 – Ranney Well Evaluation	\$54,200
i.	Task Series 700 – Water Treatment Plant Siting Evaluation	\$54,000

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall pay the full amount of each pay estimate up to 90% of the contract/task amount. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

B. Final payment shall be the above stated basic fee less all previous payments.

Section 2. Payments for Extra Services when Authorized by Billings.

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on a negotiated price.

Section 3. Corrections.

Costs of Billings work that is required for corrections to the Engineer's work which requires redoing by Billings shall be deducted from any payments due the Engineer, if the Engineer fails to make the required corrections.

Section 4. Fee Increases

For contracts and services that are expected to require more than one (1) year to complete, the above stated basic services payments may be reviewed and adjusted annually by mutual agreement of the parties, based upon documented evidence that the Engineer's costs and hourly rates have increased for all comparable clients.

Appendix C

Additional Services of Engineer

Extra Services of the Engineer will be paid only with written prior authorization by Billings.

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

Appendix D

Schedule of Professional Fees

Not Used

Appendix E

Project Schedule

Based on a notice to proceed by Billings date no later than June 23, 2008, the completion date for the Engineer's work through final design shall be:

- C. Task Series 100 - Ongoing
- D. Task Series 200
 - i. Begin July 2008
 - ii. Complete by August 29, 2008
- E. Task Series 300 – Dependant on Follow Up work to Task Series 200.
- F. Task Series 400
 - i. Begin July 2008
 - ii. Complete by November 21, 2008
- G. Task Series 500
 - i. Begin July 2008
 - ii. Complete by July 2009
- H. Task Series 600
 - i. Begin January 2009
 - ii. Complete by May 2009
- I. Task Series 700 – Ongoing with other Tasks

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Appendix F
Certificate of Insurance

Attached

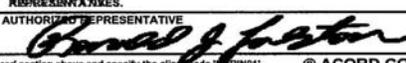
ACORD™ CERTIFICATE OF LIABILITY INSURANCE		6/1/2009	DATE (MM/DD/YYYY) 5/28/2008
PRODUCER Lockton Companies, LLC-1 Kansas City 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED 13147 HDR ENGINEERING, INC. ATTN: LOUIS J. PACHMAN 8404 INDIAN HILLS DRIVE OMAHA, NE 68114-4049 BELLEVUE/CYNTHIA RAMOLD		INSURERS AFFORDING COVERAGE INSURER A: ZURICH AMERICAN INS CO. - O.P. KS INSURER B: AMERICAN GUARANTEE & LIAB (ZURICH) INSURER C: NEW HAMPSHIRE INS. CO. INSURER D: INS. CO. STATE OF PENNSYLVANIA INSURER E:	NAIC #

THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.

COVERAGES HDRIN01 SA
 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 LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	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: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	GLO3504583	6/1/2008	6/1/2009	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000
B		AUTOMOBILE LIABILITY <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	BAP3504584.	6/1/2008	6/1/2009	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX AUTO ONLY - EA ACCIDENT \$ XXXXXXXX OTHER THAN EA ACC AGG \$ XXXXXXXX
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	NOT APPLICABLE			AUTO ONLY - EA ACCIDENT \$ XXXXXXXX OTHER THAN EA ACC AGG \$ XXXXXXXX
B		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> UMBRELLA FORM RETENTION \$	AUC3808400 (EXCLUDES PROF. LIAB)	6/1/2008	6/1/2009	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ XXXXXXXX \$ XXXXXXXX \$ XXXXXXXX
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? NO If yes, describe under SPECIAL PROVISIONS below	3621195 (AOS) 3621196 (CA)	6/1/2008 6/1/2008	7/1/2009 7/1/2009	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A		OTHER ARCHS & ENGS PROFESSIONAL LIABILITY	EOC9260026-01	6/1/2008	6/1/2009	PER CLAIM: \$2,000,000. AGG: \$2,000,000.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 RE: CLIENT #000194: ALL PROJECTS. CITY OF BILLINGS, ITS OFFICIALS, OFFICERS, EMPLOYEES & AGENTS ARE NAMED AS ADDITIONAL INSUREDS AS RESPECTS GENERAL & AUTOMOBILE LIABILITY, AS PER WRITTEN CONTRACT. WAIVER OF SUBROGATION APPLIES.

CERTIFICATE HOLDER 2824447 CITY OF BILLINGS PUBLIC WORKS DEPARTMENT ATTN: DAVE MUMFORD 510 NORTH BROADWAY 4TH FLOOR BILLINGS MT 59101	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL SEND BY MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY FIRST CLASS MAIL OR BY FAX OR BY TELEPHONE TO THE ADDRESS OR TELEPHONE NUMBER OF THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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[\(Back to Consent Agenda\)](#)



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Contract Award for Public Safety i5 High Availability System
DEPARTMENT: Administration - ITD
PRESENTED BY: David Watterson, ITD Manager

PROBLEM/ISSUE STATEMENT: Information Technology and the Communications Advisory Board have been working together to improve the ability to maintain 9-1-1 Computer Aided Dispatch (CAD) services during an unscheduled downtime caused by a machine failure and/or a disaster impacting the 9-1-1 facility. A “High Availability System” would seamlessly replicate the production i5 system with a backup system located at a remote site. An investment in High Availability technology will greatly reduce the impacts of both unscheduled and scheduled systems downtime for the 9-1-1 computer center.

For the past four years, the City has relied on an older i5 system for disaster/recovery backup. Several times in the past few years, Information Technology has provided the Communications Advisory Board with information on the benefits of a High Availability System. Some members of the advisory board were hesitant to seek funding for this project and wanted to maintain the reliance on the older i5 system. Due to the age of the older i5 system, to advances in the functionality of our New World public safety software, and to new operating system releases from IBM, the older i5 system is no longer capable of serving as a backup system. This development emphasized the need for the Communication Advisory Board to find a solution that would meet their disaster/recovery needs now and into the future. The High Availability solution recommended to the board by Information Technology was approved as an amendment to the Billings City/County 9-1-1 Plan by the State of Montana Public Safety Services Bureau. The use of 9-1-1 funds for this purchase was unanimously approved by the Communication Advisory Board on April 16, 2008. The High Availability System was not in the FY 2008 Technology Replacement or Capital Improvement Plan because the Communications Advisory Board was not convinced until recently that the investment is needed. Purchasing the system requires that the Council acknowledge an amendment to those plans.

The proposed High Availability System will provide 24/7 replication of the 9-1-1 center’s i5 mission critical system to a remote system located at City Hall. Dispatchers and other public

safety personnel can be redirected to a fully functional backup system in less than 15 minutes. This technology also reduces scheduled downtime by allowing daily backups to be done on the backup system.

FINANCIAL IMPACT: An RFP was advertised for the desired High Availability System. The City received proposals from three (3) vendors that met the advertised RFP requirements. The vendors and the cost of their proposed solutions are as follows:

<u>Vendor</u>	<u>Proposed Cost</u>
Vision Solutions 5215 Wiley Post Way Salt Lake City, UT 84116	\$ 71,350 + Travel
Synatrix PO Box 5010 St. Cloud, MN 56302	\$ 72,654.56 (travel included)
Integrated Information Systems 2425 West Central Missoula, MT 59803	\$ 51,565 (travel included)

The High Availability System will be funded out of the 9-1-1 funds as approved by the Communications Advisory Board on April 16, 2008.

RECOMMENDATION

Staff recommends that Council approve the purchase of the i5 High Availability System from Integrated Information Systems a total cost of \$ 51,565. In addition, staff recommends that Council approve an amendment to the FY2008 Capital Improvement Plan and Technology Replacement Plan to reflect this purchase.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: 800 Mhz Maintenance Contract with EF Johnson Company
DEPARTMENT: Fire and Information Technology
PRESENTED BY: John Staley, Interim Fire Chief and David Watterson, Director of Information Technology

PROBLEM/ISSUE STATEMENT: The current 800 Mhz radio maintenance agreement will expire at the end of the month. It is necessary to maintain the system. EF Johnson Company has made an offer to extend the maintenance agreement for three (3) years. An EF Johnson certification is required to perform maintenance work.

Acorn Technology is the only option for the everyday maintenance and particularly the warranty of our EF Johnson 800 Mhz radio system.

- **ALTERNATIVES ANALYZED:** *None*

FINANCIAL IMPACT:

- The financial impact of this contract is \$517,466.85 over three (3) years. This bid reflect an increase of approximately 17.5% over the previous three (3) year contract.
- This contract has been budgeted for in the FY 2008/2009 Budget. The budgets affected include Fire, Police, Airport, Public Utilities, Cemetery, Parks and Recreation, Met Transit, Solid Waste, 9-1-1 Communications Center, Parking Division, and Building. Signing a three (3) year contract provides a predictable and stable maintenance cost.

RECOMMENDATION

Staff recommends that Council approve the three (3) year maintenance agreement with EF Johnson Company

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

- A. EF Johnson 3-year Maintenance Contract.



**AGREEMENT FOR MAINTENANCE PROGRAM
OF THE PUBLIC SAFETY TRUNKED RADIO
COMMUNICATIONS SYSTEM
#010108.1**

THIS AGREEMENT FOR A MAINTENANCE PROGRAM OF THE PUBLIC SAFETY TRUNKED RADIO COMMUNICATIONS SYSTEM is made and entered into as of the 30th day of June, 2008, between the CITY OF BILLINGS, a political subdivision of the State of Montana and E.F. Johnson Company, a Minnesota corporation.

Recitals

WHEREAS, the E.F. Johnson Company designed and constructed a Public Safety Trunked Radio Communications System for the CITY OF BILLINGS; and,

WHEREAS, the parties desire to enter into this Agreement for the purpose of providing maintenance service of the Public Safety Trunked Radio Communications System.

W I T N E S S E T H

IN CONSIDERATION OF the foregoing Recitals, the mutual covenants and promises hereinafter set forth, and for other good and valuable consideration, the receipt of which are hereby acknowledged and objections to the adequacy and sufficiency of which are hereby waived, the parties agree as follows:

ARTICLE 1- DEFINITIONS

As used throughout this Agreement the terms set forth in this Article shall have the meanings attributed thereto unless the context clearly indicates a different meaning. Elsewhere and throughout this Agreement, other terms are described and defined. In each such instance, each such term is set forth parenthetically adjacent to the text that describes and defines it, and as used in this Agreement shall have the meaning so defined and described.

- 1.1 “Agreement” shall mean this Agreement between the Contractor and the CITY OF BILLINGS, including the exhibits attached hereto and the documents expressly incorporated into this Agreement by reference.
- 1.2 “Board” shall mean the Board of Commissioners of the CITY OF BILLINGS.
- 1.3 “Contractor” shall mean E.F. Johnson Company, a Minnesota corporation.
- 1.4 “City” shall mean the CITY OF BILLINGS, a political subdivision of the State of Montana, by and through the Mayor.

- 1.5 "Notice to Proceed" shall mean a written notification issued by the City authorizing and directing the Contractor to proceed with the implementation of the Maintenance Services in accordance with this Agreement, including the exhibits attached hereto.
- 1.6 "Statement of Work" shall mean the document attached to this Agreement as Exhibit A.
- 1.7 "Standard Maintenance Schedule" shall mean the document attached to this Agreement as Exhibit B.
- 1.8 "Site Maintenance Checklist" shall mean the document attached to this Agreement as Exhibit C.
- 1.9 "PRP Statement of Work and Checklist" shall mean the document attached to this Agreement as Exhibit D.
- 1.10 "Maintenance Services" shall mean the maintenance products and services provided to the City as described in this Agreement, including the exhibits attached hereto.
- 1.11 "Term" shall mean the period commencing with the start date of this Agreement and ending upon the expiration date of this Agreement.

ARTICLE 2 - SCOPE OF SERVICES

- 2.1 Generally and subject to the terms herein, Contractor shall provide Maintenance Services in accordance with this Agreement, including the exhibits attached hereto.

2.2 TERM AND PAYMENT

- 2.2.1 The Term for this Agreement shall be three years: Start Date: July 1, 2008 to Expiration Date: June 30, 2011. The Contractor will not begin performance of any work until the City has provided a Notice to Proceed on or before June 30, 2008, or as soon as practical thereafter. Notice to Proceed required for first year only.
- 2.2.2

Year 1 7/1/08 – 6/30/09	\$172,488.95 (includes PRP valued at \$44,000)
Year 2 7/1/09 – 6/30/10	\$172,488.95 (includes PRP valued at \$44,000)
Year 3 7/1/10 – 6/30/11	\$172,488.95 (includes PRP valued at \$44,000)

The total price for this three (3) year Agreement is five hundred seventeen thousand, four hundred sixty six dollars and eighty five cents (\$517,466.85), plus any applicable tax which is not included in any of the prices above.

- 2.2.3 The purchase price of the contract will be paid in full, each year in advance of commencement of Maintenance Service for that year.

ARTICLE 3 - GENERAL PROVISIONS

3.1 EQUAL OPPORTUNITY EMPLOYMENT

The Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age or national origin. This provision shall include but not be limited to the following: employment upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. The Contractor agrees to furnish the City with a copy of its Affirmative Action Policy upon request.

3.2 EMPLOYMENT STATUS

It is agreed and understood that the Contractor shall be employed as an Independent Contractor and not be entitled to the benefits and privileges of an employee of the CITY OF BILLINGS under the City's Civil Service System, and it is further agreed and understood that the Contractor shall be excluded from participating in any fringe benefits not specifically enumerated herein

3.3 ASSIGNMENT

This Agreement shall not be transferable or assignable in whole or in part by either party except with the prior written consent of the other party; provided, however, that a successor in interest by merger, operation of law, purchase or otherwise of all or substantially all of the business of either party shall acquire all interest of such party hereunder without any such consent. Any prohibited assignment shall be null and void.

3.4 FORCE MAJEURE

In the event Contractor is prevented from performing hereunder due to events or circumstances beyond its control, including, without limitation, fire, flood, acts of God, inclement weather, governmental inaction), acts, orders or regulations, or prolonged shortages of parts or components not attributable to action or inaction on the part of the City, the Contractor's obligation to perform hereunder shall be suspended during the period of such disability without liability.

3.5 GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Montana. Venue of any action or proceeding arising under this Agreement shall be in Billings, Montana.

3.6 NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by hand delivery with a signed receipt or by Federal Express or UPS overnight mail addressed to the party for whom it is intended, at the place specified in this section. Notice shall be effective upon receipt. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR THE CITY OF BILLINGS:

FOR THE CONTRACTOR

EFJohnson
Corporate Attorney
1440 Corporate Drive
Irving, TX 75038-2401

or to such other address as any party shall specify by written notice so given.

3.7 HOLD HARMLESS PROVISION

Subject to the terms herein, Contractor shall indemnify and save harmless and defend the City, its officers, agents, servants, employees and subcontractors from and against any claim, demand, liability, judgment or cause of action arising out of a breach of this Agreement by Contractor or a negligent act of Contractor, its agents, servants or employees in the performance of its duties under this Agreement. The obligation on the part of Contractor to defend shall include the duty to provide competent counsel selected by Contractor and to pay reasonable attorney's fees in any such claim. IN NO EVENT SHALL CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION EXCEED, IN THE AGGREGATE, TWO TIMES THE AMOUNT OF THE MAINTENANCE SERVICE PRICES ACTUALLY PAID BY THE CITY THROUGH THE DATE OF SUCH CLAIM. CONTRACTOR AGREES TO MAINTAIN DURING THE TERM OF THIS AGREEMENT SUCH WORKER'S COMPENSATION AND DISABILITY INSURANCE COVERAGE AS MAY BE REQUIRED BY LAW, TOGETHER WITH COMMERCIAL LIABILITY INSURANCE WITH LIABILITY LIMITS OF \$1.0 MILLION PER OCCURRENCE AND TO PROVIDE PROOF OF SUCH INSURANCE COVERAGE TO THE CITY AT THE TIME OF EXECUTION OF THIS AGREEMENT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL CONTRACTOR BE LIABLE HEREUNDER FOR (A) LOST PROFITS, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT THAT THEY MAY BE LAWFULLY DISCLAIMED; OR (B) ANY CLAIM, DEMAND OR CAUSE OF ACTION RELATING TO OR ARISING OUT OF ANY ERROR, OMISSION OR NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS, SERVANTS, CONSULTANTS, EMPLOYEES OR OTHER THIRD PARTY NOT OTHERWISE IN CONTRACTUAL PRIVITY WITH CONTRACTOR AND OVER WHICH THE CITY HAS AUTHORITY OR EXERTS CONTROL OR TO WHICH THE CITY HAS GRANTED ACCESS TO THE SYSTEM.

Contractor further agrees to maintain during the term of this Agreement such Worker's Compensation and Disability Insurance coverage as may be required by law, together with liability insurance with liability limits reasonably satisfactory and to provide proof of such insurance coverage to the City, if requested by the City, at the time of execution of this Agreement.

3.8 DEFAULT

If a party fails to perform a material obligation under this Agreement, the other party may consider that party to be in default. The non-defaulting party shall give the defaulting party written notice of such default, and specify in writing a reasonable amount of time that is in no event less than thirty (30) days

during which the defaulting party has to cure such default or provide a cure plan. The amount of time to cure specified shall take into consideration the gravity and nature of the default. If the defaulting party fails to cure the default or provide a cure plan and expeditiously implement such plan within the specified period of time, the non-defaulting party may terminate this Agreement.

3.9 SEVERABLE

If for any reason whatsoever, one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied in any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

3.10 HEADINGS

The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs, exhibits and schedules, unless otherwise provided, refer to sections and paragraphs hereof and exhibits and schedules attached hereto, all of which are incorporated herein by this reference.

3.11 SUBCONTRACTORS

Contractor reserves the right to subcontract maintenance plan work to qualified subcontractors. The Contractor will ensure that each subcontractor is in compliance with all articles of this contract. If for any reason the selected subcontractor should change during the term of this agreement, the City retains the right to approve any replacement contractor.

3.12 COMPLIANCE WITH STATE AND FEDERAL LAW

This Agreement is subject to all state and federal laws and regulations relating to the Contractor's performance and completion of this Agreement, including but not limited to the Americans with Disabilities Act, health and safety, labor, antidiscrimination and environmental laws and regulations.

3.13 CONTRACTOR'S INABILITY TO CONTRACT FOR CITY OF BILLINGS

Notwithstanding anything herein contained to the contrary, Contractor shall not have the right to make any contracts or commitments for or on behalf of the City without first obtaining written consent of the Mayor and City Controller.

3.14 FINDINGS CONFIDENTIAL

Any reports, information, data given to or prepared or assembled by the Contractor under this Agreement, which the City deems confidential, shall not be made available to the any individual or organization by the Contractor without the prior written approval of the Mayor and City Controller of the City.

3.15 CAMPAIGN CONTRIBUTIONS PROHIBITED

It is understood and agreed by the Parties that no portion of the Contractor's compensation to be paid under the terms of this Agreement shall be used as a campaign contribution.

3.16 GENERAL

This Agreement and the exhibits constitutes the final written expression of the agreement between the parties hereto on the subject matter covered herein, is the complete and exclusive statement of such terms and cancels and supersedes all prior agreements, documents, negotiations and discussions between the parties relating thereto. There are no other or further contracts, warranties, promises or representations, either oral or in writing, relating to the subject matter covered herein which are binding upon either party. No purchase order, letter, statement or other oral or written communications passing between the parties hereto, shall become part of or in any way modify or change this Agreement, unless such a writing is expressly declared to be an amendment to or modification of this Agreement and is signed by both parties hereto. The parties acknowledge and agree that each party has participated in the drafting of this Agreement and that the normal rules of construction to the effect that any ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement. No inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

The waiver by either party of the breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties hereto have executed this contract document ("Agreement For Maintenance Program" for the period July 1, 2008 through June 30, 2011 with EF Johnson Company) as of the date and year first below written.

THE CITY OF BILLINGS

EFJOHNSON

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____



**Exhibit A
Statement of Work**

EXHIBIT A: MAINTENANCE AGREEMENT STATEMENT OF WORK (SOW)

Customer Name: CITY OF BILLINGS
Date: 1/1/08
Number: 010108.1

The CITY OF BILLINGS ("CUSTOMER") operates an 800 MHz Multi-Net[®] trunked radio system. This system operates on a continuous basis 24 hours a day, 365 days a year, for the purpose of providing radio communications to emergency services for CITY OF BILLINGS .

1.0 DEFINITIONS:

- 1.1 "Customer" shall mean the Owner of the EFJohnson 800 MHz Multi-Net[®] Trunked Radio System Equipment.
- 1.2 "EFJohnson" shall mean the E.F. Johnson Company.
- 1.3 "Fixed Equipment" shall mean the radio communication system equipment Covered under this maintenance agreement, and may include but not be limited to the 3000 Series Switches or RNT's and modules, Call Processor/System & Subscriber Manager (CP/SSM) or System Management Module (SMM), Usage Accounting System (UAS), Remote Management Facility (RMF), Orbacom Central Processor and Dispatch Consoles, Zetron Tone Remotes, Zetron 4010 Dispatch Console, as applicable, voice logging system, network management, repeaters, combining equipment, and relevant equipment identified solely by Johnson in this statement of work.
- 1.4 "Site(s)" shall mean the physical location of the Fixed Equipment.
- 1.5 "Links" shall mean any circuits that are used for interconnection purposes of the Fixed Equipment. Circuits are commonly 4-wire audio telephone, microwave, fiber optic, or RF links.
- 1.6 "Subscriber Equipment" shall mean the mobile, portable, and control stations (base stations) and associated accessories.

2.0 SERVICE PROVIDER

- 2.1 EFJohnson may, at its discretion, use subcontractors to perform portions of its obligations under this SOW. EFJohnson elects the following sole Authorized Multi-Net[®] EF Johnson Service Center in area as the local service provider:

Company: ACORN TECHNOLOGIES, INC.
Address: 2110 OVERLAND AVE., SUITE 118
City, State, Zip: BILLINGS, MT 59102
Phone: 406-652-1515

- 2.2 EFJohnson and/or its service provider will maintain a staff of radio service technicians with all necessary vehicles tools and radio maintenance equipment capable of both maintenance and repair of all system components in CUSTOMER radio system.
- 2.3 All measuring devices used by EFJohnson and/or its service provider for final test of any components covered by this Maintenance Agreement shall be current in calibration and traceable to the National Bureau of Standards (NBS). Copies of the calibration certificates shall be provided to the CUSTOMER on the start date of this contract and equipment shall be maintained and calibrated as required throughout the life of this contract.

3.0 EQUIPMENT NOT COVERED

- 3.1 EFJohnson will not maintain or service the following items under this Maintenance Statement of Work:

- 3.1.1 Any equipment that has suffered physical damage or abuse outside of the product normal usage
 - 3.1.2 Radio Antennas, antenna systems
 - 3.1.3 Batteries for Microwave System, batteries for the Orbacom Central Processor, radio batteries
 - 3.1.4 Ancillary radio controlled devices connected to mobile and portable hand held radios
- 3.2 Installation or removal of any radio equipment in new vehicles or removal of radio equipment from vehicles being removed from service will not be covered.

4.0 EMERGENCY RADIO SERVICES

- 4.1 EFJohnson will provide Emergency Service for all fixed equipment. Emergency Service is defined as all calls, 24 hours per day, 365 days per year, received from CUSTOMER requesting immediate service for the radio system. Such call outs will generally be, but not limited to, sustained failure of fixed equipment, critical system/component failure, loss of trunking, site communications link, ability to communicate to or from consoles or alarm condition reports from remote tower sites or system electronics.
- 4.2 All Emergency Service calls will be immediately acknowledged and a technician assigned when reported during Normal Hours. Normal Hours is defined as Monday through Friday, 8am to 4:30 pm CUSTOMER Local Time, excluding any State Government recognized holiday. All other calls received after Normal Hours will be acknowledged by telephone or radio to the dispatch center within 15 minutes of original request for emergency service. A CUSTOMER representative may accompany the technician on any call outs. EF Johnson shall provide CUSTOMER with an updated callout list of technicians throughout the life of this contract. The list shall include names, addresses and telephone numbers of personnel responsible to respond on a 24-hour / 7-day a week basis.
- 4.3 All Emergency Service calls will be attended on site by at least one radio service technician with necessary tools and radio maintenance equipment capable of repair of all system components in the CUSTOMER public safety radio system within two (2) hours of call notification. On site will be defined as the Dispatch Center, however, at the technician's discretion, response to another site within the radio system may be required, or corrective action may be accomplished by remote diagnostics. All repairs will be completed in a timely manner to restore full system operations.

5.0 NON-EMERGENCY RADIO SERVICE

- 5.1 Non-emergency Radio Service is defined as maintenance or repair of system components that have not caused a failure or emergency condition.
- 5.2 EFJohnson will include technician(s) labor, parts, travel and shipping for maintenance and repair of covered components and costs for Technical Support Group calls and equipment exchange or loan.

6.0 800 MHz MULTI-NET[®] TRUNKED RADIO SYSTEM

- 6.1 CUSTOMER service calls to EFJohnson concerning 800 MHz Multi-Net[®] Trunked Radio System will initially be considered as emergency service calls.
- 6.2 This equipment will be serviced on site when practical. All sites, all components, parts and electronics, wiring/cable operational functions, software, hardware, firmware and features for existing system. Such as, but not limited to, Repeaters, RNT 3000 Switch Components, SSM/CP (UAS) equipment and Control Stations with and with out remote, Lightning Protection Devices and UPS devices. EFJohnson will respond to service calls for battery related problems, however, replacement of batteries is not covered under this plan as noted in Section 3.1.3.

- 6.3 EFJohnson will provide routine maintenance on Net and System Manager Computers, workstations and existing software programs and printer located at the dispatch center. EFJohnson will provide a written overview of the computer equipment on a two year basis and recommend any upgrades/purchases that EFJohnson feels would be in the best interest of CUSTOMER to keep its computer equipment up to date with industry standards.
- 6.4 For both emergency and non-emergency service calls, EFJohnson will include technician labor, parts, travel and shipping for maintenance and repair of covered components and costs for Technical Support Group calls and equipment exchange or loan.
- 7.0 **MOBILE RADIO SERVICE** (Limited to E F Johnson 800 MHz Multi-Net® Trunked Radio System Mobile Radio Equipment.)
- 7.1 Mobile Radio Equipment will be serviced on site (*police/fire/ambulance*) within 48 business hours of call for service. Some conditions may require that the vehicle be taken to the service facility. Service to mobile radio equipment will be scheduled in advance during normal shop working hours (*Monday / Friday 8am-4pm*) by contacting the Service provider designated in Section 2.1 of this Maintenance Statement of Work.
- 7.2 Radio Programming, except upon returning a repaired radio to service, is not included in this Maintenance Statement of Work.
- 7.3 Installation and/or removal of radios, except as required for repair or service, are not included in this Maintenance Statement of Work
- 8.0 **TELEPHONE CIRCUITS** (used to control radio equipment)
- 8.1 Such calls to EFJohnson will initially be considered as emergency service calls.
- 8.2 When a service call is made and the resulting trouble is determined to be a defective telephone circuit creating the trouble condition, the initial service call will be covered by EFJohnson at no charge. Upon determination of telephone line difficulty, the technician will be responsible for notifying the telephone company repair service. The technician will report to the Dispatch Center that the telephone company repair service has been notified and what actions are being taken to resolve the trouble condition.
- 8.3 Subsequent service calls relating to the same telephone circuit trouble condition, even if intermittent or if EFJohnson has to respond and work with the telephone company repair service to resolve the trouble condition, will require reimbursement to EFJohnson by CUSTOMER for labor and travel time associated with the subsequent service call(s) at a rate of \$100 per hour with a minimum one hour charge. Calls after normal work hours will be charged at the rate of \$150 per hour with a minimum 2 hour charge.
- 9.0 **RADIO CONTROL STATIONS**
- 9.1 Such calls to EFJohnson will initially be considered as emergency service calls.
- 9.2 All components, parts and electronics, for existing equipment are included. This equipment will be serviced on site when practical.
- 9.3 For both emergency and non-emergency service calls, EFJohnson will include technician labor, parts, travel and shipping for maintenance and repair of covered components and costs for Technical Support Group calls and equipment exchange or loan.

10.0 DISPATCH CONSOLE SYSTEMS

- 10.1 Such calls to EFJohnson concerning dispatch console systems will initially be considered as emergency service calls.
- 10.2 All components, parts and electronics for existing systems, to include all wiring and current operational functions, software/hardware firmware and features are included. This equipment will be serviced on site when practical.
- 10.3 For both emergency and non-emergency service calls, EFJohnson will include technician labor, parts, travel and shipping for maintenance and repair of covered components and costs for Technical Support Group calls and equipment exchange or loan.

11.0 MICROWAVE SYSTEM

- 11.1 CUSTOMER service calls to EFJohnson concerning the Microwave System will initially be considered as emergency service calls.
- 11.2 The microwave system equipment will be serviced on site semi-annually in accordance with the Microwave Checklist in Appendix B. Manufactured discontinued equipment will be serviced on a best effort basis. Any equipment that can not be serviced or repaired will be replaced at CUSTOMER expense. EFJohnson will be required to deliver to CUSTOMER a detailed report indicating the reasons why equipment cannot be serviced or replaced and options available to rectify any loss of critical infrastructure.
- 11.3 For both emergency and non-emergency service calls, EFJohnson will include technician labor, parts, travel and shipping for maintenance and repair of covered components and costs for Technical Support Group calls and equipment exchange or loan.

12.0 TOWER STRUCTURES:

- 12.1 CUSTOMER service calls concerning the tower and antenna system will initially be considered as emergency service calls.
- 12.2 EFJohnson will not provide any maintenance or repair of the tower. When necessary, EFJohnson will assist CUSTOMER in obtaining service and repair for tower.
- 12.3 EFJohnson will provide contact information for tower and antenna system maintenance contractors that would be capable of responding to a tower related service call within 24 hours for CUSTOMER. CUSTOMER will be responsible for the associated tower maintenance contractor costs.

13.0 SPARE PARTS

- 13.1 EFJohnson will maintain a sufficient supply of critical spare parts for repair to system components, except where manufactured discontinued items are no longer available. Within 30-days of signing this contract, EFJohnson will provide CUSTOMER with a listing of critical spare parts and system components that are available. EFJohnson will report on a yearly basis the types and quantities of spare parts used throughout the year to CUSTOMER.
- 13.2 For both emergency and non-emergency service calls, EFJohnson will include technician labor, parts, travel and shipping for maintenance and repair of covered components and costs for Technical Support Group calls and equipment exchange or loan.

14.0 PREVENTIVE MAINTENANCE PLAN

- 14.1 EFJohnson can conduct an annual Performance Renewal Program (PRP) (Exhibit D). The cost for this service is as stated in the Maintenance Agreement, paragraph 2.2. The PRP is designed to return all infrastructure equipment in the radio system to factory specifications. This will include routine maintenance on Net and System Manager Computers and workstation and existing software programs and printers located at the dispatch center. A prescribed set of preventive maintenance checks, (quarterly and semi-annually), will be accomplished through the maintenance provider through an agreed upon schedule with CUSTOMER (Exhibits B & C).

15.0 LIGHTNING PROTECTION / GROUNDING SYSTEMS:

- 15.1 EFJohnson will examine existing lightning protection devices and grounding systems at all sites on an annual basis as part of the Performance Renewal Program. The cost to repair and/or replace any lightning protection devices will be the responsibility of CUSTOMER.

16.0 REPAIRS AND REPLACEMENT:

- 16.1 In order to ensure that the radio system is always operating at factory specifications, EFJohnson, when deemed necessary, will maintain, repair or replace defective equipment or components covered in the maintenance agreement at no additional charge to include labor, shipping and travel. Repair of items not manufactured by EFJohnson will be provided on a best effort basis. However, if these items can not be repaired, replacement will be the responsibility of the CUSTOMER if it is outside the scope of warranty. The following conditions are specifically excluded from this Maintenance Statement of Work:

- 16.1.1 Vandalism or Sabotage.
- 16.1.2 Fire damage unless covered component is determined to have caused fire damage. Failure or damage due to user negligence, accidents, misuse, abuse or unauthorized modification, AC power surges.
- 16.1.3 Act of God, severe weather events, ice/snow, flooding, lightning strike or other extraordinary circumstances beyond the control of EFJohnson.
- 16.1.4 EFJohnson will exercise reasonable skill and care in carrying out any work pertinent to maintenance/repair.
- 16.1.5 Service on radio or microwave equipment installed by a vendor other than EFJohnson or approved subcontractor.
- 16.1.6 Installation or removal of new radio equipment, in new vehicles, or removal from vehicles going out of service.
- 16.1.7 Removal and installation of existing maintenance-covered radio equipment is covered by this Maintenance Agreement. All parts and material used will be OEM new, OEM reconditioned or factory manufacture approved, or newer version may be used if such will not create compatibility problems.
- 16.1.8 Any equipment that leaves a site for repair shall be documented on a traceable work order by description and full serial number.
- 16.1.9 Any equipment removed from a site due to a maintenance issue shall be documented on a traceable work order by description and full serial number and restored back into its original location. All equipment is to be returned to its site within 7 work days following the completion of repair.

17.0 MAINTENANCE RECORDS:

- 17.1 EFJohnson will maintain records of all maintenance and repair activity. Such records will be typewritten or electronic in Microsoft Word or Excel format and available on disk to CUSTOMER. CUSTOMER shall be provided such disk within fourteen (14) days of quarterly maintenance and annual Performance Renewal Program from EFJohnson and/or its subcontractor. Records will contain the following information: (1) date/time, (2) job number, (3) action taken, (4) what was repaired or replaced, and: (5) the name of technician who performed work.

18.0 SECURITY AND SITE ACCESS:

- 18.1 EFJohnson understands the need for security with the radio system. Access keys, passwords, telephone numbers and computer software utilized for remote diagnostics and radio programming shall be treated as confidential and shall only be released to CUSTOMER'S authorized personnel. CUSTOMER will provide EFJohnson a list of such authorized persons. Site access is restricted to EFJohnson, its employees, and its authorized subcontractors. All other persons EFJohnson may deem necessary to be on site will require permission in advance from CUSTOMER's designated representative.

19.0 RADIO LICENSING:

- 19.1 EFJohnson shall provide reasonable assistance to CUSTOMER for renewal or modification of CUSTOMER'S radio licenses. EFJohnson labor charges will be agreed upon between EFJohnson and CUSTOMER at the time of the request for assistance. CUSTOMER will be responsible for all other fees or payments for license renewal or modification.

APPENDIX A: COVERED EQUIPMENT

Item	Qty	Description
1	15	Repeaters
2	1	RNT Switch ⁽¹⁾
3	1	SSM/CP (Switch Computer) ⁽²⁾
4	1	Console System (CPP) (Orbacom Switch Cabinet) ⁽³⁾
5	6	Console Positions ⁽⁴⁾
6	3	Voter Modules
7	1	Simulcast Controller
8	1	Simulcast Host Computer
9	3	Station Site Controller
10	4	Spectracom GPS
11	1	Microwave
12	2	Channel Banks
13	0	Base Station
14	0	Control Station
15	0	Remotes
16	302	Mobiles
17	579	Portables
18	12	24/7 availability

⁽¹⁾ This is the cabinet that controls the repeaters and interfaces to the Dispatch Console system. Includes the RNT Switch Cabinet, power supplies in the cabinet and all the cards in the cabinet.

⁽²⁾ This is the computer that controls the switch and handles the subscriber management and reporting. Includes the computer, monitor, keyboard and mouse. Includes repair (if possible), but not replacement of the computer/monitor upon catastrophic failure.

⁽³⁾ This is the cabinet that controls the Dispatch Console positions. Includes the cabinet, power supplies in the cabinet and all the cards in the cabinet.

⁽⁴⁾ These are the computers that are used to dispatch calls. Includes the computers, monitors, keyboards, mouse and Console Interface Position (CIP) trays. Includes repair (if possible), but not replacement upon catastrophic failure.

21.0 SPECIAL PROVISIONS

21.1 The following special provisions are hereby incorporated into this Maintenance Agreement:

21.1.1 EFJohnson shall invoice the CUSTOMER for 100% of the purchase price 30 days prior to the first day of each Term in advance of commencement of services.

21.1.1.1 Impacts of 800 MHz Rebanding. CUSTOMER has entered into a Rebanding Agreement with EFJohnson, through which EFJohnson will replace CUSTOMER'S subscriber radios as defined in a Frequency Reconfiguration Agreement (FRA) between CUSTOMER and Sprint Nextel. This will impact the subscriber equipment covered by this Agreement. Replacement subscriber radios will not be deployed at a single point in time. The deployment will take approximately 6 months. The quantity of existing radios and replacement radios will therefore be constantly changing, and exact timing cannot be predicted at this time. The Parties therefore agree as follows:

- 21.1.1.2 For each month of this Agreement, in which replacement radios are deployed, EFJohnson will identify a maintenance credit to CUSTOMER for units that have been replaced. This credit will be applied against future Maintenance Agreements, and calculated as follows - \$2.83 per radio replaced in previous months, plus \$1.44 per radio replaced in the current month.
- 21.1.1.3 If, by November 30th 2008, EFJohnson has not received Authorization to Proceed with the radio replacement from Sprint/Nextel, EFJohnson will continue to provide maintenance services throughout the term of this Agreement, but CUSTOMER acknowledges that the following listed subscriber products are no longer supported by EFJohnson, and EFJohnson's support obligation on these product models and associated accessories are limited to using commercially reasonable efforts to repair defective products. If parts required to repair these units are not available, EFJohnson will not manufacture or redesign parts to repair these units:
- ⇒ 85xx Viking portables
 - ⇒ 81xx Avenger portables
 - ⇒ 86xx Tiger mobiles
 - ⇒ 975x Summit mobiles
 - ⇒ 988x mobiles

EXHIBIT B: STANDARD MAINTENANCE SCHEDULE

Every site will be visited every quarter. This maintenance plan is perpetual in nature, and the cycle repeats as follows:

Month 1	
Month 2	
Month 3	A
Month 4	
Month 5	
Month 6	A/B
Month 7	
Month 8	
Month 9	A
Month 10	
Month 11	
Month 12	A/B/C

Maintenance schedule “A” - this schedule is performed on a **quarterly** basis at all sites. Repeater data and deviation tests are performed on all repeaters. This procedure includes complete visual inspection inside and out, a checklist of alarms and operational parameter indicators.

Maintenance schedule “B” - this is the **semi-annual** procedure. System sensitivity and System squelch tests are performed on all repeaters.

Maintenance schedule “C” - this is the **annual** PRP procedure. Please see PRP Statement of Work (Exhibit **D**) for detailed information.

Data from each visit shall be recorded on the Site Maintenance Checklists. See Exhibit **C**.



**Exhibit C
Site Maintenance Checklists**

EXHIBIT C: SITE MAINTENANCE CHECKLIST

Customer: _____
 Site Name: _____
 Date: _____
 Tech: _____

Maintenance Schedule A

1. Site Visual Checks

Fence/Gate	<input type="checkbox"/>	Temp/Humidity	<input type="checkbox"/>
Bulkhead	<input type="checkbox"/>	Bulkhead/RF	<input type="checkbox"/>
Coax/Gnd	<input type="checkbox"/>	Wire/Cable	<input type="checkbox"/>
Tower	<input type="checkbox"/>	OCXO	<input type="checkbox"/>
Site Log	<input type="checkbox"/>	GPS	<input type="checkbox"/>
Other	<input type="checkbox"/>	Mux	<input type="checkbox"/>

2. Repeater Checks (All items are Pass/Fail)

Rptr	Alarms	1PPS	TX IAC	TX SMC*	TX Temp	Audio	10sUpdate
1							
2							
3							
4							
5							
6							
7							
8							

* Simulcast only

Rptr #	Rpt Data		Re-TX Deviation	
	TX ⁽¹⁾	RX ⁽²⁾	@ 1.5kHz	@ 2.5kHz
Repeater 1				
Repeater 2				
Repeater 3				
Repeater 4				
Repeater 5				
Repeater 6				
Repeater 7				
Repeater 8				

Specifications

(1) 800 MHz = 1 KHz, 900MHz = 800 Hz

(2) 340 milli-volts

3. Cold Reboot, Win NT site computer

Maintenance Schedule B

Repeater #	System Sensitivity ⁽¹⁾	System Squelch ⁽²⁾
Repeater 01		
Repeater 02		
Repeater 03		
Repeater 04		
Repeater 05		
Repeater 06		
Repeater 07		
Repeater 08		

Specifications

- (1) < .35 μ v @ 12 dB SINAD
- (2) Unsquench @ 6 dB

Perform corrective action as necessary on failed items to return to specification. Indicate corrective action performed in the Notes section.

Notes:

**EXHIBIT D: PERFORMANCE RENEWAL PROGRAM (PRP)
STATEMENT OF WORK****1.0 GENERAL**

- 1.1 This Statement of Work (SOW) is used in conjunction with the EFJohnson Performance Renewal Program (PRP).
- 1.2 Definitions:
 - a) "Customer" shall mean the Owner of the Equipment and/or the Buyer of the PRP service.
 - b) "EFJohnson" shall mean the E.F. Johnson Company.
 - c) "Fixed Equipment" shall mean the radio communication system equipment to be evaluated under the PRP to include the 3000 Series Switch and modules, System & Subscriber Manager (SSM) or System Management Module (SMM), Usage Accounting System (UAS), Remote Management Facility (RMF), as applicable, voice logging system, network management, dispatch consoles, repeaters, combining equipment, and relevant equipment agreed to by EFJohnson and CUSTOMER.
 - d) "Site(s)" shall mean the physical location of the Fixed Equipment.
 - e) "Links" shall mean any circuits that are used for interconnection purposes of the Fixed Equipment. Circuits are commonly 4 wire audio telephone, microwave, fiber optic, or RF links.
 - f) "Subscriber Equipment" shall mean the mobile, portable, and control stations (base stations) and associated accessories.
- 1.3 Working hours, working conditions, access to work sites, and, if required, local transportation shall be arranged for and clearly defined. EFJohnson's workday is defined as a ten (10) hour day. Arrival and departure dates for EFJohnson personnel shall be clearly communicated between Customer and EFJohnson, prior to departure of EFJohnson personnel.
- 1.4 This SOW does not change, or alter in any way, the previous equipment warranty.
- 1.5 EFJohnson will upgrade system software and firmware to latest releases as applicable and necessary to optimize performance and meet factory specifications. (Does not include upgrades to mobiles and portables.) A one-year Programming and Flash software subscription has been included in the purchase of this PRP at no additional charge.

2.0 EQUIPMENT AND SITE INFORMATION

- 2.1 The Fixed Equipment will be located at the Sites as outlined in EFJohnson documentation (e.g. drawing packages, data base).
- 2.2 The Equipment included for service within the guidelines of this SOW will be what is identified in EFJohnson documentation. If additional equipment is to be included in the services, it must be identified by the Customer in advance. There may be an additional charge to the Customer.
- 2.3 Subscriber Equipment is not serviced during a PRP and is not a part of this SOW.

3.0 EFJOHNSON'S RESPONSIBILITIES

- 3.1 EFJohnson shall designate a contact person(s) to coordinate EFJohnson's responsibilities.
- 3.2 EFJohnson shall adjust the Fixed Equipment for optimum performance within factory specifications. This will include Switch (RNT) power supplies, all cards within the switch (RNT), associated levels across links (see Customer link responsibilities), repeaters, logging equipment, consoles, as applicable.

- 3.3 EFJohnson shall inspect, and adjust as applicable, the combining equipment, computer-based elements, and other relevant Equipment.
- 3.4 EFJohnson shall update all relevant software and firmware in the switch (RNT) Modules, SSM (or SMM, UAS, RMF, as applicable), consoles, and other pertinent Fixed Equipment to the latest version when prudent and when performance improvements can be realized.
- 3.5 EFJohnson shall perform field updates to pertinent Fixed Equipment when prudent and performance improvements can be realized.
- 3.6 EFJohnson will provide a ninety (90) day guarantee for all workmanship and materials in conjunction with the work performed under this Statement of Work.

4.0 CUSTOMER'S RESPONSIBILITIES

- 4.1 Customer shall designate a contact person(s) (e.g. Project coordinator, system manager, technician, etc.) to coordinate Customer's responsibilities as set forth in this SOW.
- 4.2 Customer shall provide and permit timely access to any communication towers, equipment shelters and other electrical and mechanical equipment necessary for EFJohnson to complete the PRP service.
- 4.3 Customer is responsible for the RF environment at the Equipment Sites (e.g. site noise, adjacent channel problems, etc.).
- 4.4 Customer is responsible for timely resolution of telephone circuits and leased microwave link problems noted by EFJohnson during the course of the PRP. If the telephone circuits and leased microwave links cannot be repaired during the allotted PRP time, it is the Customer's responsibility to correct any portions of the service work that could not be performed due to the Link problem. EFJohnson will be responsible for PRP on all EFJ supplied equipment.
- 4.5 Customer is responsible for supplying a copy of the users Fleetmap(s) (Programming) and a minimum of two radios (preferably portables) to use for testing on the system while performing the PRP.
- 4.6 Customer is responsible for all tower, antenna, coax and other ancillary equipment problems.
- 4.7 Customer is responsible for repair or replacement of any assemblies identified by EFJohnson during the service work that are not field repairable, or are not in an EFJohnson Warranty or Maintenance Period. This will be outside of the price quotation for the PRP itself. The Customer will receive a ten (10) percent discount off any exchange modules, from the exchange/loan program's stock, needed as a result of this service. If this is not handled through the exchange/loan program, or does not fall in the time-frame of the PRP, the Customer will assume responsibility for reinstallation of the identified Equipment if the work done is not covered by the maintenance agreement.
- 4.8 Customer is responsible for costs due to delays beyond the control of EFJohnson at the daily rates specified in the quotation.
- 4.9 Customer is responsible for the cost associated with any specialized equipment or transportation needed to reach equipment sites.

5.0 PRP CHECKLIST

Customer: _____
 Date: _____
 Site: _____

Item	Description	Chk'd/Set
5.1.	SWITCH/RNT	
a	Upgrade CP/SSM Software (as necessary)	
b	Upgrade remote SSM software (as necessary)	
c	Defrag Hard Disk	
d	Upgrade Switch (RNT) Firmware (as necessary)	
	DCM	
	CIM	
	WAM	
	MCM/IDM	
	CPM	
	DIM	
	NetNIM	
	SNM	
	TIM	
e	Check and set voltages on power supplies	
f	Check dips switch setting on PTM cards. (S6 and S8 position 2 should be ON in a 6 shelf RNT.)	
5.2.	FUNCTION TESTS	
a	Telco Calls	
b	Wide Area Calls	
c	Console Functions	
d	Review restart & backup procedures with customer	
5.3.	DISPATCH CONSOLE SYSTEM	
a	Upgrade CPP Firmware (as necessary)	
	CSC	
	PIC	
	CAD-EFJSM	
	CAD-Timesyn	
	CAD-PRPG	
	TIC	
	LIC	
	AIC	
	ICR	
b	Upgrade Console CIP tray Firmware (as necessary)	
c	CRT-Consoles	
d	Consistent Boot procedures	
e	Upgrade Operating System service pack (as necessary)	
5.4.	LINK LEVELS (Repeater to Switch)	
a	Link Audio RNT Side	
	RX Audio J11 on CIM (dBm)	
	TX Audio J12 on CIM (dBm)	
b	Link Audio Repeater Side	
	TX Audio RXA+, RXA- on punch blocks (dBm)	
	RX Audio J100/J103 on MAC (dBm)	

Item	Description	Chk'd/Set
5.5.	VOTERS	
a	Check voter bucket level	
b	Rx Audio Level	
c	Check link levels.	
5.6.	REPEATERS	
a	Upgrade Repeater Flash	
b	Upgrade Repeater Firmware	
c	Check HSDB dipswitch settings on end MPC cards.	
d	Check HSDB dipswitch settings on center MPC cards.	
e	FCC Frequency	
f	RX Frequency	
g	Sinad 12 dB	
h	Distortion	
i	Squelch Threshold	
j	RX Data VACRMS	
k	Power Out P.A.	
l	Power Out Antenna	
m	Power Reflected (mW)	
n	Data Deviation kHz	
o	Voice Deviation kHz	
p	TX Frequency	

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Animal Shelter Privatization Contract
DEPARTMENT: City Council/City Administrator's Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings issued a request for proposals for privatization of the Animal Shelter on February 22, 2008. The City received only one response, from Yellowstone Valley Animal Shelter, Inc. (YVAS), but it is more than 150 pages long. The contract is being reviewed by a committee consisting of City Councilmember Vince Ruegamer, Animal Control Board Chair Kevin Walsh, City Administrator Tina Volek, Purchasing Agent Liz Kampa-Weatherwax and Police Department Marketing/Minor Alcohol Prevention Coordinator Lisa Posada-Griffin. The committee is thoroughly reviewing the proposal, and needs additional time to complete the review and negotiate a contract with YVAS.

ALTERNATIVES ANALYZED: The City Council may:

- Continue the item to August 25, 2008;
- Award the contract to YVAS;
- Reject all bids.

FINANCIAL IMPACT: The financial impact would depend on the negotiated contract.

RECOMMENDATION

Continue the contract to the August 25, 2008, City Council meeting.

Approved By: City Administrator ____ City Attorney ____

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

SUBJECT: Library Security Guard Service
DEPARTMENT: Parmly Billings Library
PRESENTED BY: Bill Cochran, Library Director

PROBLEM/ISSUE STATEMENT: The Library began contracting with a private guard service in 1999, to maintain safety for patrons, staff and facility and now seeks approval of a new agreement for Library guard service with Guardian Security beginning July 1, 2008, when the current agreement expires.

ALTERNATIVES ANALYZED:

1. Authorize the approval of the Guardian Security agreement, the firm chosen by the selection committee, for guard service for the Library. (Recommended)
2. Part-time guard service.
3. No guard service.

FINANCIAL IMPACT: The annual cost for the first year of the three-year agreement is \$65,926. The Library has sufficient funds in the proposed FY09 budget to pay for the services.

RECOMMENDATION

Staff recommends that Council approve the Library guard service agreement with Guardian Security for the first year of a three-year agreement.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS:

- A. Introduction, Procedural History, Alternatives Analyzed and Background – pages 2 and 3
- B. Library Journal article regarding Tacoma Library 2/25/02 - page 4
- C. Listing of reported incidents – pages 5 and 6

Attachment A

INTRODUCTION

The current contract with Guardian Security expires June 30, 2008. The proposed agreement is for three years with a set rate for the first year and annual rate negotiations approved by the City Council for the two years following. Staff recommends the City Council approve a contract to retain guard service to maintain safety for patrons, staff and facility.

PROCEDURAL HISTORY

Members of the selection committee included Jean Warner, Library Board; Lieutenant John Bedford, Billings Police Department; Nicole Cromwell, Planning Division and 4th Floor representative; Jennifer Wilke, Library Circulation Staff and Sandy Raymond, Library Senior Administrative Coordinator.

The contract was advertised in The Billings Times on April 17 and April 24, 2008. In addition, RFP packets were mailed to the four local security firms listed in the current telephone directory. The RFP was also posted on the City's website. Three firms submitted proposals to provide the guard service and copies of the proposals were supplied to committee members a week prior to the interviews on May 20, 2008. Two of the proposals were rejected because they failed to meet the requirements of the RFP. The Wackenhut Corporation based in Casper, Wyoming, could not provide the evening building checks that were a requirement in the RFP and Elite Security based in Irvine, California, failed to meet the deadline for submission. The committee interviewed one company, Guardian Security.

Guardian Security \$16.25/hour with no charge for 3-4 daily security checks of the building and parking lot late evening and early morning.

The committee confirmed that Guardian Security could meet the RFP requirements and it was their unanimous decision to recommend them for the new contract.

BACKGROUND

Since the City Council approved the Library guard service contract in 1999, the guards have responded regularly to criminal activities including vandalism, theft, indecent exposure, consumption of alcohol and use of illegal substances in the building and on the Library grounds and viewing sexually oriented internet sites in children's area and Teen Center. There have been a number of medical emergencies involving people coming into the Library who have been hurt and need assistance to patrons who have been transported to the hospital for medical attention. On a daily basis they deal with people who are panhandling on Library property and patrons whose conduct is not within the guidelines of the Library Policy.

The guard is in contact with all floors of the Library at all times via cell phone and is in radio contact with the Guardian Security office and the Library staff via radio. This allows them to respond to incidents in the facility in a short period of time. The agreement also calls for checking the building and parking lot 3 – 4 times during the late evening and early morning hours that at times have helped the Library avoid problems with vandalism and building maintenance emergency issues. During these checks the guard has discovered doors that have been broken in an attempt to break in to the facility and doors that were inadvertently left unlocked.

Since June 1, 2005, the security guard employees have enforced new policies prohibiting adults in Teen and Children's areas except with their own children or to retrieve materials; limiting cell phone use to the lobby; prohibiting adults from sleeping in the Library, and requiring patrons to meet minimal personal hygiene standards.

There have been many positive comments from the public and city staff who enjoy the change of atmosphere since the guard service has been employed.

ALTERNATIVES ANALYZED

No Guard Service

The presence of a uniformed security guard serves as a deterrent to violation of the Library's patron conduct policy and criminal activity. Many instances require the guard on duty to respond immediately, ranging from criminal activity to assisting 4th floor staff with irate customers or helping Library staff deal with patrons whose conduct violates Library policy. Private security guards limit the demands made by the Library on the time of sworn officers in the Billings Police Department to situations involving criminal acts. See attachment B for similar situation at another library.

Part-time Guard Service

Many of the same issues apply with part-time guard services that apply to having no guard service. It would not provide the level of protection needed to safeguard the patrons, staff and building and grounds adequately.

RECOMMENDATION

Staff recommends that Council approve the Library guard service agreement with Guardian Security for the first year of a three-year agreement.

Attachment B

Library Journal

Tacoma PL Director Says Library Beset by Drunks/Junkies

-- 2/25/2002

Facing budget cuts in 2001, the Tacoma Public Library, WA, was forced to either reduce hours or trim its security team. In the interest of public service, Director Susan Odencrantz cut security. Though there was little choice, she's paying for the decision now. Odencrantz reports that the library has become a haven for drunks and drug dealers. A large contributing factor was the 2001 closure of a nearby homeless shelter, which was razed to make space for a new convention center. With the shelter gone, the homeless now have relocated to the library, which has experienced a 22 percent rise in gate count while its circulation figures have decreased. As many as 100 homeless are passing the daylight hours at the library, but the number of other patrons is falling off.

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Attachment C

Library Security Guard Listing of Reported Incidents

Daily Situations

- advise intoxicated persons that they are not allowed in the Library
- advise people that are panhandling in the Library, lobby and parking lot to move along
- take cash deposits for Library and 4th floor to City Hall
- stop people who have set off the Library's security system to see if they have any library items in their possession
- recover patron's personal property left on tables, desks and computer terminals (purses, library cards, billfolds, cell phones etc.)
- monitor activities of known registered sex offenders that come into the Library
- monitor people going in and out of the public bathrooms
- monitor children playing on circular staircase or elevators, and locate parents
- monitor people that are loitering on sidewalk around the Library
- help to clear the Library at closing time by asking patrons to shut down computers and checking to insure that all patrons are out of the building and all doors are locked
- check to see that the appropriate doors are locked during regular business hours
- escort staff to their vehicles when the Library closes at 9:00 p.m.

Recent Situations

- issued trespass warnings to patrons when necessary
- dealt with patrons engaged in arguments in the Library
- intervened when people circumvent the internet filters to access sexually explicit material in the teen and children's area
- called fire department and standby until they can assist sick, injured or impaired patrons
- responded to front desk calls for assistance with irate and/or threatening patrons
- advised people outside of the building that they can't consume alcoholic beverages on Library property
- responded to vehicle accidents in the parking lot
- contacted police when unlocked bicycle stolen from bike rack
- stopped toddlers and small children who are about to wander outside and into the parking lot
- assisted patrons who have locked keys in their car
- advised adult patrons that sleeping is not allowed in the Library
- upon request, escorted patrons to their vehicles
- investigated inappropriate patron behavior in Teen area

- helped parents locate children that have wandered away
- contacted police when patrons have personal items stolen in Library
- patrolled areas where empty alcoholic beverage containers have been found inside the building
- warned people who are abusing the telephone privilege by exceeding the time limit or talking in a loud and or threatening manner on the telephone
- investigated problem with patron who was angry and trying to damage security gates
- stopped patrons who are smoking, drinking alcohol or eating food in the Library
- advised maintenance when public bathrooms need attention because people have been sick and cleanup needs to occur
- standby with children and teens who are waiting for rides after the Library has closed

Other Special Situations

- stopped suspected thief, who was casing cars in parking lot
- stopped person/s urinating and or defecating in doorways and or parking lot and stairway
- removed persons sleeping in NW fire escape
- reported person in possession of a weapon
- stopped person who was committing incident exposure in Library
- escorted person out of building who had come in with a live pet snake around their neck
- worked with police to apprehend a suspect who was hiding in the men's room on the 4th floor
- helped remove person from patron's vehicle who was unknown to patron but was sitting in their car in the parking lot
- alerted police and fire regarding person who was passed out on the sidewalk
- escorted a person from the property who was loud and using profane language in the library
- observed a man pulling an unconscious female into the back of his van; police responded and called an ambulance to take her to the hospital
- worked with police regarding a note threatening library staff that was found on the property
- gave a trespass warning to a person in the Library who was making inappropriate gestures toward a staff member and then was loud and used profanity with the guard when confronted
- contacted police when patron reported that a person who they have a restraining order against had followed them into the Library

AGREEMENT

This agreement entered into this 1st day of July, 2008, by and between Parmly Billings Library/City of Billings, hereinafter referred to as "Library", and Guardian Security, Inc., hereinafter referred to as "Contractor".

I. TERM

The term of this contract is July 1, 2008 with security services outlined in this Agreement starting that day and continuing through June 30, 2009

II. SCOPE OF SERVICE

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

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

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

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

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

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

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

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

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

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

COMPENSATION

The Library will be billed \$16.25 per hour per officer. Each month the Contractor shall present an invoice to the Library describing the work for which it seeks payment and documenting the hours worked by the security officer in the previous month. One officer will be assigned to the facility unless the parties mutually agree in writing to assignment of additional officers.

OTHER PROVISIONS

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

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

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

- 4. It is mutually agreed that the Contractor is an independent contractor and is responsible for all expenses related to such status.
- 5. The Contractor shall not sell, subcontract, or otherwise assign this Agreement or any of the services to be rendered without first securing the written consent of the Mayor and City Council.
- 6. The Contractor shall provide, at its expense, uniforms approved by the Library, for all Library security officers.
- 7. All persons with responsibilities in the performance of the terms of this Agreement on behalf of the Contractor shall not discriminate against any person(s) on the basis of race, religious creed, color, sex, national origin, age, political affiliation or beliefs, marital status, mental or physical handicaps, or ancestry, in any activities performed pursuant to the Agreement.
- 8. The Library agrees to notify Contractor as soon as possible of any changes in procedures that might affect the Library's security or the security officer's performance in their duties.
- 9. Either party has the right to cancel and terminate this agreement forthwith upon giving thirty (30) days written notice.
- 10. Complete Agreement: This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written contract shall be valid or binding and this contract may not be enlarged, modified, or amended, except in writing signed by the parties.

Dated this ____ day of _____, 2008.

Ron Tussing, Mayor
City of Billings

Date

Guardian Security Co.

Date

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: MDU Landfill Gas Sales Agreement

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: Solid waste landfills naturally produce methane gas, for which the Montana Department of Environmental Quality (MDEQ) and Federal Environmental Protection Agency (EPA) require monitoring and proper disposal. The methane gas produced at the Billings Regional Landfill has remained within MDEQ and EPA allowable levels. The Solid Waste Division has retained \$725,000 in reserves to begin extraction of the methane gas when it becomes necessary. Last year, the Public Works Department began discussing with other cities their long-term strategies for removing methane gas. One option was to remove the gas for sale as either clean natural gas or to power an electrical generator for power sales. In subsequent discussions with Montana-Dakota Utilities (MDU), they agreed to assist in funding a feasibility study of the landfill's methane gas.

The feasibility study concluded that there is sufficient methane gas in the existing landfill to support commercial production and sales. Based on the data provided in the feasibility study, MDU has requested to contract with the City of Billings for the rights to extract, clean, and distribute the methane gas.

ALTERNATIVES ANALYZED: The Public Works Department has reviewed the following alternatives for disposal of the landfill methane gas:

- Continue our current practice of monitoring the methane gas release from the landfill site and dispose of the gas in the future when the gas release exceeds MDEQ and EPA requirements. This will require the City to retain reserves for future gas extraction.
- Proceed independently in developing the gas extraction process for sale as electricity or natural gas. The start up costs is estimated to be \$8 million. This would require the City of Billings to hire staff knowledgeable in natural gas production, develop a distribution system, and market the clean gas or electricity.
- Distribute the gas directly to an end user. This would require the City of Billings to develop the gas extraction process and find an end user in the local vicinity to purchase

the gas. Currently there are no users in the area that could utilize the projected volume of gas from the landfill.

- Distribute the gas directly to MDU for use in their distribution system. The proposed contract would require MDU to provide the start up costs, operate the collection system, and purchase the gas for distribution in their system.

FINANCIAL IMPACT:

- Continuing to monitor the methane gas for removal when it exceeds state and federal guidelines requires the City of Billings to carry reserves for future disposal of the methane. The exact cost of the disposal system is not known at this time. There would be no revenue for the City of Billings from the gas removal.
- Development and operation of gas extraction process using City of Billings resources and staff. This would require the City of Billings to fund the development and ongoing operational costs. The City would be required to market and operate the gas or electric production. This would place all the financial risk on the City of Billings.
- Contracting with MDU would require MDU to assume the financial risk for the development of the gas production, operating costs, and purchase the gas for market value. The City of Billings would receive 15% of the net revenues from the sales. This is estimated to be \$19 million over 40 years or approximately \$500,000/annually. These funds would be placed in the City's General Fund account.

RECOMMENDATION

Staff recommends that Council approve the Landfill Gas Sales Agreement with Montana-Dakota Utilizes Co.

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

ATTACHMENTS

A. MDU Landfill Gas Sales Agreement

LANDFILL GAS SALES AGREEMENT

This LANDFILL GAS SALES AGREEMENT (“Agreement”), dated as of _____, _____, 2008, is by and between the City of Billings (“City”), a Montana municipal corporation, and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation organized under the laws of Delaware (“MDU”).

WITNESSETH:

WHEREAS, the City owns a landfill site that contains methane gas located at Sections 29 and 30, Township 1 South, Range 26 East, Yellowstone County, Montana (“Landfill”)

WHEREAS, MDU wants to test the concentration of methane gas and, if economically feasible, to extract, condition, transport and purchase the methane gas for commercial use; and

WHEREAS, the City is willing to allow MDU to test for, extract, condition, transport and purchase such methane gas on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

SECTION 1 – DEFINITIONS

- 1.1 **Certain Definitions.** For purposes of this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:
- 1.1.1 **“Commission**” shall mean to install Facilities at the Landfill and utilizing said Facilities, to begin extracting methane gas on a sustained basis.
 - 1.1.2 **“Commissioning Date**” shall mean the day Facilities installed at the Landfill begin to extract methane gas on a sustained basis.
 - 1.1.3 **“Landfill**” shall mean the landfill of the City located at Sections 29 and 30, Township 1 South, Range 26 East, Yellowstone County, Montana.
 - 1.1.4 **“Landfill Easement Agreement**” means an easement agreement between the City and MDU substantially in the form attached as Exhibit 2.
 - 1.1.5 **“Facilities**” shall mean the methane gas wells, piping, conditioning, metering equipment, and any other equipment owned and installed by MDU at the Landfill required for the extraction, conditioning, recovery, metering and transportation of methane gas in accordance with this Agreement. The Facilities are more particularly described in Exhibit 3.
 - 1.1.6 **“Force Majeure**” shall have the meaning set forth in Section 13.2.
 - 1.1.7 **“MDU Indemnitees**” shall have the meaning set forth in Section 12.3.
 - 1.1.8 **“MDU Personnel**” shall have the meaning set forth in Section 11.2.
 - 1.1.9 **“Prudent Practice**” shall mean the exercising of the same degree of care and control considered reasonable in similar circumstances by other entities of a size comparable to the City or MDU as the case may be,

when confronting the same or similar circumstances. In applying the standard of Prudent Practice, equitable consideration should be given to the circumstances, the complexity of the equipment or the tasks involved, the facts known by the Parties at the time, the fact that neither Party is in a position or in the business of being an insurer or guarantor, the then-current state of technology, and with respect to MDU's Facilities at the Landfill, recognizing that the equipment will not always operate as designed and that construction and erection of equipment will not always be performed perfectly with the result that modifications and improvements may have to be made and sometimes at substantial cost to MDU.

1.1.10 "Methane Gas Payment" shall have the meaning set forth in Section 4.1.1.

1.2 Other Terms

References herein to Exhibits are to the Exhibits attached to this Agreement which are incorporated into this Agreement by this reference. Other terms used in this Agreement are defined in the context in which they are used and shall have the meaning therein indicated.

SECTION 2 - TERM

2.1 Interim Term

The Interim Term of this Agreement shall commence on the date first written above and shall terminate on the first day of the Initial Term, unless cancelled or terminated as provided herein.

2.2 Initial Term

The Initial Term of this Agreement shall commence on the Commissioning Date, and shall terminate forty (40) years thereafter, unless earlier terminated as provided herein.

2.3 Extension

The Agreement shall be renewable at the end of the Initial Term for successive five-year terms subject to prior written approval by the City and MDU. Upon renewal, all applicable terms of the Agreement will apply.

SECTION 3 – METHANE GAS TESTING AND FACILITIES

3.1 Methane Gas Testing

During the Interim Term, MDU will drill and monitor test wells within the vertical and horizontal boundaries of the Landfill to confirm the availability of sufficient quality and quantity of recoverable methane gas on a sustained basis to economically support the construction and operation of the Facilities. If MDU

determines in its sole discretion from the test well results that a sufficient commercial quality and quantity of recoverable methane gas on a sustained basis exists within the Landfill to economically support the construction and operation of the Facilities, MDU shall proceed with the design and construction of the Facilities. Payment shall not be required for methane gas extracted prior to the Commissioning Date except to the extent such methane gas is gathered for transportation and commercial use by MDU. If MDU determines, in its sole discretion, from the test well results that a sufficient commercial quality and quantity of recoverable methane gas on a sustained basis does not exist at the Landfill, MDU shall notify the City in writing of MDU's determination and this Agreement shall terminate.

3.2 Design and Construction

MDU shall be responsible for the design, construction, and operation of the Facilities.

3.3 Facilities and Site Easement

The City and MDU shall execute a Facilities Easement Agreement so as to allow MDU to locate and construct the Facilities on the Landfill and such other area as described in the Facilities Easement Agreement. Upon termination of this Agreement, MDU shall (i) execute such waivers, releases or other instruments in recordable form as may be necessary to evidence such termination, (ii) release any interest which MDU may have in and to the Facilities Easement Agreement, and (iii) remove the Facilities from the Landfill site and restore the Landfill site to its pre-construction condition unless otherwise agreed by MDU and the City.

SECTION 4 – METHANE GAS PURCHASE TERMS

4.1 Rates and Payments

4.1.1 Methane Gas Payment

Beginning with the Commissioning Date of the Facilities, MDU will pay to the City a payment monthly for methane gas ("Methane Gas Payment") extracted and transported from the Landfill, net of losses, equal to fifteen percent (15%) of the Colorado Interstate Gas Co. Index ("CIG Index") per MMBtu, as reported in the first issue of the month of delivery of Inside FERC's Gas Market Report in the table "Prices of Spot Gas delivered to Pipelines" or another mutually agreed upon pricing mechanism. The measurement of the total recovered methane gas extracted and transported from the Landfill, net of losses, shall be the meter readings at the meter located at the interconnection point between the Facilities and MDU's natural gas distribution system or other commercial use transportation system. Such meter shall be calibrated and maintained in accordance with Prudent Practice. Measurement and payment shall be

on a net MMBtu basis after conditioning of the methane gas to remove impurities to meet MDU's natural gas specifications for commercial use.

4.1.2 Title Transfer of Methane Gas

Title transfer of the methane gas between the parties shall occur at the MDU measurement facilities identified in section 4.1.1.

4.2 Carbon Credits

The Parties agree that all carbon credits, renewable energy credits, emission credits, or other certification of emission reduction or carbon methane destruction or displacement attributable to the extraction of methane gas from the Landfill (hereinafter "Credits") shall inure to the benefit of and be the property of MDU or its assignee or designee. The City agrees to execute any assignment, or other document reasonably requested by MDU transferring any right of the City in the credits or acknowledging MDU's interest and ownership in the Credits.

4.3 Taxes

The Parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as follows:

4.3.1 Personal, Property and Income Taxes

Each Party shall be responsible for any personal or real property taxes on property it owns or leases, and taxes based on its receipt of the Methane Gas Payment.

4.3.2 Sales, Use, Excise and Value-Added Taxes

MDU shall be responsible for any sales, use, excise, value-added, services, consumption, and other taxes and duties payable by MDU on any goods or services used or consumed by MDU in the methane gas extraction process where the tax is imposed on MDU's acquisition or use of such goods or services and the amount of tax is measured by MDU's costs of acquiring such goods or services.

4.3.3 Production Taxes

MDU and the City agree to jointly petition the Montana Department of Revenue for a declaratory ruling that methane gas extracted from the Landfill under the Agreement is not natural gas for purposes of taxation under the Montana Oil and Gas Production Tax. If it is determined the methane gas extracted from the Landfill under this Agreement is subject to the Montana Oil and Gas Production Tax or any other current or future local, state or federal production, severance, extraction, or similar tax, the tax shall be paid by the City or deducted from the Methane Gas Payment if the tax is paid by MDU. MDU will cooperate with the City to seek exemption for taxation of the methane gas under any such current or future production, severance, extraction, or similar tax.

4.4 Payments

4.4.1 Billings and Statements

Beginning the month following the Commissioning Date, MDU will prepare and deliver each month to the City a written statement for the preceding month prepared in accordance with, and subject to the terms and conditions in the Agreement. Such statement shall be dated and delivered to the City on or before the 10th day of the month in which it is prepared (e.g. the month following the delivery of the methane gas reflected therein) and shall set forth the total amount due by MDU under Section 4.1.1. Amounts due and owed shall be paid by MDU not later than fifteen (15) days after the date of such statement. Amounts not paid when due under this section, shall accrue interest at one hundred five percent (105%) of the Federal Reserve Prime Rate of interest, as quoted in the *Wall Street Journal*. Such interest due shall accrue from the due date to the date of payment.

In the event any portion of any statement submitted is disputed, the undisputed amount shown to be due shall be paid by the due date. Any additional amount subsequently determined to be due shall be paid with interest at the rate stated above upon determination of the correct amount due. Any amount of an invoice determined to have been overpaid shall be refunded with interest at the rate stated above.

The Parties shall have one (1) year after receipt or delivery of any statement to question the correctness thereof. If a statement has not been challenged in writing by either Party during such one-year period, then such statement shall become final for all purposes and no longer subject to challenge or adjustment.

SECTION 5 – OPERATION OF FACILITIES

5.1 Operational Responsibilities

5.1.1 Operation and Maintenance

MDU shall be responsible for the operation and maintenance of the Facilities in accordance with Prudent Practice.

5.1.2 Personnel

MDU shall ensure that all operational personnel working on the Facilities are trained and experienced in the operation of gas facilities.

5.1.3 Utility Expense

MDU shall be responsible for arranging direct utility hook-ups (electricity, water, communications, etc.) needed for the Facilities and for paying any utility expenses associated with the operation of the Facilities directly to utility suppliers.

5.1.4 Curtailments

MDU, in its sole discretion, may determine that regulatory requirements, market conditions, flow conditions or other operational considerations require the curtailment or the shut down of any of the Facilities for any period of time. Further, industry and market conditions may require MDU to curtail or shutdown the Facilities for equipment upgrades and replacement. Such curtailments and shut-downs shall not be considered a breach or event of default under this Agreement.

5.1.5 Operational Emergency

If, in MDU's reasonable judgment, it determines that any of the operations of the Facilities is creating an emergency or safety concern, endangering the Facilities or MDU's gas transportation or distribution system, or other equipment or personnel, then MDU may cease operations until the emergency or safety concern ceases to exist.

5.2 Permits and Approvals

5.2.1 Permits

MDU shall be responsible for obtaining any permits and clearances necessary for the construction and operation of the Facilities from any governmental authority having jurisdiction.

5.2.2 Regulatory Approval and Treatment

This Agreement may be subject to review and/or approval by the state regulatory commissions for the states in which MDU operates its natural gas distribution system. If a regulatory commission disapproves this Agreement for any reason, or at any time determines the capital and operational costs of the Facilities and extracted gas are not fully recoverable by MDU through its retail rates, MDU may terminate this Agreement upon written notice to the City.

SECTION 6 – INSURANCE

6.1 Delivery of Certificates of Insurance

MDU shall insure that all of its employees as well as its contractors, subcontractors and their employees performing services in accordance with this Agreement have in effect Commercial General Liability Insurance, Workers' Compensation Insurance, Automobile Liability Insurance and Excess Liability Insurance with the coverage limits set forth in Exhibit 4.

6.2 Proof of Insurance

Upon request of the City, MDU shall provide certification of insurance for coverage in types and amounts set forth in Exhibit 4 respectively for itself and any contractor or subcontractors engaged by it at the Landfill.

SECTION 7 – PERIODIC REVIEWS; AUDIT RIGHTS

7.1 Annual Reviews

MDU agrees to maintain its books and records in accordance with generally accepted accounting principles. No more than once each year, the City shall have the right to inspect and audit those books and records and other supporting evidence of MDU that the City deems necessary to verify: (i) the quantity and quality of methane gas extracted, conditioned and transported from the Landfill, and (ii) that MDU is in compliance with the terms of this Agreement, regulatory authorities, or other laws and regulations that govern the operation of the Facilities.

SECTION 8 – TERMINATION FOR CAUSE

In the event that MDU or the City commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of breach, the other Party may terminate this Agreement in whole or in part, as of the date specified in the notice of breach.

SECTION 9 – RELATIONSHIP OF THE PARTIES

Nothing in this Agreement will imply a joint venture, partnership, or principal-agent relationship between the Parties. Neither Party will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other Party, pursuant to this Agreement.

SECTION 10 – REPRESENTATIONS AND WARRANTIES

10.1 Work Standards

MDU represents and warrants that design, construction and operation of the Facilities shall be performed with promptness and diligence and shall be executed in a workmanlike manner, in accordance with the practices and high professional standards used in methane gas extraction and recovery operations performing similar services. MDU represents and warrants that an adequate number of qualified individuals with suitable training, education, experience, and skill shall be utilized to perform such services.

10.2 Compliance with Laws and Regulations

MDU shall construct and operate the Facilities in accordance with all laws, rules, regulations, certificates, orders, ordinances, codes and directives of all applicable authorities with jurisdiction over the Landfill or the Facilities.

10.3 Title

The City represents and warrants that it is the sole owner of the Landfill and has exclusive title to the methane gas extracted from the Landfill and the authority to allow extraction of the methane gas and to sell the methane gas to MDU under this Agreement.

SECTION 11 – INDEMNIFICATION

- 11.1** MDU shall defend, protect, indemnify, and hold harmless the City, its officers, and employees, (collectively the “City Indemnitees”) from and against all liabilities, claims, costs, expenses, demands, suits and causes of action of every kind and character arising in favor of any person, corporation or other entity, on account of personal injuries or death or damages to property to the extent caused by the acts or omission of MDU, its employees, contractors, subcontractors or agents.
- 11.2** MDU further agrees, except as may be otherwise specifically provided herein, that the obligation of indemnification hereunder shall include, but not be limited to, expenses, claims, fines, and penalties or other enforcement charges, resulting from the failure of MDU to abide by any and all valid and applicable laws, rules or regulations of any governmental or regulatory authority with jurisdiction.
- 11.3** The City shall defend, protect, indemnify, and hold harmless MDU and its directors, officers, and employees (herein referred to as the “MDU Indemnitees”) from and against all liability, claims, costs, expenses, demands, suits and causes of action of every kind and character arising in favor of any person, corporation or other entity, on account of personal injuries or death or damages to property to the extent caused by acts or omission of the City, its employees, contractors, subcontractors or agents.
- 11.4** The City further agrees, except as may be otherwise specifically provided herein, that the obligation of indemnification hereunder shall include, but not be limited to, expenses, claims, fines, and penalties or other enforcement charges, resulting from the failure of the City to abide by any and all valid and applicable laws, rules or regulations of any governmental or regulatory authority with jurisdiction.
- 11.5** The City further agrees to indemnify the MDU Indemnitees from any claim by any third party asserting title or interest in the methane gas, or the right of additional compensation for the methane gas, recovered from the Landfill.
- 11.6** In connection with any claim or action described in this Section 11, the Party seeking indemnification will (a) give the indemnifying Party prompt written notice of the claim, (b) cooperate with the indemnifying Party (at the indemnifying Party’s expense) in connection with the defense and settlement of the claim, and (c) permit the indemnifying Party to control the defense and settlement of the

claim, provided that the indemnifying Party must diligently defend the claim and may not settle the claim without the indemnified Party's prior written consent (which will not be unreasonably withheld or delayed). Further, the indemnified Party (at its cost) may participate in the defense and settlement of the claim.

SECTION 12 – LIABILITY

12.1 Liability Restrictions

12.1.1 IN NO EVENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT), SHALL A PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, ARISING OUT OF OR IN CONJUNCTION WITH THIS AGREEMENT.

12.2 Force Majeure and Other Events Excusing Performance

12.2.1 No Party shall be liable for any default or delay in the performance of its obligations under this Agreement (i) if and to the extent such default or delay is caused, directly or indirectly by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, explosions, breakage, accident or repairs to machinery, equipment or lines of pipe, inability to obtain or unavoidable delay in obtaining pipe, materials, equipment for Facilities, or compliance with any order or request of any governmental authority, or any other cause, whether similar or dissimilar to any above enumerated beyond the reasonable control of such Party (a Force Majeure event), (ii) provided the non-performing Party is without fault in causing such default or delay, and (ii) such default or delay could not have been prevented by reasonable precautions and can not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means.

12.2.2 In such event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances detailed above prevail and such Party continues to use its reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall promptly as reasonably possible notify the Party to whom performance is due and describe at a reasonable level of detail the circumstances causing such delay.

SECTION 13 – DISPUTE RESOLUTION

13.1 Negotiation of Disputes and Disagreements

In the event of any dispute or disagreement arising out of or relating to the performance of this Agreement, which the Parties hereto have been unable to

settle or agree upon within a period of sixty (60) days after the dispute or disagreement arises, either party may then by notice to the other submit the dispute to arbitration in accordance with the provisions of Section 13.2.

13.2 Arbitration Resolution

Any claim, dispute or controversy arising out of or relating to this Agreement, shall be submitted to binding arbitration by the American Arbitration Association at a location in Billings, Montana, in accordance with the Commercial Rules of the American Arbitration Association then in effect. There shall be three arbitrators, with each party selecting one; the third arbitrator, who shall be the chairman of the panel, shall be selected by the two party-appointed arbitrators. The claimant shall name its arbitrator in the demand for arbitration and the responding party shall name its arbitrator within thirty (30) days after receipt of the demand for arbitration. The third arbitrator shall be named within thirty (30) days after the appointment of the second arbitrator. The American Arbitration Association shall be empowered to appoint any arbitrator not named in accordance with the procedures set forth herein. The decision of the arbitration panel shall be final and binding upon the Parties without the right of appeal to the courts and judgment thereon may be entered by any court having jurisdiction thereof. The arbitrators' fees and other costs of the arbitration shall be shared by the parties. Each party shall bear the costs of its attorney fees, expert witness fees, and costs.

13.3 Continuation of Service

Pending final resolution of any dispute, whether or not submitted to arbitration hereunder, the City and MDU shall continue to fulfill their respective obligations under this Agreement.

SECTION 14 – MISCELLANEOUS

14.1 Notices under this Agreement shall be sufficient only if personally delivered by a commercial prepaid delivery or courier service or mailed by certified or registered mail, return receipt requested to a Party at its address set forth below or as amended by notice pursuant to this Section 14.1. If not received sooner, notice by mail shall be deemed received five (5) business days after deposit in the U.S. mail. All notices shall be delivered as follows:

If to the City:

Office of the City Attorney
City of Billings
210 North 27th Street
Billings, Montana 59101

If to MDU:

Montana-Dakota Utilities Co.
400 North 4th Street
Bismarck, ND 58501
Attention:
Fax No.: (701) 222-7606

14.2 Binding Nature; Entire Agreement

The City and MDU acknowledge (i) that each has read and understands the terms and conditions of this Agreement and agrees to be bound by such terms and conditions, (ii) that this Agreement is the complete and conclusive statement of the agreement between the Parties, and (iii) that this Agreement sets forth the entire agreement and understanding between the Parties relating to the subject matter hereof. All understandings and agreements, oral and written, heretofore made between the City and MDU relating to the subject matter hereof are merged in this Agreement which alone, fully and completely expresses their agreement on the subject matter.

14.3 Amendment

No modification of, additions to or waiver of this Agreement shall be binding upon the City or MDU unless such modification is in writing and signed by an authorized representative of each Party.

14.4 Severability

If any term or provision of this Agreement shall to any extent be held by a court or other tribunal to be invalid, void or unenforceable, then that term or provision shall be inoperative and void insofar as it is in conflict with law, but the remaining terms and provisions of this Agreement shall nevertheless continue in full force and effect and the rights and obligations of the Parties shall be deemed to be restated to reflect nearly as possible the original intentions of the Parties in accordance with applicable law.

14.5 Headings

Headings used in this Agreement are for reference and convenience only and are not to be deemed or construed to be part of this Agreement.

14.6 Compliance with Laws and Regulations

Each Party shall perform its obligations in a manner that complies with the laws, rules, certificates, regulations, ordinances codes, orders and directives of all applicable authorities with jurisdiction over the Landfill or the Facilities. If a Party is charged with a failure to comply from any such applicable authority, the Party charged with such non-compliance shall promptly notify the other Party of such charges in writing.

14.7 Governing Law and Venue

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana, and not, by the application of choice of law principles, the laws of any other state. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

14.8 Nondiscrimination

MDU agrees that all hiring of persons performing work pursuant to this Agreement or any sub-agreements by MDU and/or its contractors and subcontractors will be on the basis of merit and qualification and MDU will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

14.8 Binding Nature and Assignment

This Agreement shall be binding on the Parties hereto and their respective successors and assigns. Neither Party may or shall have the power to assign this Agreement without the prior written consent of the other, except that MDU may assign its rights and obligations under this Agreement without the approval of the City to an entity which acquires all or substantially all of its assets of MDU, or to any subsidiary or affiliate or successor in a merger or acquisition of MDU. In no event shall any assignment or partial assignment hereunder relieve the assigning Party of its obligations under this Agreement and any assignment or partial assignment hereunder is subject to the written assumption by the assignee of the obligations of the assigning Party.

14.9 No Waivers

Failure or delay on the part of the City or MDU to exercise any right, power or privilege under this Agreement shall not constitute a waiver of any right, power or privilege of this Agreement.

14.10 Survival

Any provision of this Agreement which contemplates performance or observance subsequent to any terminations or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

IN WITNESS WHEREOF, the City and MDU have caused this Agreement to be executed effective as of the date first written above.

CITY OF BILLINGS

**Montana-Dakota Utilities Co., a
Division of MDU Resources Group,
Inc.**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibits:

Exhibit 1: Landfill Description

Exhibit 2: Compressor Site Easement Agreement

Exhibit 3: The Facilities

Exhibit 4: Minimum Insurance Requirements

Exhibit 1

Landfill Description

C/S 1098 Tract 1 Amended in the south ½ of Section 30, 1 South, 26 East

C/S 796 Tract 1 in the west ½ of Section 29, 1 South, 26 East

C/S 1130 in the south ½ of the southwest corner of Section 29, 1 South, 26 East

Exhibit 2

FACILITIES EASEMENT AGREEMENT

The Facilities Easement Agreement (“Agreement”) dated as of _____, ____, 2008 is by and between the City of Billings (“City”), a Montana municipal corporation, and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation organized under the laws of Delaware (“MDU”).

W I T N E S S E T H:

WHEREAS, MDU and the City entered into a Landfill Gas Sales Agreement dated as of _____, ____, 2008, the (“Landfill Gas Agreement”) pursuant to which the City granted MDU the right to extract, condition, transport and purchase methane gas from a Landfill owned by the City, and

WHEREAS, the Landfill Gas Agreement requires that the City grant an easement to MDU in the form of this Agreement. Any capitalized term used in this Agreement and not defined herein shall have the meaning assigned to such term in the Landfill Gas Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein the Parties agree as follows:

1. Subject to the terms and conditions hereinafter set forth, the City hereby grants to MDU the right, privilege and easement, hereinafter referred to as “Easement,” to use, operate, construct, reconstruct, repair, maintain and have access for the Facilities on, over, under and across that real property as described in Exhibit A, attached hereto and incorporated herein, to as the “Landfill Site” including the right of ingress and egress from the real property.

2. The Easement hereby granted shall be non-exclusive, and the City, its successors and assigns, shall reserve the right to use and to grant to others, subject to the terms hereof, the right to use the property encumbered by the Easement for any and all purposes, including the right to cross over or under the Easement for any purposes, provided that the exercise by City or others of such rights to use, and the use of the land encumbered by the Easement shall not be for the purpose of constructing or operating methane gas recovery facilities and shall not be inconsistent with the grant of the Easement to MDU. Subject to the limitations set forth in the foregoing sentence, but without otherwise limiting the foregoing, the City shall have the right to use the property encumbered by the Easement and to cross over the Easement for the operation and maintenance of its Landfill consistent with the terms and conditions of the Landfill Gas Agreement.

3. MDU covenants and agrees that it will not permit or suffer any lien to be put upon or to arise on or accrue against the Easement in favor of any person or persons, individual or corporate, furnishing either labor or material in connection with any work done or permitted to be done by MDU on the Facilities, and MDU further covenants and agrees to hold the City harmless against and to keep the Easement free

from any and all liens or claims of liens which may or might arise or accrue or be based upon any mechanic's lien law of the State of Montana, now in force or hereinafter enacted, by reason of MDU's exercise of the rights and privileges granted hereunder, and in the event any such lien shall arise or accrue against the Landfill Site, MDU agrees to promptly cause the release of same.

4. Provided that MDU is in full compliance with the terms and conditions of the Landfill Gas Agreement and this Agreement, the City agrees that MDU may enforce this Agreement by a suit for specific performance.

5. In the event of damage to or destruction of the Facilities, MDU agrees to promptly repair and restore the same. MDU shall keep the Facilities and the Easement free of any trash or debris.

6. Notwithstanding the grant of the Easement, but subject to the provisions of the Landfill Gas Agreement, MDU shall at all times and at its sole cost and expense keep the Facilities in good repair and in compliance with all applicable governmental rules and regulations. MDU shall procure, at its sole cost and expense, any permits or licenses necessary for the use and operation of the Facilities and will pay any and all taxes assessed thereon or attributable thereto.

7. The Easement hereby granted shall cease and terminate in its entirety (except as to any indemnities or warranties herein contained) upon the first to occur of the following:

- a. the mutual agreement of the City and MDU,
- b. non-use of the Facilities for a period of two consecutive years, or
- c. the date which is twelve months after the expiration or termination of the Landfill Gas Agreement.

8. Upon any such termination, MDU agrees to: (i) execute such waivers, releases or other instruments in recordable form as may be necessary to evidence such termination, (ii) release any interest which MDU may have in and to the Easement by reason of this Agreement, and (iii) remove the Facilities from the Landfill Site and restore the Landfill Site to its pre-construction condition.

9. This Agreement and the covenants and conditions herein contained shall run with the land and shall be binding upon the successors and assigns of the parties hereto.

10. Except as otherwise provided in this Agreement, neither party shall assign this Easement or any of its rights or obligations hereunder except with the consent of the other party, which consent shall not be unreasonably withheld. Any such assignment is subject to the written assumption by the assignee of the obligations of such party hereunder. Any company or other entity succeeding by purchase, merger or consolidation to the properties, substantially as an entity, of MDU shall be entitled to the rights and be subject to the obligations of its predecessor under this Agreement without the necessity of obtaining the consent of the City.

11. Any notice, demand or election under this Agreement shall be deemed properly given if sent by United States mail and addressed as follows:

If to the City: Office of the City Attorney
City of Billings
210 North 27th Street
Billings, Montana 59101

If to MDU: Montana-Dakota Utilities Co.
400 North 4th Street
Bismarck, ND 58501
Attention:
Fax No.: (701) 222-7606

or as otherwise provided by notice given as herein provided.

12. This Agreement may not be modified or amended except by written agreement of the parties.

13. This Agreement and the rights and obligations of the Parties shall be governed by and interpreted in accordance with the laws of the State of Montana and not, by the application of choice of law principles, the laws of any other state.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and the year in this certificate first above written

(Seal)

Notary Public

Exhibit A

LANDFILL SITE DESCRIPTION:

C/S 1098 Tract 1 Amended in the south ½ of Section 30, 1 South, 26 East

C/S 796 Tract 1 in the west ½ of Section 29, 1 South, 26 East

C/S 1130 in the south ½ of the southwest corner of Section 29, 1 South, 26 East

Exhibit 3

FACILITIES

Gas wells

Gas piping

Condensate tanks

Blower and Flare

Compressor

Gas treatment system

Concrete foundation for equipment

Building to house equipment

Gathering pipeline and equipment to interconnect to MDU natural gas distribution system

Property Damage (Minimum) \$1,000,000 Combined Single Limit Each Occurrence

Excess Umbrella Liability Coverage

Bodily Injury and Property Damage (Minimum) \$1,000,000 Combined Single Limit Each Occurrence

Additional Requirements

Upon request at the time this Agreement is executed, MDU shall submit a Certificate of Insurance, evidencing that satisfactory coverages of the type and limits set forth hereinabove are in effect. Policies providing such coverages shall contain provisions that no cancellation or material changes in the policies shall become effective except on thirty (30) days advance written notice thereof to the other Party. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Party, the failure of any insurance company to pay claims accruing, or the inadequacy of the limits of the insurance, shall not affect, negate or waive any to the provisions of this Agreement including, without exception, the indemnity obligations of the Parties.

MDU agrees to require any policies of insurance, except Workers Compensation coverages, which are in any way related to the Facility and that are secured and maintained by MDU to include the City, its officers, employees and agents, as Additional Insured.

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: 2008/2009 FISCAL YEAR LANDFILL USE AGREEMENTS
DEPARTMENT: Public Works Department
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Billings Regional Landfill currently accepts wastes from adjoining counties and the cities and towns within those counties. This is accomplished via 1-year or 3-year agreements (with annual amendments) with those entities. The current agreements expire June 30, 2008. The renewal of these agreements is recommended to continue the current practice.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: These agreements specify a rate of \$11.50 per ton of waste. This is the same rate charged in the 2007/2008 Fiscal Year Landfill Use Agreements with each entity. We project these agreements will generate \$998,000 in revenue in fiscal year 2009.

RECOMMENDATION

Staff recommends that the City Council approve, and the Mayor sign, Amendment No. 2 to the 3-year agreement with Yellowstone County and new one-year Landfill Use Agreements with:

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

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A – Example of "Standard" Landfill Use Agreement

B – Amendment No. 2 to the 3-Year Agreement with Yellowstone County

INTRODUCTION

The Billings Regional Landfill currently accepts wastes from adjoining counties and the cities and towns within those counties. This is accomplished via 1-year or 3-year agreements (with annual amendments) with those entities.

BACKGROUND

The City of Billings currently provides landfill services to each of the entities listed. The City provides this service based upon a 3-year agreement, with annual amendments, with Yellowstone County and 1-year agreements with the other entities. These agreements allow us to accurately reflect the actual cost of providing service to each entity.

Since each of these other governmental agencies works on a July 1 fiscal year, as we do, staff tries to obtain approval of these agreements before the adoption of both the City of Billings' budget and their budgets. The current rate of \$11.50 per ton is maintained in these agreements.

Previous City Councils have felt that offering landfill services to other communities is worthwhile because the citizens of Billings benefit from spreading the fixed overhead cost of the landfill operation over a larger base. The Landfill Master Plan contemplates providing this service and still shows a landfill life to the year 2049. We provide this "good neighbor" service to surrounding communities and counties that border Yellowstone County but do not have their own landfills.

STAKEHOLDERS

We have held at least bi-annual *Landfill User Summits* since 1994. We extend invitations to representatives from each entity currently using the Billings Regional Landfill. The meetings are used to share statistical information, update participants on current programs, and discuss future plans.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The Landfill Master Plan contemplates providing this service and shows landfill life to 2049.

RECOMMENDATION

Staff recommends that the City Council approve, and the Mayor sign, Amendment No. 2 to the 3-year agreement with Yellowstone County and new one-year Landfill Use Agreements with:

Bighorn County
Town of Bridger
Carbon County
Town of Columbus

Town of Fromberg
Town of Hysham
Town of Joliet
City of Laurel

Musselshell County
City of Red Lodge
Stillwater County
Treasure County

ATTACHMENTS

A – Example of "Standard" Landfill Use Agreement

B – Amendment No. 2 to the 3-year Agreement with Yellowstone County

AGREEMENT

ATTACHMENT A

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

WITNESSETH:

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

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

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

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

2. That «TheOrganization» agrees to pay the CITY for the use of said landfill facilities at the rate of \$11.50 per ton as weighed on the landfill scale. Should the scale be inoperable, the rate will be \$1.45 per cubic yard of non-compacted solid waste and \$3.75 per cubic yard of compacted solid waste as determined by the load capacity of the vehicle used to haul said solid waste regardless of the actual size of the load.

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

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

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

6. It is further understood and agreed that this agreement shall be effective for Twelve (12) Months from and after the 1st day of July 2008, unless terminated by the CITY. The CITY may terminate this agreement at any time, with or without cause, upon thirty (30) days written notice to «TheOrganization».

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

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

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

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

DATED THIS ____ day of _____, 20__.

«ORGANIZATIO»

CITY OF BILLINGS

RON TUSSING, MAYOR

TINA VOLEK, CITY ADMINISTRATOR

CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

Billings City Attorney

AMENDMENT NO.2

YELLOWSTONE COUNTY LANDFILL USE AGREEMENT

The Agreement dated _____ between THE CITY OF BILLINGS (City) and YELLOWSTONE COUNTY SOLID WASTE DISPOSAL DISTRICT (District) shall be amended as follows:

For July 1, 2008 to June 30, 2009 the total annual payment shall be Three Hundred Ninety-One Thousand Five Hundred dollars (\$391,500.00).

Both parties hereby agree upon this Amendment. All other provisions of the original Agreement remain in full force and effect and shall be undisturbed by this Amendment.

DATED THIS _____ day of _____, 2008

YELLOWSTONE COUNTY

SOLID WASTE DISPOSAL DISTRICT

CITY OF BILLINGS

By: _____

Chairman

By: _____

Ron Tussing, Mayor

Attest: _____

Cari Martin, City Clerk

APPROVED AS TO FORM:

By: _____

City Attorney

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Assignment and Transfer of Limited Commercial Aviation Building and Ground Lease from Big Sky Ground Support Industries to Alpine Aviation, Inc., d.b.a. Big Sky Ground Support Industries

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On March 10, 2008, Big Sky Ground Support Industries (BSGSI) entered into a Limited Commercial Aviation Building and Ground Lease with the City of Billings for a one (1) year term, with a one-year option to renew. The leased property is an Airport facility commonly known as the former Operations/ARFF building, a warehouse located on the east end of the airfield. The 3,429 square foot warehouse comprises the north one-half of the building with the south one-half currently housing the rental car wash facilities. BSGSI, a local company that provides ground support equipment maintenance service, uses the warehouse space to perform maintenance on ground handling equipment owned by the airlines based at the Airport. Buck Smith, the owner/operator of BSGSI has recently sold the business and its assets to Alpine Aviation, Inc. Mr. Smith remains with the company post sale, and will continue to provide the maintenance service. Alpine Aviation, Inc. is currently an Airport tenant that contracts with the U.S. Postal Service (USPS) for mail hauling service and United Parcel Service (UPS) for freight hauling service. This Assignment and Transfer will formally transfer the Lease on this parcel from BSGSI to Alpine Aviation, Inc., d.b.a. Big Sky Ground Support Industries.

FINANCIAL IMPACT: There is no financial impact from this action. The name on the Lease is all that changes with this Assignment and Transfer.

RECOMMENDATION

Staff recommends that Council approve the Assignment and Transfer of the Limited Commercial Aviation Building and Ground Lease from Big Sky Ground Support Industries to Alpine Aviation, Inc., d.b.a. Big Sky Ground Support Industries.

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

ATTACHMENT

A. Assignment and Transfer

ATTACHMENT A

“EXHIBIT A1”

SCOPE OF SERVICES PROCESS CONTROL REVIEW AND FILAMENT INVESTIGATION

Purpose

Provide assistance to the City of Billings Wastewater Treatment Plant to evaluate nitrification requirements to facilitate meeting WET testing permit requirements. Additionally HDR will evaluate and provide recommendations for operations procedures to improve reliability of plant operations.

Scope

Information gathered from the Process Control analysis will be used to develop additional nitrification options that look at partial nitrification that will meet the WET testing requirements.

Information gathered from the Process Control analysis and additional follow up information from the Billings plant will be compared with HDR’s experiences with other successful plant operations around the country to make recommendations for operation procedures improvements as appropriate.

Further follow up will be completed on various concerns throughout the plant identified by Staff during initial meetings and follow up meetings from the Process Control analysis.

Deliverables

Technical memorandum revised from Process Control memorandum.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Process Control Review and Filament Investigation
 Agreement Amendment Number One - Wastewater Division

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: An agreement was entered into with HDR Engineering, Inc. to provide a process control review and filament investigation at the Wastewater Treatment Plant associated with recent activated sludge process upsets. During the investigation, it became apparent that the initial scope of the agreement was not sufficient to cover the issues associated with making recommendations for operating the Wastewater Plant in partial nitrification on a long-term basis. An amendment to the initial agreement is necessary for a more detailed review that would recommend an operational practice of partial nitrification with seasonal adjustments that will help avoid potential effluent violations due to excess ammonia causing failure of the Whole Effluent Toxicity Test. The amendment will also provide for recommendations for operational procedure improvements based on HDR's experience with other successful plants.

FINANCIAL IMPACT: An additional amount not to exceed Five Thousand Dollars (\$5,000.00) is expected to be necessary to complete the review. There is sufficient funding in the Wastewater budget to cover this additional service.

RECOMMENDATION

Staff recommends that Council approve Amendment No. 1 with HDR Engineering, Inc. for the Process Control Review and Filament Investigation for an amount not to exceed \$5,000.00.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A – Amendment Number One and “Exhibit A1”

ATTACHMENT A

**AMENDMENT NUMBER ONE
TO THE
AGREEMENT FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES
BY AND BETWEEN
THE CITY OF BILLINGS, MONTANA
AND
HDR ENGINEERING, INC.
PROJECT FOR PROCESS CONTROL REVIEW AND FILAMENT INVESTIGATION**

THIS AMENDMENT NUMBER ONE, made and entered into this ____ day of _____, 2008, modifies the Agreement for Professional Services by and between the City of Billings, Montana, and HDR Engineering, Inc., dated December 20, 2008. The Agreement is modified as follows:

- Item 1: Paragraph 1. After "Exhibit A" ADD "and Exhibit A1"
- Item 2: Paragraph 2. CHANGE "\$10,000" to "15,000"
- Item 3: ADD attached Exhibit A1 after Exhibit A.

All provisions of the Agreement dated December 20, 2007, shall remain in full force and effect except as amended herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number One (1) as of the day and year first above written.

CONSULTANT

HDR Engineering, Inc.

BY: _____
Craig Caprara

DATE: _____

ATTEST:

CITY

City of Billings

BY: _____

ATTEST:

APPROVED AS TO FORM:

By: _____
City Attorney

ATTACHMENT A

“EXHIBIT A1”

SCOPE OF SERVICES PROCESS CONTROL REVIEW AND FILAMENT INVESTIGATION

Purpose

Provide assistance to the City of Billings Wastewater Treatment Plant to evaluate nitrification requirements to facilitate meeting WET testing permit requirements. Additionally HDR will evaluate and provide recommendations for operations procedures to improve reliability of plant operations.

Scope

Information gathered from the Process Control analysis will be used to develop additional nitrification options that look at partial nitrification that will meet the WET testing requirements.

Information gathered from the Process Control analysis and additional follow up information from the Billings plant will be compared with HDR’s experiences with other successful plant operations around the country to make recommendations for operation procedures improvements as appropriate.

Further follow up will be completed on various concerns throughout the plant identified by Staff during initial meetings and follow up meetings from the Process Control analysis.

Deliverables

Technical memorandum revised from Process Control memorandum.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Access Easement for Foursquare Properties at Miller Crossing Subdivision
DEPARTMENT: Public Works Department – Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The City owns property on the south side of the Miller Crossing Subdivision that Foursquare Properties would like to use for access. The developer originally discussed the possibility of purchasing the land the property has a main sanitary sewer trunk line in it so the developer and the city staff decided to pursue an easement instead.

ALTERNATIVES ANALYZED:

- Grant an easement to Foursquare Properties at Miller Crossing Subdivision
- Do not grant an access easement to Foursquare Properties at Miller Crossing Subdivision

FINANCIAL IMPACT: No financial impact associated with approval of the easement. The cost of the easement is offset by the improvements that will be made to the easement by the Grantee.

RECOMMENDATION

Staff recommends that Council approve the easement to access for Foursquare Properties

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Access Easement

GRANT OF EASEMENT

THIS EASEMENT AGREEMENT (this "Agreement"), made and entered into as of this ____ day of June, 2008 (the "Effective Date"), by and between THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, City Hall, 210 North 27th Street, Billings, Montana, 59101 ("Grantor") and) SOUTH BILLINGS CENTER, LLC, a Delaware limited liability company, its successors and assigns, 5850 Avenida Encinas, Suite A, Carlsbad, CA 92008 ("Grantee")

WITNESSETH:

WHEREAS, Grantor is the owner of that certain parcel of land located in the City of Billings, Yellowstone County, Montana, containing approximately 1.7524 acres as described in Part I of Exhibit "A" attached hereto and by this reference made a part hereof, and as shown on Exhibit "B" attached hereto and by this reference made a part hereof (the "Easement Property"); and

WHEREAS, Grantee is the owner of certain parcels of land located in the City of Billings, Yellowstone County, Montana, as described in Part II of Exhibit "A", and as shown on Exhibit "B" (the "Adjacent Property"); and

WHEREAS, Grantee desires to develop the Adjacent Property as a shopping center, and

WHEREAS, Grantor and Grantee desire to make an integrated use of the Easement Property and the Adjacent Property

WHEREAS, the Easement Property is currently being used and maintained by Grantor as a gravel service road in connection with a City sanitary sewer system as shown on Exhibit "B" (the "Sanitary Sewer System"); and

WHEREAS, in connection with the development of the Adjacent Property, Grantee desires that Grantee have the right to use, and the obligation to maintain the Easement Property as hereinafter set forth; and

WHEREAS, Grantor desires to grant to Grantee certain easements in, to, over, under, and across Easement Property as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements on the part of Grantor and Grantee, as hereinafter set forth, for one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed:

1. **Grant of Easement.** Grantor hereby grants to Grantee, its successors and assigns, an exclusive easement over the Easement Property for: (a) ingress to and egress from the Adjacent Property, (b) the passage and parking of vehicles as shown in Exhibit C "Restricted Parking Exhibit", (c) passage and accommodation of pedestrians, (d) the installation, operation, flow and passage, use, maintenance, repair, replacement, relocation and removal of underground utility lines, and (e) the doing of such other things as are authorized or required to be done in, on, under, through or across the Easement Property pursuant to the terms of this Agreement, in such respective portions of Easement Property as are from time to time set aside, maintained and authorized for such use pursuant to the terms of this Agreement. The grant of easement set forth in this Section 1 shall bind and burden the Easement Property, which shall, for the purpose of this Agreement, be deemed to be the servient tenement. Grantee and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, nor any other fixed objects of any kind, shape or form, except as described above.

2. **Reservation by Grantor.** Grantor hereby reserves, and the grant of easement described in Section 1 hereof is hereby subject to, the right of Grantor to use the Easement Property solely for the purpose of Grantor's ingress to and egress from the Sanitary Sewer System for the purpose of inspection, maintenance and repair of the Sanitary Sewer System. Also, if the Grantor desires to install additional utilities, i.e. storm drain or water, the portion of the Easement Property as shown on Exhibit D, "Utilities Area Exhibit", may be used for installation, inspection, maintenance and repair of other utilities, provided that Grantor has given Grantee at least thirty (30) days prior written notice of its entry onto the Easement Area. In the event that the Sanitary Sewer System or other utility system requires any installation or maintenance, all reasonable methods will be used to maintain normal business operations for the Grantee, such as construction or maintenance access solely from the access on the south,

maintaining access for delivery vehicles, and maintaining vehicle passage on the south side of the building, and such work shall be without cost or expense to Grantee with the exception of surface restoration. Grantee agrees that the sole responsibility of the Grantor for any surface restoration due to any construction, replacement, repair or service work to the Sanitary Sewer System and/or other utilities by the Grantor, shall be limited to trench backfill, compaction and placement of backfill material to existing grade by the Grantor.

3. **Maintenance of Easement Property.** Grantee shall pave the Easement Property with concrete paving and thereafter, during the term of this Agreement, Grantee maintain, or cause to be maintained, the Easement Property generally in accordance with the practices prevailing for the maintenance of the Adjacent Property, and in compliance with all federal, state, county and municipal laws, ordinances, rules and regulations, without expense to Grantor. As used in this Section 3 "maintain" shall include inspect, maintain, clean, repair and replace and where appropriate, illuminate. Maintenance shall also include the maintenance, repair and replacement of landscaping and providing snow removal as necessary.

4. **Parking.** Any automobile parking stalls located on the Easement Property shall be included as part of the parking on the Adjacent Property and credited towards the required parking ratio on the Adjacent Property for all purposes as if such spaces were actually located on the Adjacent Property. Parking is restricted as per Exhibit C, "Restricted Parking Exhibit".

5. **Indemnification.** Each of Grantor and Grantee hereby indemnifies, defends and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its property, except if caused by the negligence or willful misconduct of the other party hereto.

6. **Insurance.**

(a) Grantor and Grantee shall procure and maintain or cause to be procured and maintained in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$2,000,000.00 (in "Constant Dollars") for injury or death of a single person, and to the limit of not less than \$2,000,000.00 (in "Constant Dollars") for any one occurrence, and to the limit of not less than \$2,000,000.00 (in "Constant Dollars") for property damage. Each party shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to the other party.

(b) Policies of insurance provided for in this Section 7 shall name Grantor and Grantee as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

(c) "Constant Dollars" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of this Agreement, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the year this REA commences; the "Current Index Number" shall be the level of the Index for the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

7. **Waiver.** No waiver of the provisions hereof shall be effective unless in writing and signed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of a similar or dissimilar nature, unless expressly so stated in writing.

8. **Notice.** Any notice, request, instruction or other document to be given hereunder by either party to the other shall be in writing, and delivered personally, by telecopy, by messenger or by certified mail, postage prepaid, return receipt requested as follows:

If to Grantor, addressed to: City Of Billings
 City Hall
 210 North 27th Street
 Billings, MT 59101

If to Grantee, addressed to: South Billings Center, LLC
 Foursquare Properties, Inc.
 5850 Avenida Encinas, Suite A
 Carlsbad, CA 92008
 Attn: Jeffrey Vitek, President

Either party may change its representative or the address to which notice shall be directed by appropriate written notice to the other party in the manner described above.

9. **Estoppel Certificates.** Grantor and Grantee agree that upon written request (which shall not be more frequent than three (3) times during any calendar year) of the other it will issue within thirty (30) days after receipt of such request to the requesting party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

(a) Whether it knows of any default under this Agreement by the requesting Party, and if there are known defaults, specifying the nature thereof in reasonable detail.

(b) Whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail.

(c) Whether this Agreement is in full force and effect.

10. **Default.** The occurrence of the following shall constitute a material default and breach of this Agreement by the non-performing party (the "Defaulting Party"). The failure to observe or perform any of the covenants, conditions or obligations of this Agreement, within thirty (30) days after the issuance of a notice by the party (the "Non-Defaulting Party") specifying the nature of the default claimed; provided, however, if such default cannot reasonably be cured within such 30-day period, and the Defaulting Party has commenced within such 30-day period, and is diligently pursuing the cure of the default to completion, then the Defaulting Party shall have such additional time as may be reasonably necessary to complete the cure.

11. **No Third Party Beneficiary.** The provisions of this Agreement are for the exclusive benefit of Grantor and Grantee, and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person or entity.

12. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

13. **Document Execution, Modification and Cancellation.** It is understood and agreed that until this Agreement is fully executed by both Grantor and Grantee there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual written agreement of: the then record owners of the Easement Property and the Adjacent Property.

14. **Duration.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall automatically terminate and be of no further force and effect after ninety nine (99) years from the date hereof, or such shorter term if mandated by Montana law.

15. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

16. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

17. **Governing Law.** The parties agree that this Agreement is governed in all respects by the laws of the State of Montana and the parties expressly agree that venue for any dispute arising under the terms of this Agreement will be in Thirteenth Judicial District Court, Yellowstone County, Montana, and no other venue.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK

Executed this _____ day of _____, 2008.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

CITY: **CITY OF BILLINGS**, a Montana
Municipal Corporation

By: _____
RON TUSSING, Mayor

ATTEST:

By: _____
CARI MARTIN, City Clerk

STATE OF MONTANA)
: ss.
County of Yellowstone)

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

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

_____ (Signature)

(NOTARIAL SEAL)

_____ (Printed Name)
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: _____

PART I

LEGAL DESCRIPTION OF THE EASEMENT PROPERTY

Lot 2A-1 of Amended Lots, 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision situated in the NW 1/4 of Section 16, T. 1 S., R. 26 E., P.M.M. in the City of Billings, Yellowstone County, State of Montana

EXHIBIT "A"
PART II

LEGAL DESCRIPTION OF ADJACENT PROPERTY

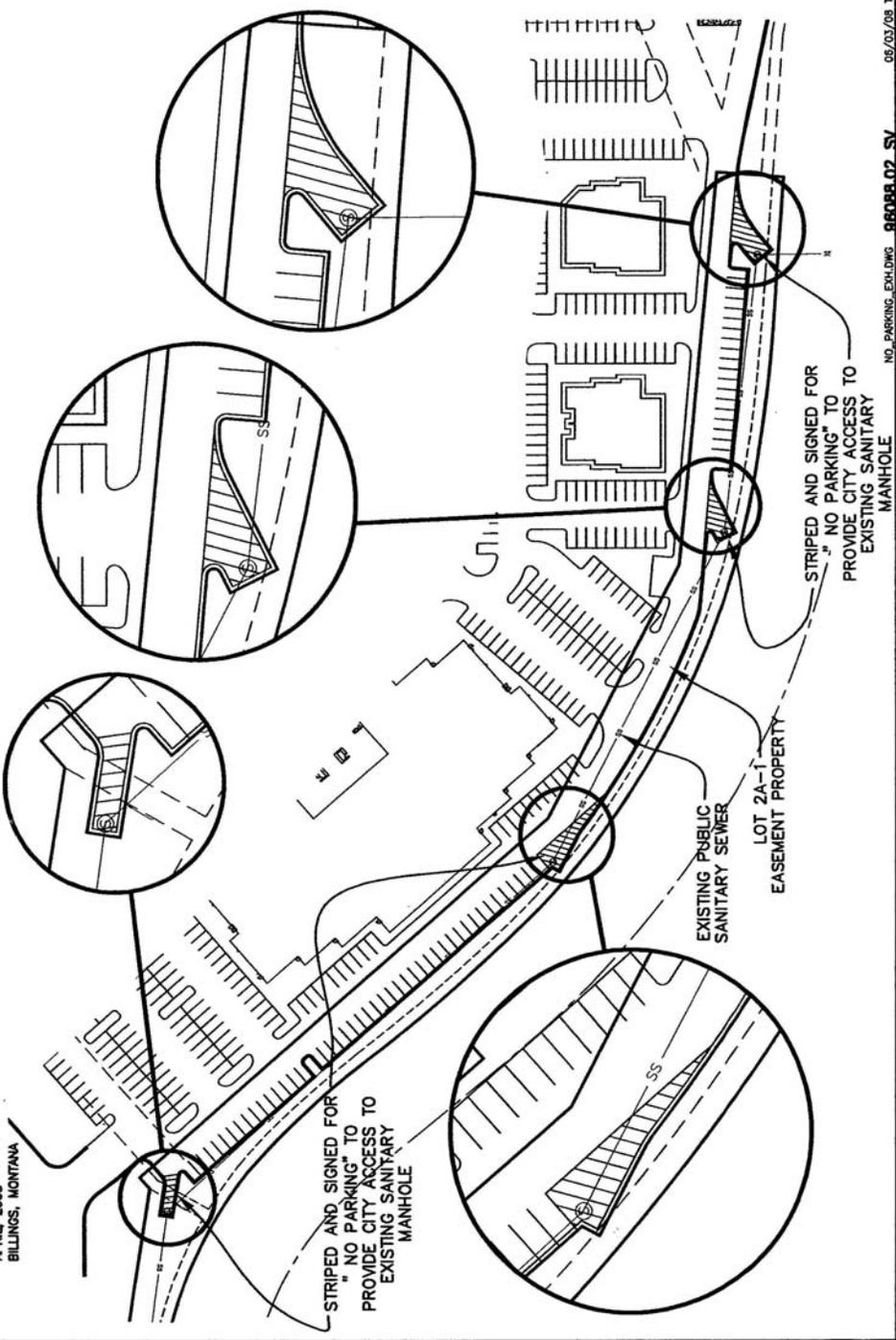
Exhibit C

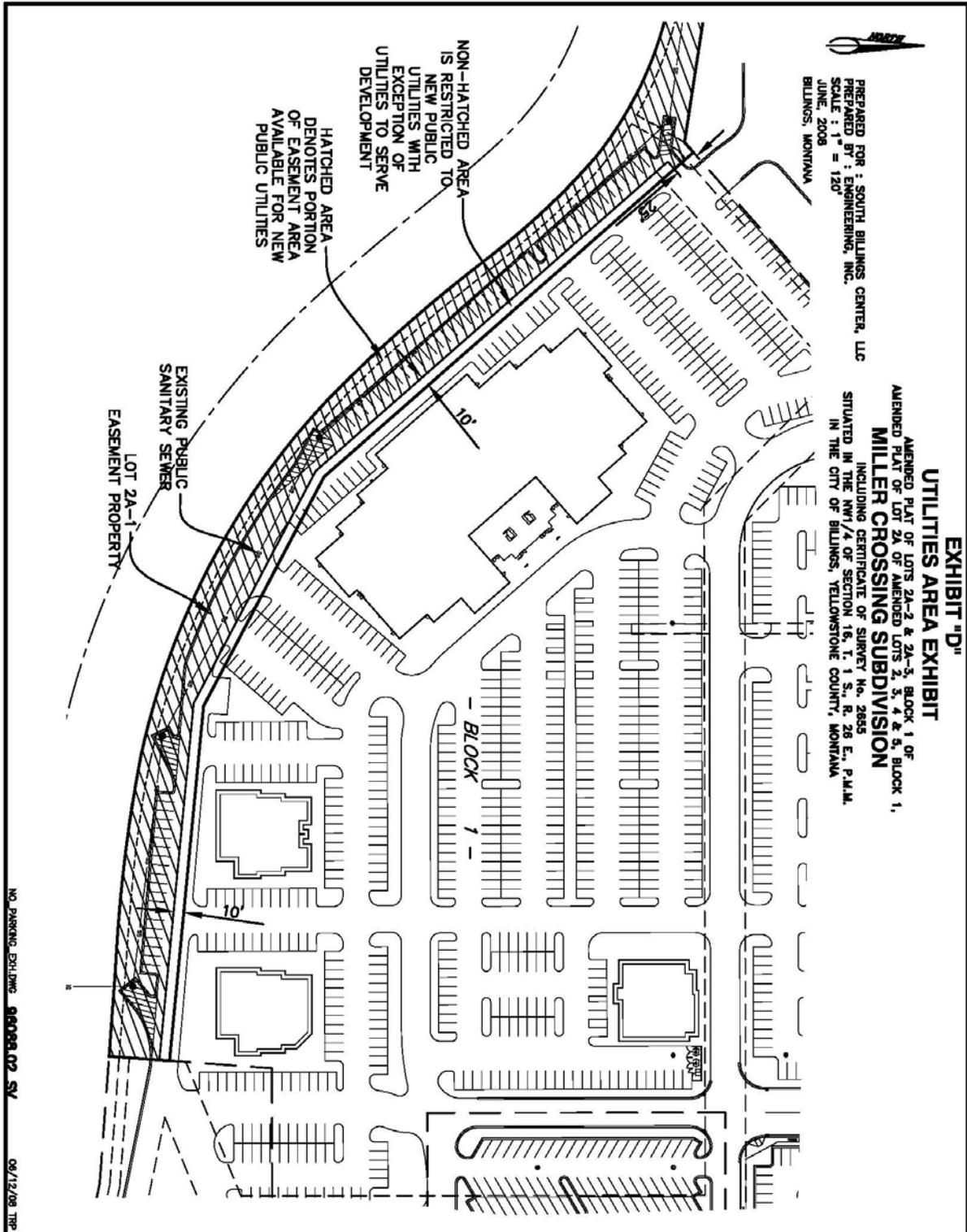
RESTRICTED PARKING EXHIBIT

AMENDED PLAT OF LOTS 2A-2 & 2A-3, BLOCK 1 OF
AMENDED PLAT OF LOT 2A OF AMENDED LOTS 2, 3, 4 & 5, BLOCK 1,
MILLER CROSSING SUBDIVISION
INCLUDING CERTIFICATE OF SURVEY No. 2485
SITUATED IN THE NW 1/4 OF SECTION 18 T. 1 S. R. 26 E. P.M.M.
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : SOUTH BILLINGS CENTER, LLC
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 120'
APRIL, 2008
BILLINGS, MONTANA

PARKING LAYOUT SHOWN IS BASED ON THE
MOST CURRENT MASTER PLAN WHICH IS
SUBJECT TO CHANGE. PARKING RESTRICTIONS
FOR PLAN MODIFICATIONS WILL BE SUBJECT TO
REVIEW AND APPROVAL BY THE CITY





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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: QWest Corporation Right-of-Way Easement to Relocate Data Lines as Required for Airport Road Project MT009.
DEPARTMENT: Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: QWest Corporation is requesting a Right-of-Way Easement to relocate existing telephone lines that provide service to the east end of the Airport. These existing lines need to be relocated, as they are currently located within the construction area associated with the Airport Road Project MDT 009 south of the Billings Logan International Airport. QWest Corporation and Bresnan are responsible for all construction costs; however, since the lines will be located on Airport property, we need to enter into this Right-of-Way Easement.

FINANCIAL IMPACT:
There will be no financial impact to the City of Billings for this Right-of-Way Easement.

RECOMMENDATION
Staff recommends that the City Council approve this Right-of-Way Easement with QWest Corporation to relocate telephone lines at Billings Logan International Airport.

Approved By: City Administrator ____ City Attorney ____

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Approval to send two officers to Calgary, Alberta, Canada for a Law Enforcement Bicycle Association (LEBA) Bike Instructor Course

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: Notification has been received for a Law Enforcement Bicycle Association (LEBA) Bike Instructor course to be held in Calgary, Alberta, Canada, from August 11 through August 16, 2008. This course would enable the two officers attending to become certified to instruct our own officers in basic bike patrol operations; thus, saving the yearly cost of sending multiple officers to other locations to train. Currently, Deputy Chief O'Connell is the only certified bike instructor for the department, and due to his position, he is not able to commit time to the training of new bike officers. There are no other Bike Instructor Courses scheduled by LEBA at this time, except for the one in Calgary. Council is being asked to approval this travel to Canada for two officers.

FINANCIAL IMPACT: This instructor course has been budgeted for in the FY 09 budget. The cost of the course would be approximately \$4,140, to include registration, per diem, car rental, airline tickets and shipment of bicycles.

RECOMMENDATION

Staff recommends City Council's approval to send two officers to the Law Enforcement Bicycle Association Bike instructor course to be held in Calgary, Alberta, Canada from August 11th through August 16, 2008.

Approved By: City Administrator ___ City Attorney ___

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Gold Wing Road Riders Motorcycle Light Parade/Food Fair Event
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E. Public Works Director

PROBLEM/ISSUE STATEMENT: Part A: The Gold Wing Road Riders requests an evening motorcycle parade on July 14, 2008 starting at 10:00 p.m. lasting for approximately 30-40 minutes long. **Part B:** Food Fair Event on July 15 which will include a right lane street closure from Montana Avenue between 23rd and 25th from 12:00 p.m. until 6:00 p.m. and then all lanes of Montana Avenue from east side of 23rd and 25th from 1:30 p.m. until 3:30 p.m. for a motorcycle performance.

Recommended conditions of approval include the Gold Wing Road Riders:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event as soon as possible
3. Clean the area to be used and provide and empty waste cans
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
5. Provide and install adequate traffic barricades directing motorists around closure
6. Coordinate with the Police and Traffic Engineering Departments to ensure proper traffic control and police assistance
7. Provide a certificate of insurance naming City of Billings as additional insured
8. Use option A on parade route

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There is no financial impact to the City of Billings. Police, traffic control and litter removal are to be paid for by the Gold Wing Road Riders.

RECOMMENDATION

Staff recommends that Council approve both Parts A and B described above for the Gold Wing Road Riders Parade and motorcycle performance.

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

ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. Parade route map
- C. Street Closure Maps
- D. Certificate of insurance
- E. BID Event Kit packet

PART B:



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 BRUCE KEENON

ORGANIZATION MAKING APPLICATION GOLDWING TOURING ASSOCIATION

PHONE 317.243.6822

ADDRESS PO BOX 42403 INDIANAPOLIS IN 46242

EMAIL ADDRESS MEMBERSHIP@GWTACO.COM CITY STATE ZIP

APPROXIMATE TIME EVENT WILL: Road closure

Assemble 12:00 PM Start 12:00 PM Disband 6 PM

DATE OF EVENT JULY 15th 2008

PURPOSE/DESCRIPTION OF EVENT: (Description and detail of the event.)
GWTA will be hosting a street fair type of event at The Depot on Tuesday July 15th from 12pm - 6pm. A variety of food & dessert vendors will attend. Seating will be available inside The Depot where a silent auction will be held to benefit the local charity, Fallen Heroes, and the GWTA charity, Helping Hands. Press releases will be distributed and a radio remote has been arranged to encourage community involvement. We are requesting the road closure for a short time during non-peak hours to accommodate motorcycle drill team performances as entertainment.
EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.) for the community.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

CLEAN UP IMPLEMENTAION: (Company contracted or services you will provide)
GWTA will provide the clean-up.

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE Bruce Keenan DATE 4/28/08

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

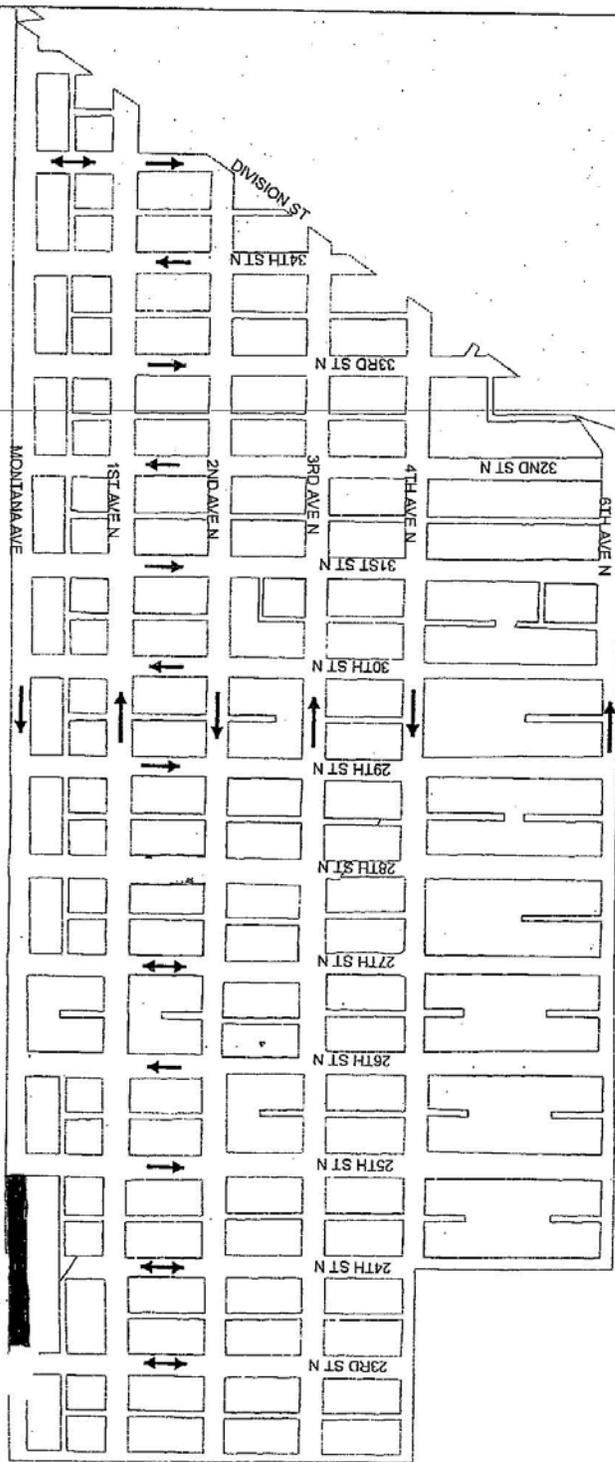
FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

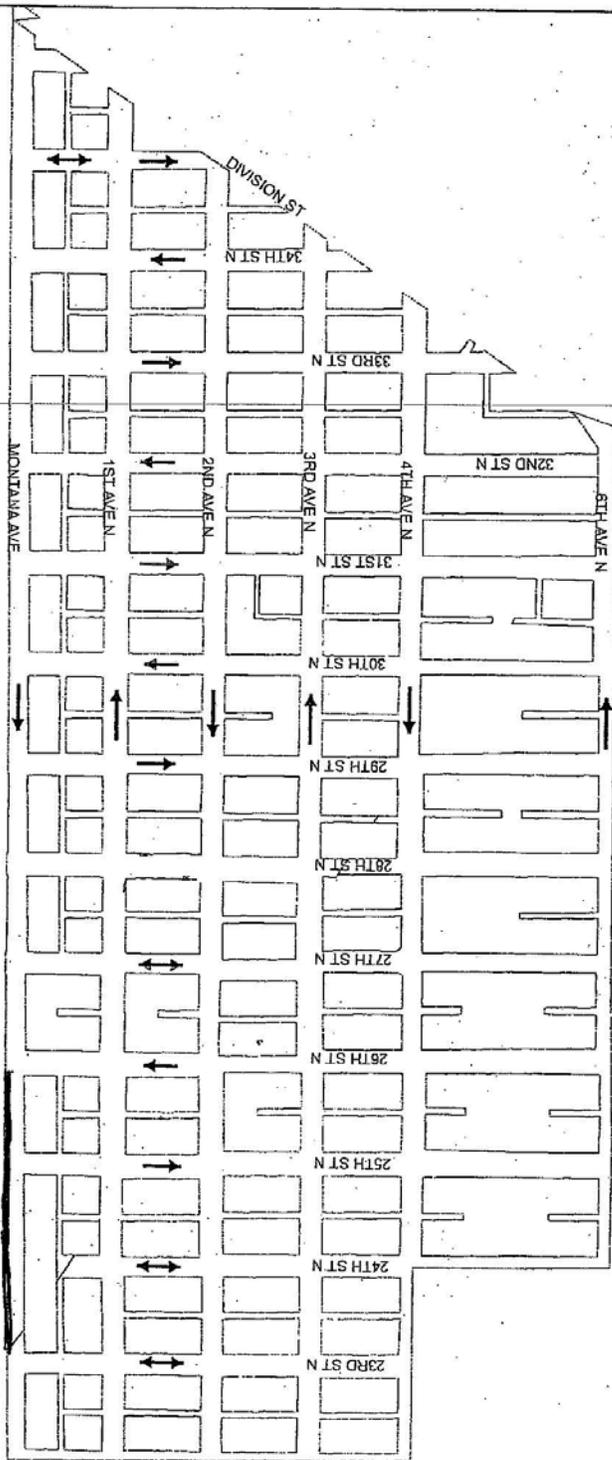
COPIES TO:
CITY ADMINISTRATOR
DEPUTY CITY ADMINISTRATOR
POLICE CHIEF
FIRE CHIEF
FIRE MARSHALL
MET TRANSIT MANAGER
STREET/TRAFFIC SUPERINTENDANT
TRAFFIC ENGINEER
PRPL DIRECTOR
PARKING SUPERVISOR
CITY ATTORNEY

Downtown Billings Street Direction Map



1:30pm to 3:30
All lanes of MT. AVE
closed from east side
of 25th to 23rd

Downtown Billings Street Direction Map



12:00 pm to 6:00 pm
Far right hand lane
of Montana Ave closed.
From 26th to 23rd

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID #	DATE (MM/DD/YYYY)		
PRODUCER FORREST SHERER, INC. PO BOX 900 TERRE HAUTE IN 47808-0900 Phone: 812-232-0441 Fax: 812-232-0926		GOLDN-1	06/03/08		
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 Gold Wing Touring Association P.O. Box 42403 Indianapolis IN 46242-0403		INSURERS AFFORDING COVERAGE	NAIC #		
		INSURER A National Specialty Ins			
		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.					
TRAILER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR CONT. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PER OCCUR <input type="checkbox"/> LOC	MSGD961951	11/09/07	11/09/08	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Per person) \$ excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Per occurrence) \$ 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 \$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 0	BINDER	06/03/08	06/03/09	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY EMPLOYEE OR PART-TIME/SEASONAL/CONTRACTOR/EMPLOYEE/EMPLOYEE (EXCLUDED) SPECIAL PROVISIONS BELOW OTHER				V.C. LIMIT \$ TORY LIMIT \$ EMPER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYER \$ E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS Certificate holder is listed as additional insured with respects to the General Liability as required by contract. Parade July 14, 2008.					
CERTIFICATE HOLDER City of Billings P O Box 1178 Billings MT 59103			CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE John Johnson		

ACORD 25 (2001/08)

© ACORD CORPORATION 1988

01.6 P. 10:406 294 5061

JUN-09-2008 09:23 From: JUN-09-2008 10:00



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: July 15th, 2008

-Does this event require any Street Closure? Yes No

-Do you have Liability Insurance that will cover this event? Yes No
(You will be required to provide a "Binder" to the City of Billings showing coverage)

-Will you be serving alcoholic beverages? Yes No
(A permit may be required from the Billings Police Department)

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

List all:

Montana Ave. between 23rd & 25th

Close the far right lane of Montana Ave from 26th to 23rd.
Then all lanes of Montana Ave from east side of 25th to 23rd.

Briefly Describe Your Event Activity/Participants: GWTA will be hosting a street fair
at the Depot on Tuesday July 15th from 12-4pm. Food & dessert vendors
will attend, the community will be encouraged to participate. We are
requesting the above road closure for a short time during non-peak hours to
accommodate motorcycle drill team performances as entertainment for the community.

-Specify the exact date and TIME the blocks noted above will be CLOSED: 1:30 pm - 3:30 pm

-Specify the exact date and TIME the blocks noted above will be REOPENED: 3:30 pm

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

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

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

BUSINESS NAME	ADDRESS	SIGNATURE
1. Log Cabin Bakery	2519 Montana Ave	ok / Brenda: phone 5/6/08
2. Sweet Ginger	2515 "	"
3. H Bar Hit Works	2513 B "	ok / Mike H: phone 5/6/08
4. Carters / Railyard	2526 "	ok / Mike Scherer
5. The Rex	2401 "	ok / Jean 5/19/08
6. McCormick Cafe	2419 "	ok - Mike Scherer
7. Harry Conroy	No phone # -	Mike Scherer ok
8. Q / Carlin	2503 Montana Ave	ok - Mike Scherer
9. Internet MT	2511 "	ok / Megan: phone 5/6/08
10. Del Alma	2507 "	ok / David: phone 5/6/08
11. Computers Unlimited	2407 "	ok / Heidi: phone 5/6/08

P. 8/10

To: 406 294 5061

JUN-04-2008 09:24 From:

BUSINESS NAME:	ADDRESS	SIGNATURE:
12. The Yoga Center	2417 Montana Ave	phone disconnected
13. Oxford Antiques	2411 " "	ok/Mike G. phone 5/6/08
14. Eagle Hotel	2415 " "	ok/Mike Scherer
15. Rainbow Bar	2403 " "	
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T: 406 294 5061 P. 9/10

JUN-04-2008 09:24 From:

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Big Sky State Games 5K Run Street Closure
DEPARTMENT: Public Works-Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Big Sky State Games requests road closures for 3rd St. West at Grand Ave and 3rd St. West at Parkhill from 6:00 pm - 7:00 pm and partial road closure for Virginia Lane and Parkhill from 6:10 pm - 7:00 pm for Friday, July 18, 2008 for its annual 5K Run. (Refer to attached race course)

Recommended conditions of approval include Big Sky State Games:

- Have no alcohol consumption in the right of way
- Clean area to be used and provide and empty waste cans
- Notify all emergency facilities, bus lines and media as soon as possible
- Provide and install adequate traffic barricades and signs directing motorists around closure
- Provide a certificate of insurance naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process application. Police, traffic control and litter removal are to be paid for the by the Big Sky State Games.

RECOMMENDATION

Staff recommends that Council approve the temporary street closure from 6:00 pm to 7:00 pm on Friday, July 18, 2008, for its annual 5K run.

Approved By: City Administrator _____ City Attorney ____

ATTACHMENTS

- A. Right of Way Special Activity Permit Application
- B. Course map
- C. Certificate of insurance



City of Billings
RIGHT-OF-WAY ACTIVITY BY
PERMIT

RECEIVED
MAY 02 2008

MAY 6 2008

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 Karen Sanford Gail

ORGANIZATION MAKING APPLICATION Big Sky State Games

PHONE 254-7426

ADDRESS Box 7136 Blm. MT 59103
CITY STATE ZIP

EMAIL ADDRESS ksj@bigskygames.org

APPROXIMATE TIME EVENT WILL:

Assemble 5:30 pm Start 6:15 pm Disband 7:30 pm

DATE OF EVENT Friday, July 18, 2008

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

5K Run - Kids of Open Ceremonies for the Big Sky State Games

PLEASE SEE ATTACHED MAP

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

Road Closures: 3rd St. West at Grand Ave 6:00 pm - 7:00 pm

3rd St. West at Parkhill 6:00 pm - 7:00 pm

Partial Closures: Virginia Ln + Parkhill 6:10 pm - 7:00 pm

and remaining intersection - following Race Route: ~~13th St. W~~ 3rd St. W from Grand to Parkhill, intersections on Parkhill to 13th St. W and back to Day's Stadium (Wendy's) Park.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

OVER →

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

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE *Karen Sanford Hill* DATE 5/1/08

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

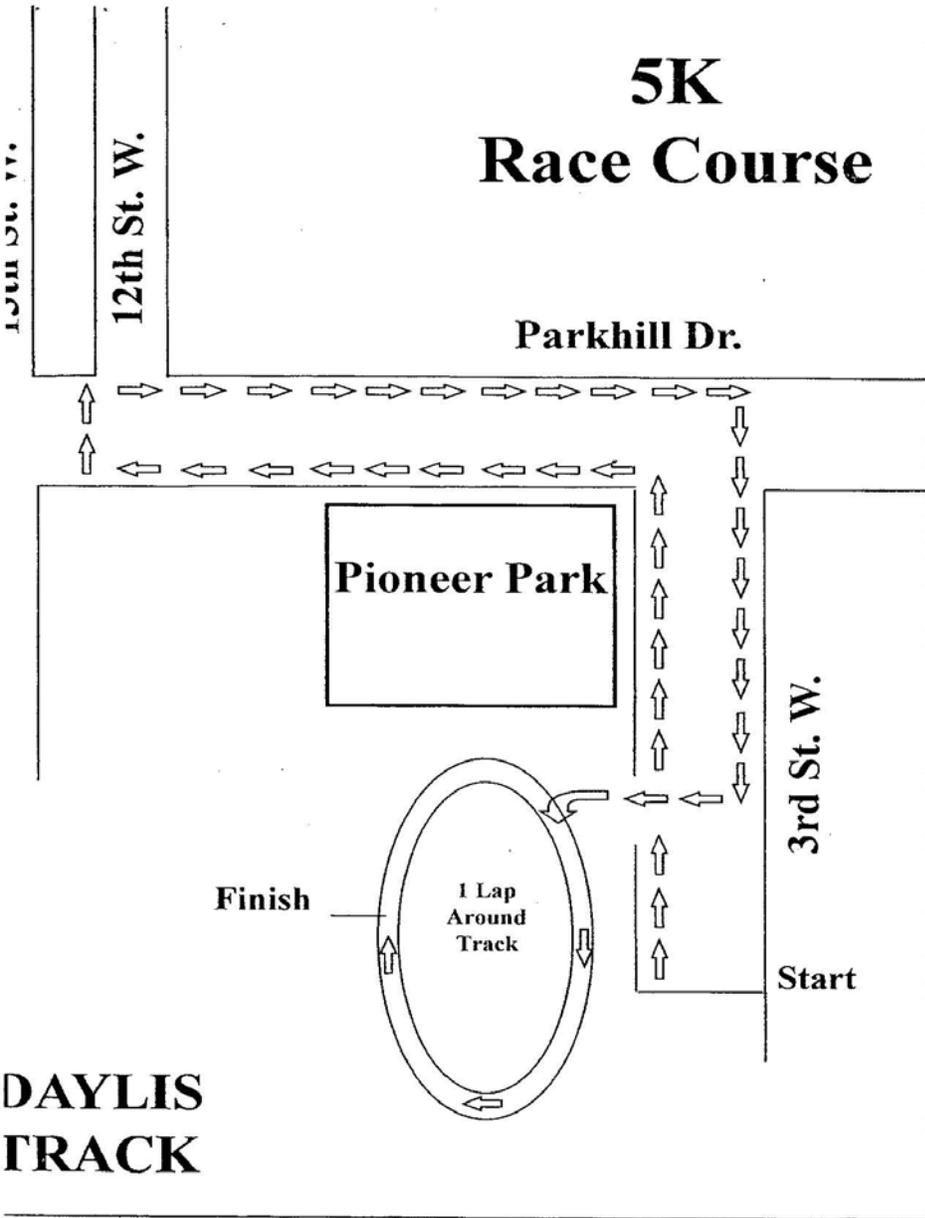
FOR CITY USE ONLY

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 |



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Big Sky State Games Cycling Mountain Bike Road Closure
DEPARTMENT: Public Works-Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT:

Big Sky State Games requests the temporary closure of Black Otter Trail from 6:00 am to 2:00 pm for its Mountain Bike Race on Sunday, July 20, 2008.

Recommended conditions of approval include Big Sky State Games:

- Have no alcohol consumption in the right of way
- Clean area to be used and provide and empty waste cans
- Notify all emergency facilities, bus lines and media as soon as possible
- Provide and install adequate traffic barricades and signs directing motorists around closure
- Provide a certificate of insurance naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the street closures as described above.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Right of Way Special Activity Permit Application
- B. 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

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PERSON MAKING APPLICATION Karen Sanford Gall

ORGANIZATION MAKING APPLICATION Big Sky State Games

PHONE 254-7426

ADDRESS Box 7136 Bla MT 59103
CITY STATE ZIP

EMAIL ADDRESS ksg@bigskygames.org

APPROXIMATE TIME EVENT WILL:

Assemble 6:00 am Start 8:00 am Disband 2:00 p.m.

DATE OF EVENT Sunday, July 20, 2008

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

MT Bike Race held by Big Sky State Games
We have requested and paid the City's Park Use Agreement
for usage of Seward's Park - the race will be held
within the park trails. Distances include: 15 miles, 10 miles & 5 miles

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

Request street closure Black Otter trail 6 am - 2:00 p.m.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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

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

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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

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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.

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 *Karen K. Hall* DATE 5-1-08

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

CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)
 01/11/08

PRODUCER
 K & K INSURANCE GROUP, INC.
 1712 MAGNAVOX WAY
 P O BOX 2338
 FORT WAYNE, IN 46801-2338

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.

COMPANIES AFFORDING COVERAGE

INSURED
 NATIONAL CONGRESS OF STATE GAMES AND
 MONTANA AMATEUR SPORTS, INC. DBA
 BIG SKY STATE GAMES
 1631 MESA AVENUE, SUITE E
 COLORADO SPRINGS, CO 80906

COMPANY LETTER **A** NATIONAL CASUALTY COMPANY
 COMPANY LETTER **B** NATIONWIDE LIFE INS CO
 COMPANY LETTER **C**

COVERAGES

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS (in thousands)	
A	General Liability <input checked="" type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occur <input type="checkbox"/> Owner's & Contractors Prod. <input type="checkbox"/>	KK00000000176400	12:01 AM 01/07/08	12:01 AM 12/31/08	General Aggregate	\$ NONE
					Products-Comp/Ops Aggregate	\$ 1000
					Personal & Advertising Injury	\$ 1000
					Each Occurrence	\$ 1000
					Fire Damage (Any one fire)	\$ 300
A	Automobile Liability <input type="checkbox"/> Any auto <input type="checkbox"/> All owned autos <input type="checkbox"/> Scheduled autos <input checked="" type="checkbox"/> Hired autos <input checked="" type="checkbox"/> Non-owned autos <input type="checkbox"/> Garage Liability <input type="checkbox"/>	KK00000000176400	12:01 AM 01/07/08	12:01 AM 12/31/08	Medical Expense (Any one person)	\$ 5
					Participant Legal Liability	\$ 1000
					Combined Single Limit	\$ 1000
					Bodily Injury (per person)	\$
					Bodily Injury (per accident)	\$
	Excess Liability <input type="checkbox"/> Other than Umbrella form <input type="checkbox"/>				Each Occurrence	Aggregate
					\$	\$
	Workers' Compensation and Employers' Liability				Statutory	
					\$ Each Accident	
					\$ Disease-Policy Limit	
B	Participant Accident	SPX0000003163400	12:01 AM 01/07/08	12:01 AM 12/31/08	AD&D	\$ 10
					Primary Medical	\$ N/A
					Excess Medical	\$ 25
					Weekly Indemnity	\$ X N/A

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS: \$250. DEDUCTIBLE APPLIES TO EXCESS MEDICAL.
 RE: 2008 BIG SKY STATE GAMES DATE: VARIOUS
 LOCATION: VARIOUS CERTIFICATE HOLDER IS AN ADDITIONAL INSURED AS
 PER THE ADDITIONAL INSURED ENDORSEMENT FORM KRGL56 ATTACHED

CERTIFICATE HOLDER
 (ADDITIONAL INSURED)

 CITY OF BILLINGS
 ATTN: JOE FEDIN
 P. O. BOX 1178
 BILLINGS, MT 59103

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 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 COMPANY, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE


National Casualty Company

ENDORSEMENT
NO. 0000

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
KKO0000000176400	01/07/08	NATIONAL CONGRESS OF STATE GAMES	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED OWNERS AND/OR LESSORS OF PREMISES,
SPONSORS OR CO-PROMOTERS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The policy is amended to include as an additional insured any person or organization of the types indicated by an "X" in any boxes shown below, but only with respect to liability arising out of your operations:

Owners and/or lessors of the premises leased, rented, or loaned to you, subject to the following additional exclusions:

- a. This insurance applies only to an "occurrence" which takes place while you are a tenant in the premises;
- b. This insurance does not apply to "bodily injury" or "property damage" resulting from structural alterations, new construction or demolition operations performed by or on behalf of the owner and/or lessor of the premises;

c. This insurance does not apply to liability of the owners and/or lessors for "bodily injury" or "property damage" arising out of any design defect or structural maintenance of the premises or loss caused by a premises defect.

With respect to any additional insured included under this policy, this insurance does not apply to any negligence of such additional insured.

- Sponsors
 Co-Promoters
 Any individual person(s) or organization(s) listed below:



AUTHORIZED REPRESENTATIVE

01/11/08

DATE

KR-GL-55 (4-07)

Page 1 of 1

IMPORTANT

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

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

DISCLAIMER

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Big Sky State Games Triathlon Partial Street Closures
DEPARTMENT: Public Works-Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Big Sky State Games requests partial street closures along several streets in the Billings Heights area, as outlined in the attached course map, for its Triathlon event on Sunday, July 20, 2008, beginning at 6:00 am until approximately 11:00 am. Big Sky State Games staff members will be manning the course to insure their participants' safety.

Recommended conditions of approval include Big Sky State Games:

- Have no alcohol consumption in the right of way
- Clean area to be used and provide and empty waste cans
- Notify all emergency facilities, bus lines and media as soon as possible
- Provide and install adequate traffic barricades and signs directing motorists around closure
- Provide a certificate of insurance naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closure of several streets in the Billings Heights area, as outlined in the attached course map, for its Triathlon event on Sunday, July 20, 2008.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Letter from Big Sky State Games
- B. Right of Way Special Activity Permit Application
- C. Map outlining course
- D. Certificate of insurance



City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT

Please check the type of activity you are applying for: Triathlon
 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 Karen Sanford Gall
ORGANIZATION MAKING APPLICATION Big Sky State Games
PHONE 254-7426
ADDRESS Box 7136 Bly. MT 59103
CITY STATE ZIP
EMAIL ADDRESS Ksg@bigskygames.org

APPROXIMATE TIME EVENT WILL:
Assemble 6:00 am Start 6:30 am Disband 11:00 am
DATE OF EVENT Sunday, July 20, 2008

PURPOSE/DESCRIPTION OF EVENT: (Description and detail of the event.)
Triathlon Competition held by Big Sky State Games
The event will include an adult + youth courses - youth course
is attracted.

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)
Please see attached map of the running route - highlighted in yellow.
Please see attached proposed cycling route - property owners located in the Old Kaman area have been contacted and given approval of the route that pertains to them. The MT Dept. of Transportation has also been contacted for approval of the route that pertains to them. If this proposed cycling route
BLOCK PARTY STREET LOCATION (IF APPLICABLE):
over ->

CLEAN UP IMPLEMENTAION: (Company contracted or services you will provide)
Big Sky State Games volunteers/staff will be responsible
for any clean-up needed on the route.

is not approved, we would like to request the old route ~~please~~
Refer back to the map - the old cycling route is highlighted in
orange. The old route has police assistance on the corner of
Wilks & Cody St. intersection. The proposed cycling route and
running route do not require any street closures.

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 *Shawn August Hall* DATE 5/11/08

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

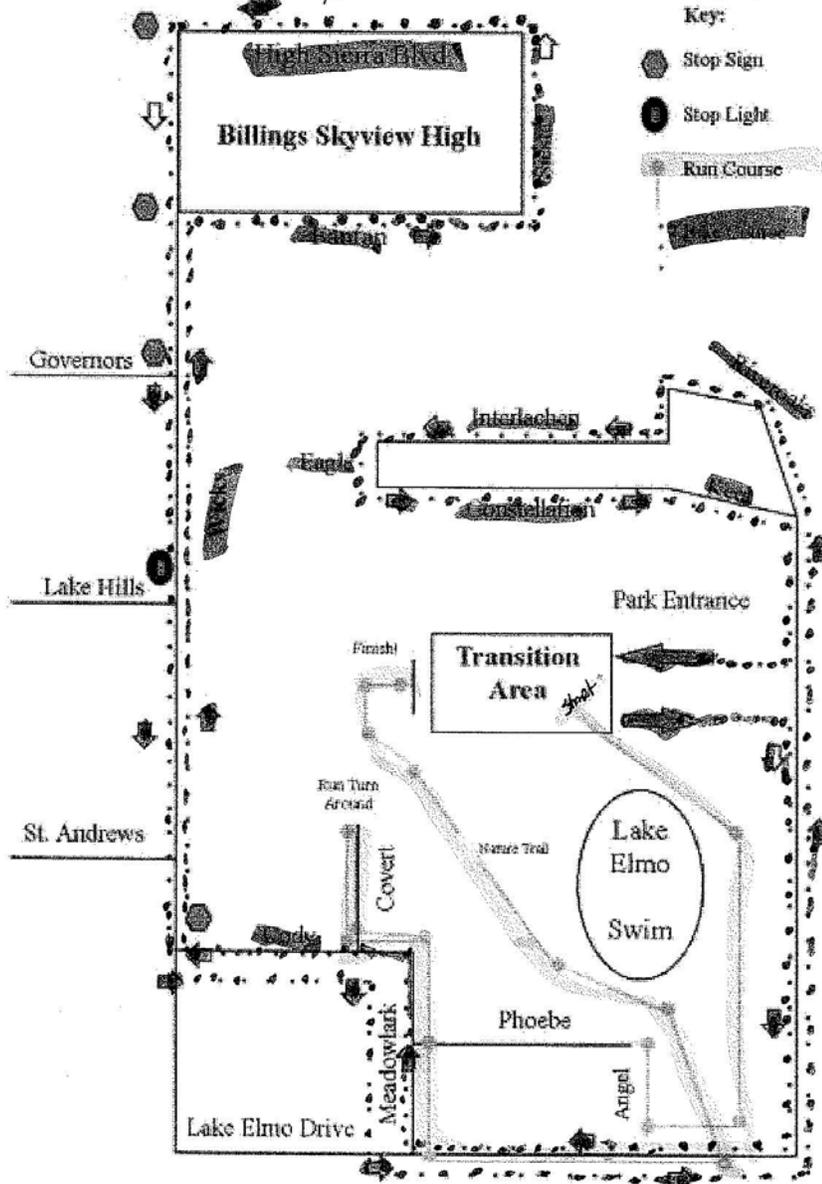
FOR CITY USE ONLY

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 |

TRIATHLON COURSE

(2007 Course - Keep running route same like to go with proposed cycling course - if not approved resort back to old course highlighted in orange)



Proposed BSSG Triathlon Bike Course

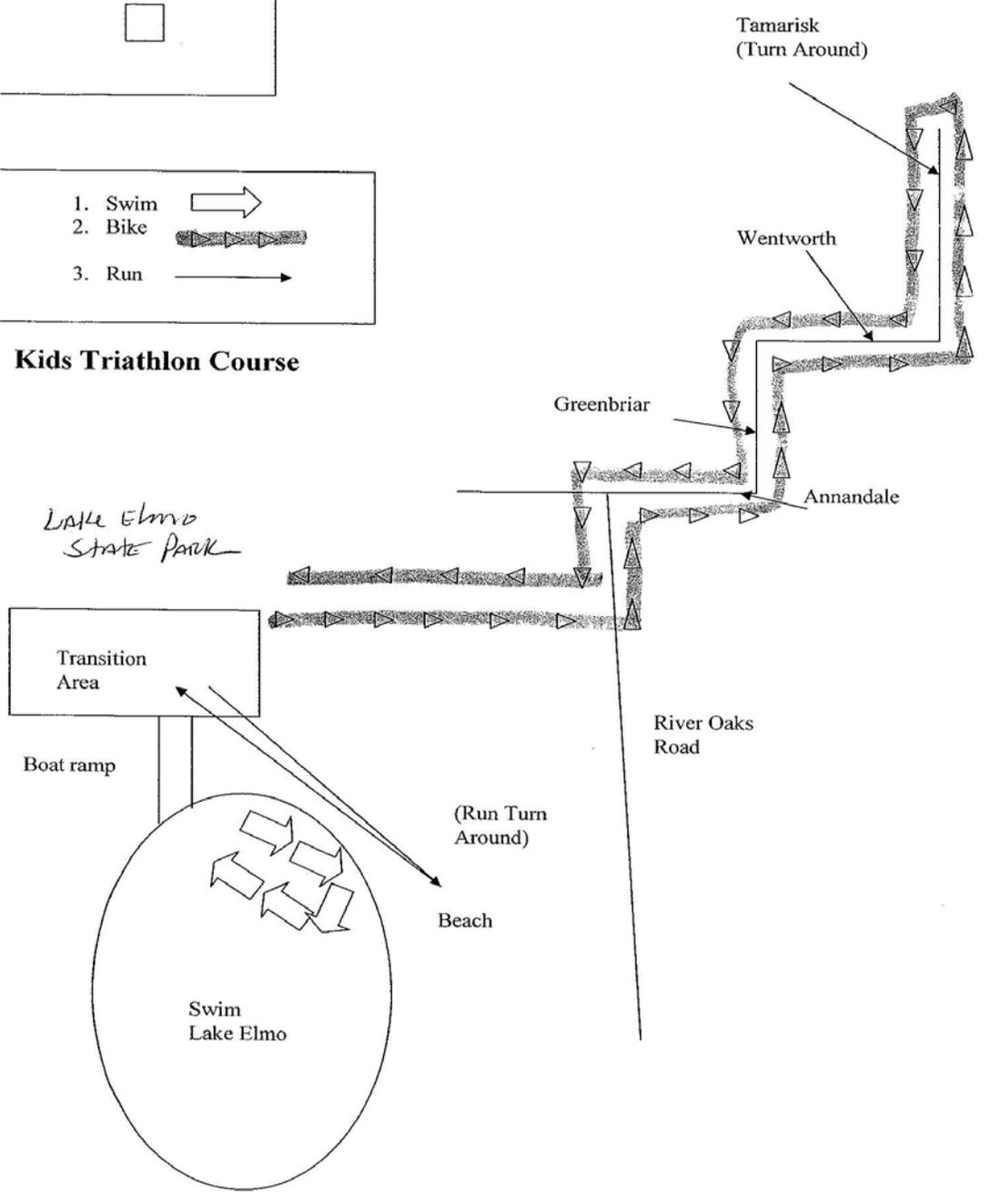
- Bike Course begins at conclusion of swim course, inside Lake Elmo State Park near the boat dock area
- Bikers exit the transition area and take a left proceeding past the Park entrance booth(1 volunteer here)
- Bikers take a right at the corner of Rolling Hills Rd and Lariat Trail. They proceed on Rolling Hills Rd. (1 volunteer here)
- Course continues straight on to Pemberton at the corner of Pemberton and Rolling Hills (1 volunteer here)
- At Pemberton and the parking lot entrance to the old KMART now home to the All American Pharmaceuticals, riders take a left into the lot. Lot will be coned so riders will know where to ride. None of the businesses are open on Sunday at 7:00 a.m. except Little Nevada Casino that opens at 8:00 a.m. (confirm).
- Riders exit the parking lot at Main - they take a immediate left turn on Main – and ride in the West Lane, not crossing the traffic on Main. The riders will be riding in a lane that has been coned off for the race. (1 law enforcement officer in uniform with vehicle and flashing lights)
- They take another left at the corner of Round Up Rd. and Main (1 -2 law enforcement officers here with vehicle and flashing lights)
- Riders will watch traffic to cross and ride the direction of traffic. Riders will ride on the very wide shoulder of the road.
- Riders continue 4.5 miles North on Hwy. 87
- (Volunteer at Lorraine Rd.)
- At the Shepherd Acton Rd. participants turn right proceed to turn around. (Law enforcement on road to slow traffic)
- Riders turn around and return to Billings on Hwy. 87 following the course in reverse. Riders ride with traffic the entire way back to Lake Elmo.

Billings Skyview High



- 1. Swim 
- 2. Bike 
- 3. Run 

Kids Triathlon Course



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

R5

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Viva La Fiesta Street Closure
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Robin Nava requests the closure of South 28th and South 29th on 6th Avenue South on July 25, 26, and 27 from 4:00 p.m. starting on July 25 until 6:00 p.m. on July 27 for a Hispanic Cultural Event Celebration.

Recommended conditions of approval include Viva La Fiesta:

1. No alcohol consumption in the public right of way
2. There must be a 15' wide lane where no kiosks/booths or other objects are located so the emergency vehicles can access the area.
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide certificate of insurance naming City of Billings as additional insured
6. Obtain a Park Use permit from the Recreation Division for the use of South Park
7. Notify residences and businesses within a 1 block area

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process permit. Traffic control and litter removal are to be paid for by Viva La Fiesta

RECOMMENDATION

Staff recommends that Council approve the closure named above.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. Course Map
- C. Certificate of insurance



City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT

APR 29 2008

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 Bobin Nawa

ORGANIZATION MAKING APPLICATION Viva la Fiesta

PHONE 248-4612

ADDRESS 31 Monroe Blvd MT 59101

EMAIL ADDRESS nawafamily4@aol.com

APPROXIMATE TIME EVENT WILL:

Assemble July 25 - 4 PM Start Disband July 27 - 6 PM

DATE OF EVENT July 25 - 26 - 27 - 2008

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

Hispanic cultural event which includes vendors, food, crafts - game booths - live music - dance performances

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

Block off South 28 & South 29th off 6th Ave South

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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

Viva la Fiesta will be responsible for all cleanup

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE Robin Nava DATE 4-8-08

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

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

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 4/1/2008
PRODUCER MELCHER INSURANCE AGENCY PO Box 20275 Billings, MT 59104 (406) 651-9244	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 Viva La Feiata 2961 Providence Pl. Billings, MT 59102 406-248-6795	INSURERS AFFORDING COVERAGE	NAIC#
	INSURER A: Scottsdale Insurance	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

INSR LTR	ADDL INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMSMADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC	Pending	07-25-08	07-27-08	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 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
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMSMADE DEDUCTIBLE RETENTION \$	Pending	07-25-08	07-27-08	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

The City of Billings is listed as an Additional Insured.

CERTIFICATE HOLDER City of Billings P.O. Box 1178 Billings, MT. 59103	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Mexican Fiesta Street Closure
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Our Lady of Guadalupe Church requests the closure of South 29th at 6th Avenue South on August 1st and August 2nd from 12:00 p.m. Friday until 8:00 p.m. on Saturday for a Mexican Fiesta Celebration.

Recommended conditions of approval include Our Lady of Guadalupe Church:

1. Have no alcohol consumption in the public right of way.
2. Notify residences and businesses within a 1 block area
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide certificate of insurance naming City of Billings as additional insured
6. Clean the area to be used after the event
7. Obtain a Park Use permit from the Recreation Division for the use of South Park

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process permit. Traffic control and litter removal are to be paid for by Our Lady of Guadalupe Church Planning Committee.

RECOMMENDATION

Staff recommends that Council approve the closure named above

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. Course Map
- C. Certificate of insurance

TRINITY PARK



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 Jake Romero

ORGANIZATION MAKING APPLICATION Our Lady of Guadalupe Church

PHONE 208-0103

ADDRESS 523 So 29th St Billings, MT 59101
CITY STATE ZIP

EMAIL ADDRESS _____

APPROXIMATE TIME EVENT WILL: ~~12:00-8:00pm~~ 12:00-8:00pm

Assemble August 1-08 Start August 2-08 Disband August 2-08

DATE OF EVENT August 2-2008

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

Mexica Fiesta in Park Show mobile with Block
Street at Ave So + 29th St Dinner will
Be served at church across from park

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

~~NA~~ See Map

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

NA

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

Jake Romero

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 Jake Romero DATE 3-11-08

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

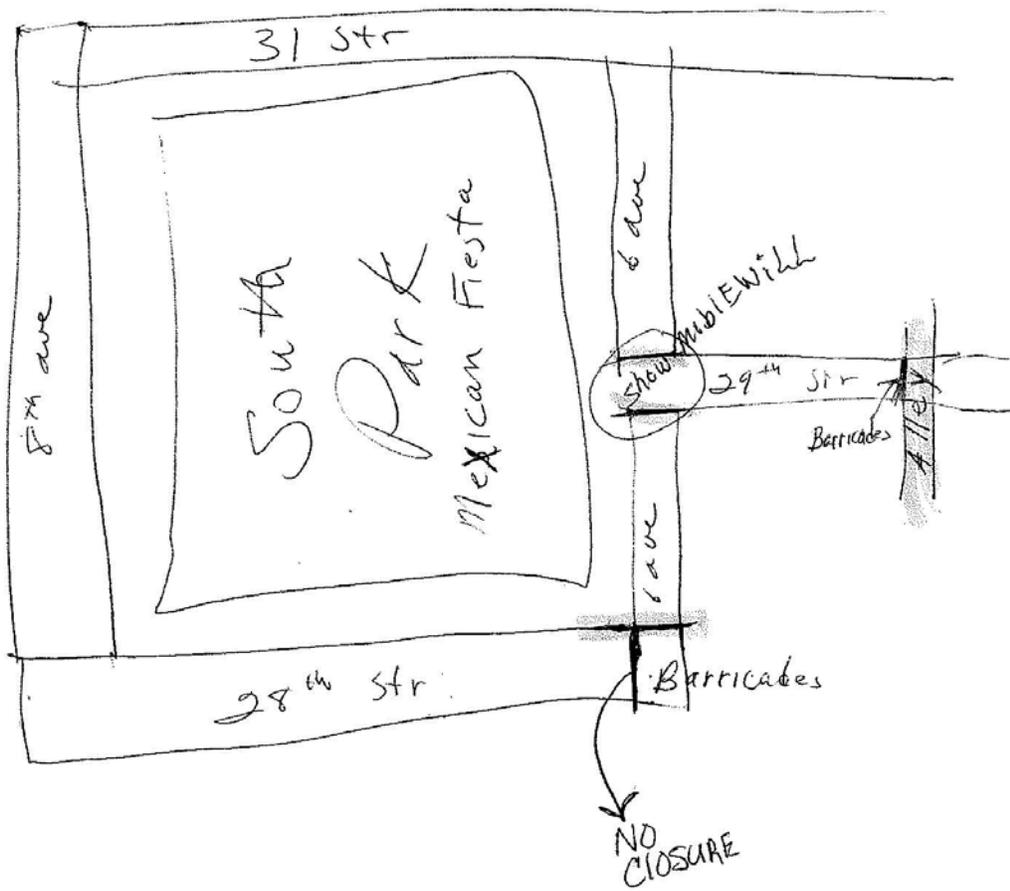
FOR CITY USE ONLY

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



Certificate of Coverage

Date: 3/4/2008

Certificate Holder
 The Roman Catholic Bishop of Great Falls
 A Corporation Sole, Chancery Office
 P O Box 1399
 Great Falls, MT 59403

This Certificate is issued as a matter of information only and confers no rights upon the holder of this certificate. This certificate does not amend, extend or alter the coverage afforded below.

Company Affording Coverage
 THE CATHOLIC MUTUAL RELIEF SOCIETY
 10843 OLD MILL RD
 OMAHA, NE 68154

Covered Location
 Our Lady of Guadalupe Church
 209 South 35th Street
 Billings, MT 59102

COPY

Coverages

This is to certify that the coverages listed below have been issued to the certificate holder named above for the certificate 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 coverage afforded described herein is subject to all the terms, exclusions and conditions of such coverage. Limits shown may have been reduced by paid claims.

Type of Coverage	Certificate Number	Coverage Effective Date	Coverage Expiration Date	Limits
Property				Real & Personal Property
General Liability <input checked="" type="checkbox"/> Occurrence <input type="checkbox"/> Claims Made	8560	7/1/2008	7/1/2009	General Aggregate
				Products-Comp/OP Agg
				Personal & Adv Injury
				Each Occurrence
				Fire Damage (Any one fire)
				Med Exp (Any one person)
Excess Liability	8560	7/1/2008	7/1/2009	Each Occurrence
				1,000,000
Other				Each Occurrence

Description of Operations/Locations/Vehicles/Special Items
 Coverage only extends for claims arising out of Our Lady of Guadalupe's Mexican Fiesta held at South Park, Billings, MT on August 2-3, 2008. Includes Host Liquor Liability of \$1,000,000.

Holder of Certificate **Cancellation**

Additional Protected Person(s)
 City of Billings

Should any of the above described coverages be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the holder of certificate named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

Authorized Representative *Joseph T. Sweniger*

0069000186

ENDORSEMENT
(TO BE ATTACHED TO CERTIFICATE)

Effective Date of Endorsement 8/2/2008 Charge _____ Credit _____
Cancellation Date of Endorsement 8/4/2008
Certificate Holder The Roman Catholic Bishop of Great Falls
A Corporation Sole, Chancery Office
P O Box 1399
Great Falls, MT 59403

Certificate No. 8560 of The Catholic Mutual Relief Society is amended as follows:

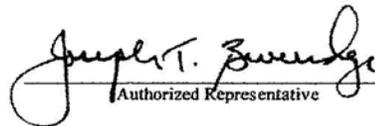
SECTION II - ADDITIONAL PROTECTED PERSON(S)

It is understood and agreed that Section II - Liability (only with respect to Coverage D - General Liability, Coverage F - Medical Payments to Others and Coverage H - Counseling Errors and Omissions) is amended to include as an Additional Protected Person(s) members of the organizations shown in the schedule, but only with respect to their liability for the Protected Person(s) activities or activities they perform on behalf of the Protected Person(s).

It is further understood and agreed that coverage extended under this endorsement is limited to and applies only with respect to liability assumed by contract or agreement; and this extension of coverage shall not enlarge the scope of coverage provided under this certificate or increase the limit of liability thereunder. Unless otherwise agreed by contract or agreement, coverage extended under this endorsement to the Additional Protected Person(s) will not precede the effective date of this certificate of coverage endorsement or extend beyond the cancellation date.

Schedule - ADDITIONAL PROTECTED PERSON(S)
City of Billings

Remarks: Coverage only extends for claims arising out of Our Lady of Guadalupe's Mexican Fiesta held at South Park, Billings, MT on August 2-3, 2008. Includes Host Liquor Liability of \$1,000,000.


Authorized Representative

PKS-122 (1-99)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Acceptance and Recognition of \$800 Donation from United Way
DEPARTMENT: Police Department
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On June 3, 2008, the City received an \$800 donation from United Way. This donation was earmarked for pay for two airline tickets to send two officers to the Northwest Alcohol Conference to be held in Boise, Idaho, in July. Council is being asked to accept and recognize this donation from United Way.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: This donation has been deposited to the General Donation Account will be used to pay for two airline tickets.

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this \$800 donation from United Way.

Approved By: City Administrator ____ City Attorney ____

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

T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 23, 2008

TITLE: Resolution of Intent to Sell Portions of Olympic Park and the Shiloh Drain access property and set Public Hearing Date

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: The City owns property along Shiloh Road that is need by MDT to construct the Shiloh Road Project. The areas are both Parks Recreation and Public Land (PRPL) land acquired as part of the Shiloh Drain acquisition. The sale of the land to MDT will not affect the remaining park land nor will it hinder the maintenance of the Shiloh Drain. The areas to be sold are the areas noted as Right-of-Way on the attached maps. This land is intended to be transferred to MDT at no cost. The entire Right-of-Way and the improvements will be conveyed back to the City upon completion of the project.

ALTERNATIVES ANALYZED:

1. Approve Resolution of Intent to Sell portions of Olympic Park and the Shiloh Drain property and set a public hearing for July 14, 2008.
2. Do not approve the Resolution of Intent to Sell portions of Olympic Park and the Shiloh Drain property.

FINANCIAL IMPACT: There is no financial impact to the City

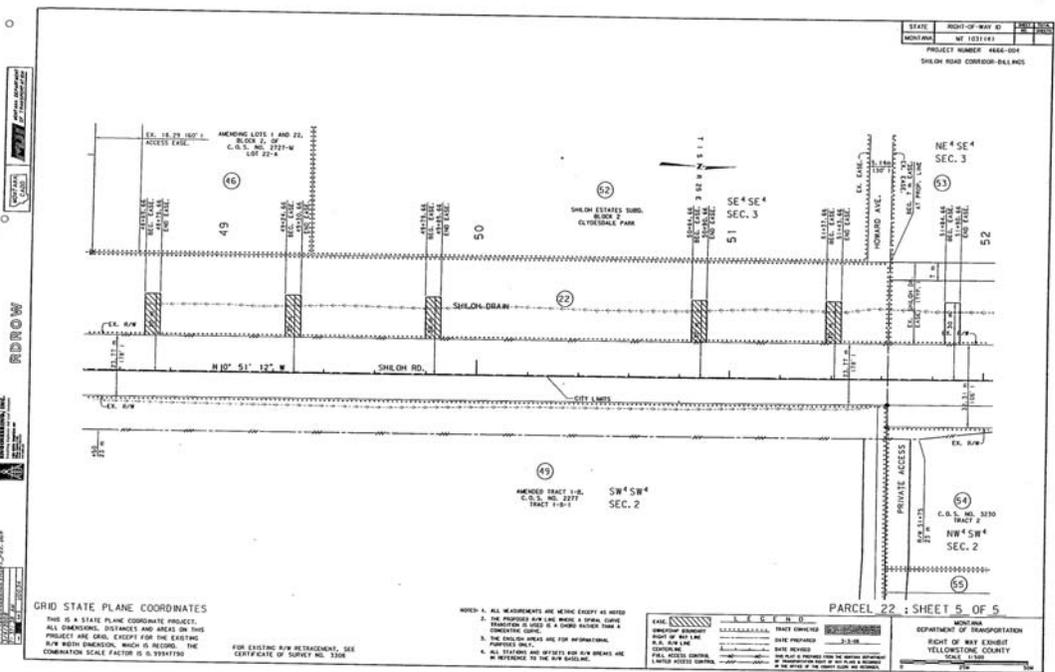
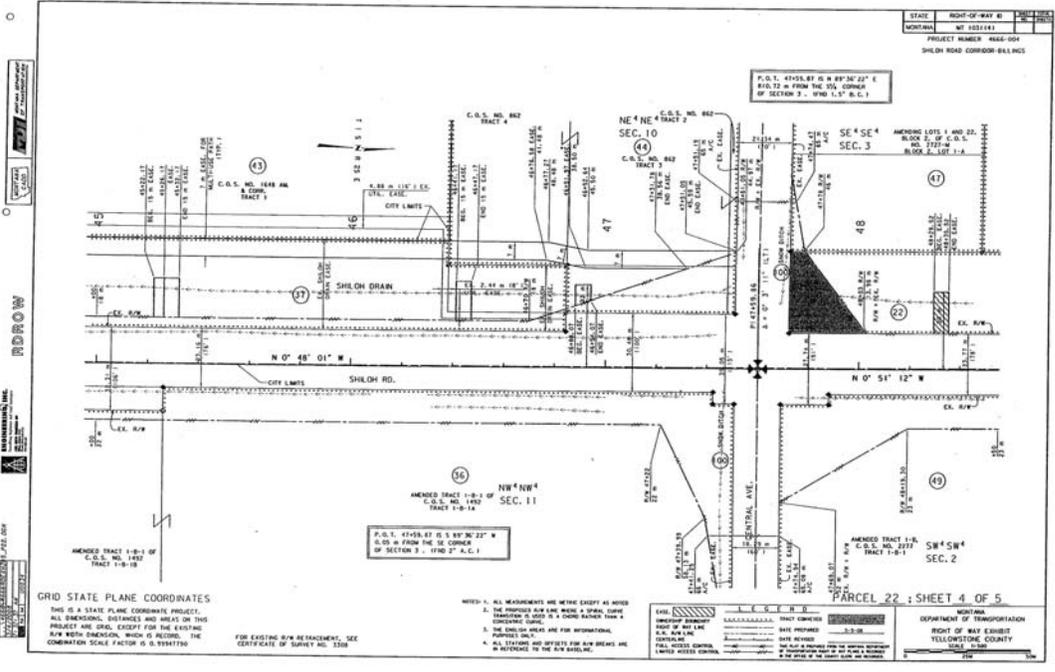
RECOMMENDATION

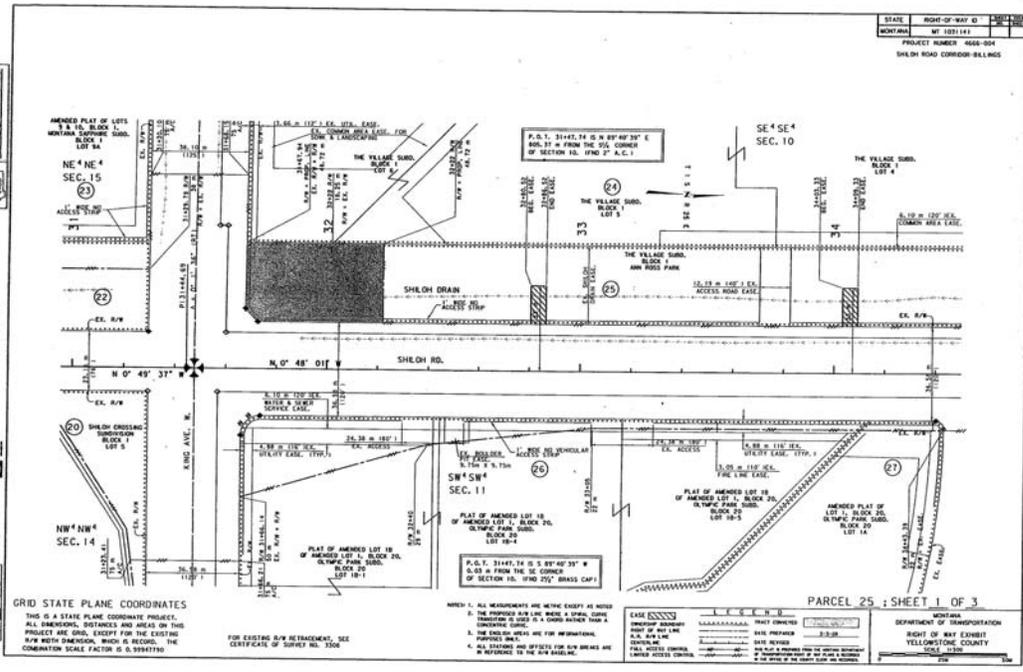
Staff recommends that Council approve the Resolution of Intent to Sell portions of Olympic Park and the Shiloh Drain access property and set a public hearing for July 14, 2008.

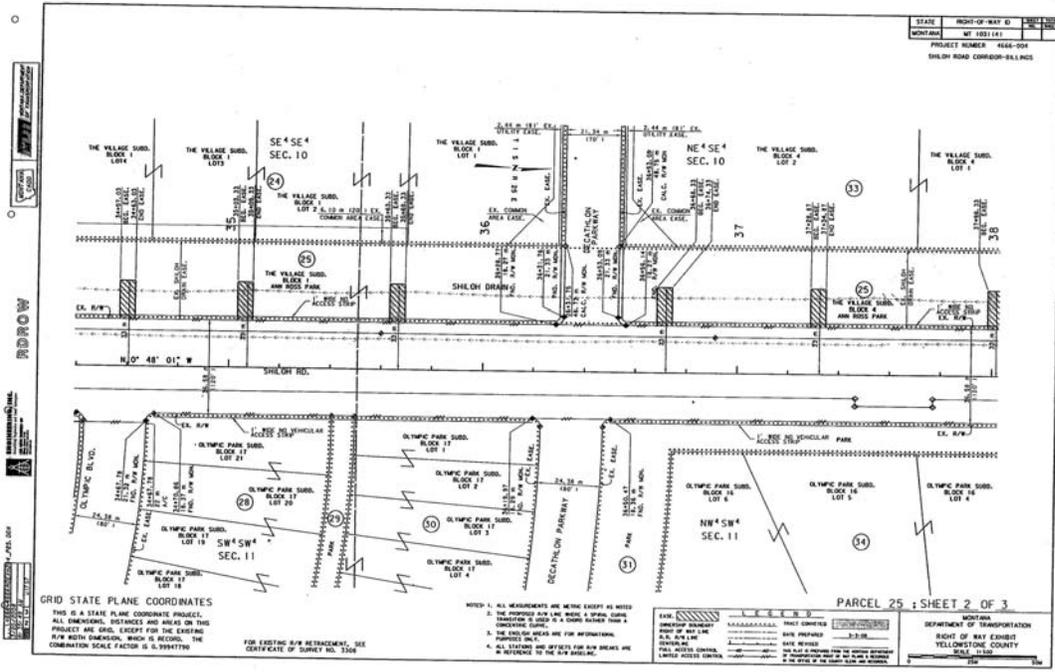
Approved By: City Administrator _____ City Attorney ____

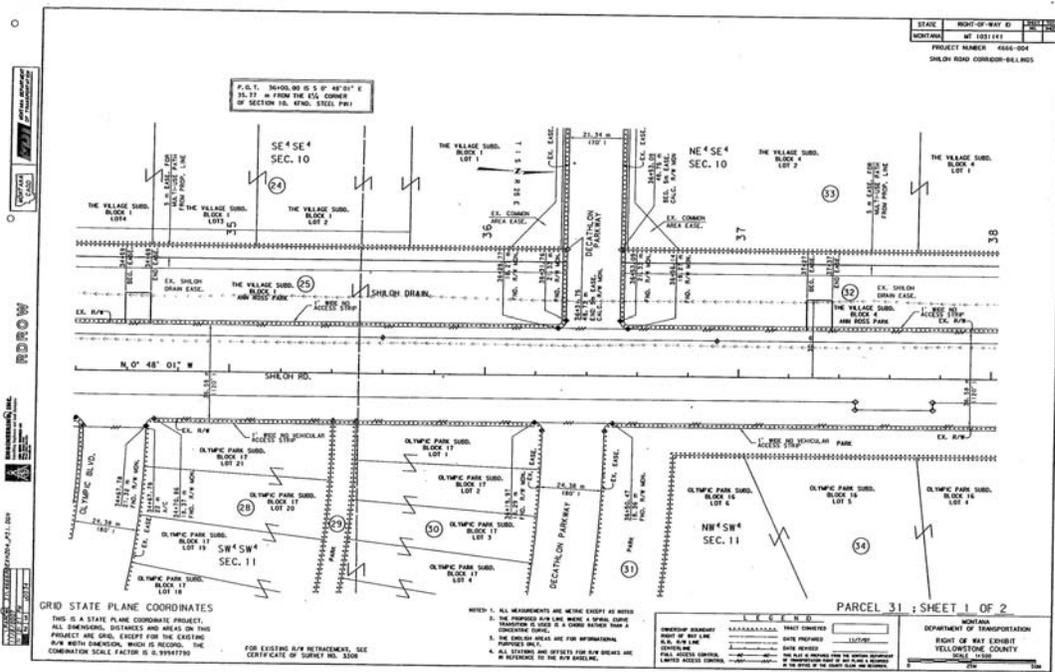
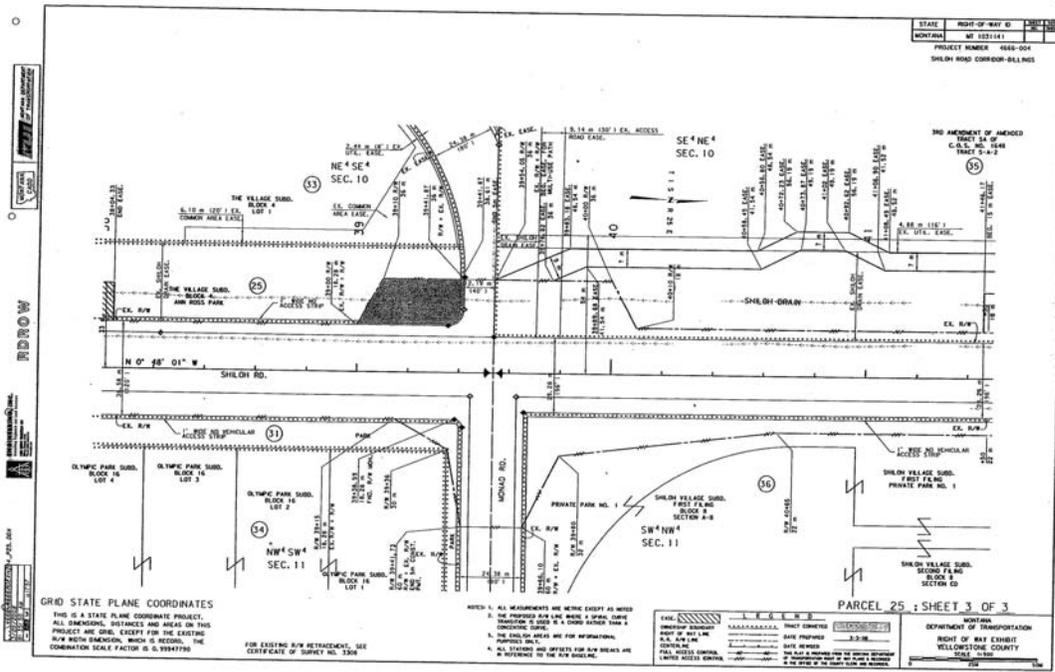
ATTACHMENT

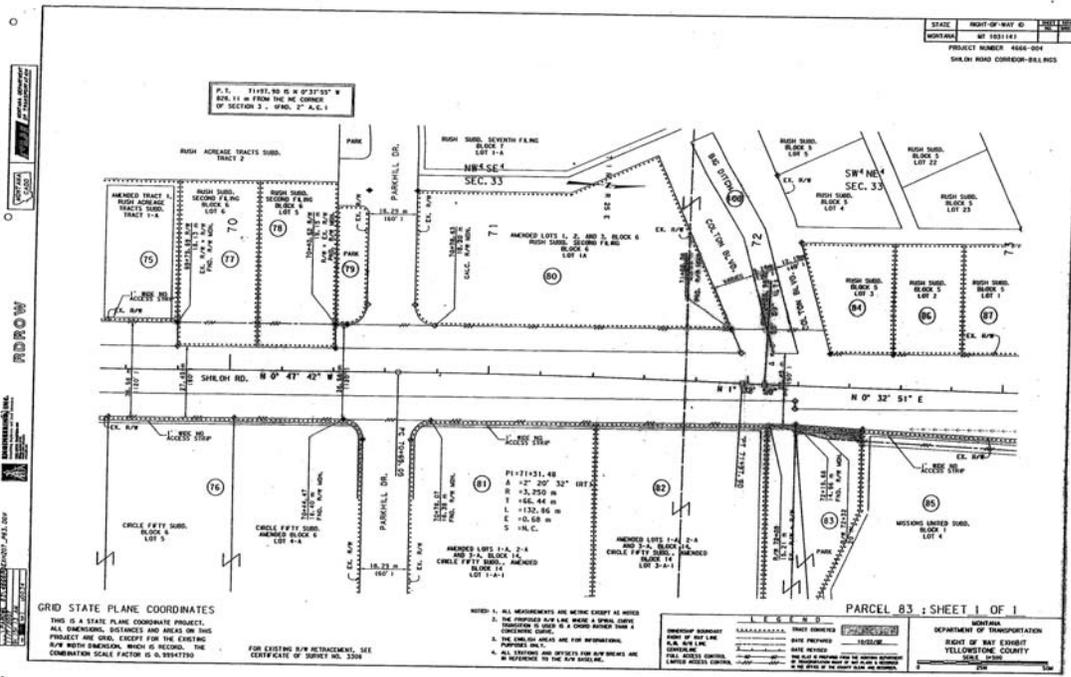
- A. Maps depicting areas proposed to be Sold
- B. Resolution of Intent to Sell











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 SOLD, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it necessary or desirable to dispose of property it currently owns, located on **Shiloh Road** in the City of Billings, Yellowstone County, Montana, as follows;

Parcel No. 22 on Montana Department of Transportation Project MT 1031(4), as shown on the Right of Way plan for said project recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana. Said parcel is also described as tracts of land in E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15; and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 1 South, Range 25 East, P.M.,M., Yellowstone County, Montana, as shown by the shaded areas on the plat, consisting of 5 sheets, attached hereto and made a part hereof, containing a total area of 0.668 ha (1.65 acres), more or less.

Parcel No. 25 on Montana Department of Transportation Project MT 1031(4), as shown on the Right of Way plan for said project recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana. Said parcel is also described as tracts of land in Ann Ross Park, Block 1 and Ann Ross Park, Block 4 of the plat of the Village Subdivision, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 3324330, as shown by the shaded areas on the plat, consisting of 3 sheets, attached hereto and made a part hereof, containing an area of 0.228 ha (0.56 acre), more or less.

Parcel No. 31 on Montana Department of Transportation Project MT 1031(4), as shown on the Right-of-Way plan for said project recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana. Said parcel is also described as a tract of land in the Park in Block 16 of the Olympic Park Subdivision in the City of Billings, Montana, according to the official plat thereof, recorded under Document No. 1140076, in the office of the Clerk and Recorder of Yellowstone County, Montana, as shown by the shaded area on the plat, consisting of 2 sheets, attached hereto and made a part hereof, containing an area of 272 m² (2,928 sq. ft.), more or less.

Parcel No. 83 on Montana Department of Transportation Project MT 1031(4), as shown on the Right-of-Way plan for said project recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana. Said parcel is also described as a tract of land in a Park located in Missions United Subdivision, in the City of Billings, Montana, according to the official plat thereof, on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 3135018, as shown by the shaded area on the plat, consisting of 1 sheet, attached hereto and made a part hereof, containing an area of 122 m² (1,313 sq. ft.), more or less.

WHEREAS, Article 22-900 BMCC requires the city to declare its intention to dispose of such lands, giving the public the opportunity to be heard regarding such action, and setting a public hearing date, and

WHEREAS, Article 22-900 BMCC also requires that all property owners within three hundred (300) feet of the exterior boundaries of said property, be notified by mail, fifteen (15) days in advance of the time, date, place of public hearing and the existing and proposed use.

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

PUBLIC HEARING. The public hearing date has been set for July 14, 2008, at 6:30 o'clock p.m. in the Council Chambers, located on the Second Floor of the Police Facility, 220 North 27th Street, Billings, Montana. The City Clerk is hereby directed to publish notice of the public hearing in The Billings Times in its regular issue on June 26th and July 3rd, 2008, and to mail a copy of such notice to all property owners within the three hundred (300) foot notification area.

APPROVED AND PASSED by the City Council of the City of Billings this 23rd day of June, 2008.

THE CITY OF BILLINGS:

**BY: _____
RON TUSSING, MAYOR**

ATTEST:

**BY: _____
CARI MARTIN, CITY CLERK**

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

U

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Resolution of Intent to Issue Tax Increment Finance Bonds
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The City Council will consider adopting a Resolution of Intent to Issue Tax Increment Finance (TIF) bonds. The bond proceeds will be used to improve King Avenue East between South Billings Blvd. and Orchard Lane and other nearby streets and intersections. The improvements are associated with the Foursquare Properties/South Billings Center LLC retail center that is planned for the south side of King. All of the increment from that project will be dedicated to the bond payments. The estimated amount of bonds to be issued is \$5 million.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the Resolution of Intent to issue bonds to pay for the construction project.
- Initiate formation of a Special Improvement District to pay for the construction project.

FINANCIAL IMPACT: The estimated bond total is \$5 million. Construction costs are estimated to be \$4.3 million. Issuance costs, bond reserve and capitalized interest are estimated to be \$700,000. The annual debt service will be approximately \$440,000 and the annual increment is estimated to be \$500,000 in 2010 and increasing thereafter.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Issue Tax Increment Bonds in the amount of \$5 million that will be used to improve King Avenue East between South Billings Blvd. and Orchard Lane.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Resolution on Intent

INTRODUCTION

The City Council will consider adopting a Resolution of Intent to Issue Tax Increment Finance (TIF) bonds for improving King Avenue East between South Billings Blvd. and Orchard Lane. The improvements are associated with the Foursquare Properties/South Billings Center LLC retail center that is planned for the south side of the street.

PROCEDURAL HISTORY

Property annexed	May 29, 2007
Development Agreement approved	September 10, 2007
Tax Increment District formed	December 10, 2007(and re-adopted 5/12/08)
Resolution of Intent	June 23, 2008
Resolution authorizing bond sale and parameters	July 14, 2008
Approve construction contract	July 14, 2008

ALTERNATIVES ANALYSIS

The City Council approved a development agreement with Foursquare in September, 2007 that obligates the developer to construct offsite public improvements that are needed to support the shopping center. The development agreement is a condition of annexing the property. The agreement states a preference to issue TIF bonds to finance the improvements but if the City cannot issue those bonds, it will attempt to create a Special Improvement District (SID) to finance them. The City’s finance staff and financial advisor believe that TIF bonds can be issued for the project and that the increment will retire the bonds. However, the Council has the option of not issuing TIF bonds and to instead create an SID. That option would cost the City of Billings approximately \$2 million and SIDs are subject to protest by affected property owners. If the City issues TIF bonds, the developer will agree to guarantee bond debt payments in the event that insufficient tax increment is available.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Issuing bonds to finance this project is consistent with the South Billings Boulevard Urban Renewal District plan that was adopted by the Council in December, 2007 and in May, 2008. The Urban Renewal Plan is consistent with the 2003 City/County Growth Policy.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Issue Tax Increment Bonds in the amount of \$5 million that will be used to improve King Avenue East between South Billings Blvd. and Orchard Lane.

ATTACHMENT

A: Resolution of Intent

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO BILLINGS SOUTH BOULEVARD URBAN RENEWAL AREA: APPROVING THE BILLINGS TOWN SQUARE PROJECT AS AN URBAN RENEWAL PROJECT; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AUTHORIZING THE ISSUANCE OF TAX INCREMENT URBAN RENEWAL REVENUE BONDS TO FINANCE THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS RELATED TO THE PROJECT AND THE AREA; AUTHORIZING CITY STAFF AND ADVISORS TO PROCEED WITH DEVELOPMENT OF DOCUMENTS RELATED TO THE BONDS AND THE PROJECT" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on June 23, 2008, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

WITNESS my hand and seal officially this ____ day of June 23, 2008

(SEAL) City Clerk-

RESOLUTION NO. _____

RESOLUTION RELATING TO BILLINGS SOUTH BOULEVARD URBAN RENEWAL AREA: APPROVING THE BILLINGS TOWN SQUARE PROJECT AS AN URBAN RENEWAL PROJECT; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AUTHORIZING THE ISSUANCE OF TAX INCREMENT URBAN RENEWAL REVENUE BONDS TO FINANCE THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS RELATED TO THE PROJECT AND THE AREA; AUTHORIZING CITY STAFF AND ADVISORS TO PROCEED WITH DEVELOPMENT OF DOCUMENTS RELATED TO THE BONDS AND THE PROJECT

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

Section 1. Recitals.

1.01 Pursuant to the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43 (the "Act") and Ordinance No. 08-5462 (the "Ordinance") adopted on May 12, 2008, the Council created the Billings South Boulevard Urban Renewal Area as an urban renewal district (the "District"), and approved the Urban Renewal Plan (the "Plan") for the District containing a tax increment financing provision all as set forth in the Ordinance.

1.02 In adopting the Plan, the City noted the lack of public infrastructure, including unimproved streets, lack of curbs, gutters and sidewalks, lack of or inadequate water and sewer improvements. The Plan anticipates using tax increment revenue generated by urban renewal projects in the District to finance needed public improvements as a way of encouraging private investment, development and redevelopment in the District.

Section 2. The Proposed Urban Renewal Project: the Public Improvements.

2.01 South Billings Center, LLC, a Delaware Limited Liability Company (the "Developer") is the owner of a 42.5 -acre parcel of land located in the District and has proposed developing thereon a 304,500 square feet retail shopping center to be known as the Billings Town Square (the "Project"). The Project as proposed will consist of two retail anchor tenants plus a third anchor tenant that may be a hotel utilizing approximately 272,000 square feet and ten separate pads consisting of 32,500 square feet. It is proposed that the Project will be developed over a 24 month period. In order to make the Project work on an economic basis, the Developer has requested that the City provide public participation in the Project through the issuance of tax increment bonds to finance the costs of certain public infrastructure that are eligible for financing under the Act, which consist of street improvements on King Avenue East, South Billings Boulevard, Newman Lane, Calhoun Lane and Orchard Lane, as well as water, storm drain and sanitary sewer facilities and city/county drain crossings, as required by

the City (the "Public Improvements"), the costs of which are estimated to be approximately \$4,300,000. The bonds to be issued would be payable from the tax increment generated by the Project. Based on costs estimated by Springsted Incorporated, the City's Financial Advisor, the principal amount of bonds needed to finance the Public Improvements and to pay costs associated with the sale and issuance of the bonds, including funding a debt service reserve and paying capitalized interest, is estimated to be \$6,200,000 (the "Bonds").

2.02 The Developer has agreed that it will enter into a development agreement (the "Development Agreement") with the City pursuant to which it will agree to, among other things:

(a) Proceed with all due diligence to develop the Project within a twenty-four month period to achieve an estimated total private investment of \$37 million upon full development of the Project.

(b) Commence construction of all on site improvements for the Project as soon as reasonably practicable and as required to meet the needs of the Project anchors and other tenants which are currently estimated to cost not less than \$1,000,000.

(c) Provide or cause to be provided credit enhancement or security on terms and conditions mutually agreeable to the parties as may be required to enable the City to effectively market and sell the Bonds in the estimated amount of \$6,200,000.

Section 3. Representations

3.01 The Developer has represented to the City as follows:

(a) it has sold a 9.3 acre parcel to Cabela's Incorporated ("Cabela's") and Cabela's has agreed to construct thereon a 85,000 square foot retail facility to be open for occupancy by June 1, 2009;

(b) it has entered into a Purchase Agreement with Sam's Club , for a 15.1 acre parcel and it is anticipated that Sam's Club will construct thereon a 153,000 square foot warehouse supermarket facility during the next 24 months;

(c) it is pursuing the third anchor ; and

(d) it intends to either sell or develop the remaining ten pads for various appropriate business uses over the next 24-month period.

3.02 The City has received a Tax Increment Financing Analysis for the Billings Town Square Project prepared by King & Associates, Inc. dated as of June 12, 2008 (the "Financial Analysis"), which among other things concludes:

(a) sufficient demand exists in the City of Billings retail trade area to support the intensity and timing of the development of the Project as proposed by the Developer; and

(b) that if developed as anticipated, the Project will result in annual tax increment revenues ranging from \$283,000 in 2011 to \$956,000 in 2033.

3.03 D.A. Davidson, as the proposed Underwriter of the Bonds, and Springsted Incorporated, as the City's Financial Advisors, have represented to the City that the projected tax increment revenue from the Project as proposed, and as shown in the Financial Analysis will be sufficient if received to pay the principal of and interest on \$6,200,000 in principal amount of tax increment bonds issued and payable over a term of 25 years.

Section 4. Findings. Based on the forgoing representations, the Council hereby finds, with respect to the Project described in Section 2 hereof, as follows:

4.01 the Plan and the Project conform to the comprehensive plan and growth policy of the City;

4.02 the Plan and the Project will afford maximum opportunity consistent with the needs of the City as a whole for the rehabilitation or redevelopment of the District by private enterprise;

4.03 the development of the Project as described in Section 2 and the entering into of the Development Agreement and the carrying out of the Development Agreement will provide a sound and adequate financial program for the financing of the Public Improvements, through the issuance by the City of its urban renewal tax increment bonds in an amount not to exceed the costs of the Public Improvements including administrative costs, capitalized interest, funding a debt service reserve and paying costs associated with sale and issuance of the Bonds

4.04 the Project constitutes an urban renewal project within the meaning of the Act and the Plan and the Public Improvements are eligible for financing from the tax increment generated by the Project.

Section 5. Intent of Council. Subject to the entering into of the Development Agreement, it is the City's intention to issue its South Billings Boulevard Urban Renewal District Tax Increment Revenue Bonds (the "Billings Town Square Project") in the estimated amount of \$6,200,000, payable from the tax increment revenue generated from the Project and payable over a term not to exceed 25 years, and to undertake the construction of the Public Improvements from the proceeds of the Bonds upon the sale of the Bonds. In no event will the principal amount of the Bonds exceed the amount that can be paid from the tax increment generated by the Project. If the costs of the Public Improvements exceeds the principal amount of Bonds available therefor, the City has no obligation to install the Public Improvements. The City's obligation to issue the Bonds is dependent on the marketability of the Bonds and the Developer's agreement to provide such credit enhancement or security as may be required to

make the Bonds marketable. The Bonds will be sold to D.A. Davidson, Inc. on the basis of a negotiated sale, the terms and conditions of which will be approved in a subsequent resolution of this Council.

Section 6. The City Manager, the Director of Financial Services, the Public Works Director and the City's Financial Advisor, Underwriter and Bond Counsel are authorized to proceed with the development of the necessary documents, including the Development Agreement with the Developer to facilitate the sale of the Bonds and the construction of the Public Improvements.

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

Mayor

Attest: _____
City Clerk-Treasurer

V

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Second Reading of an Ordinance Expanding Ward I: Annexation #08-07
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Juliet Spalding, AICP, Planner II

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 was conducted at the June 9, 2008 Council meeting.

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

RECOMMENDATION

Staff recommends that the City Council approve the second reading of this ordinance that adds property to City Ward I.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

- A. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD 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 9th day of June, 2008.

PASSED by the City Council on the second reading this 23rd day of June, 2008.

THE CITY OF BILLINGS:

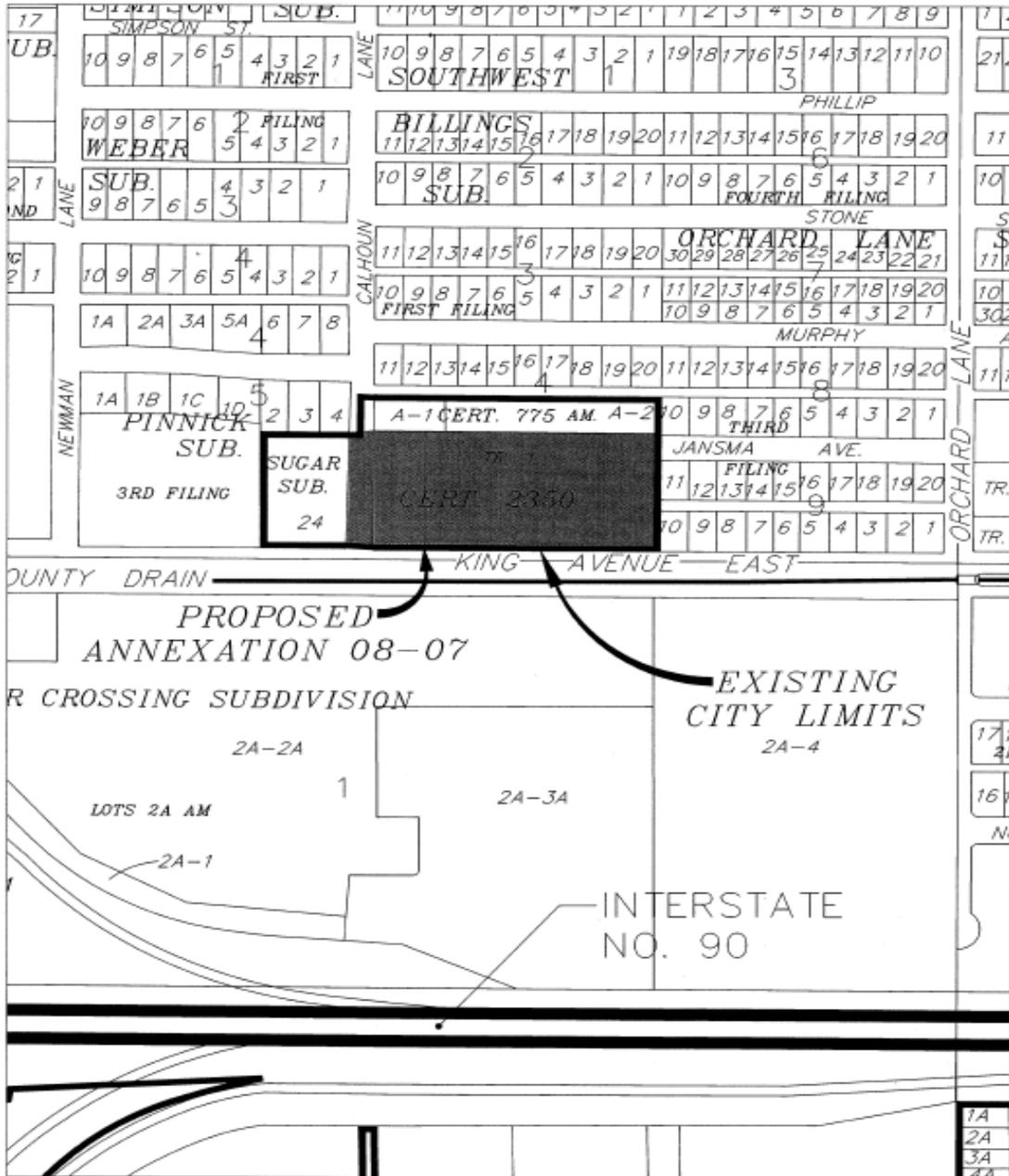
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

(AN 08-07)

EXHIBIT A



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

W

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Preliminary Subsequent Minor Plat of Amended Lot 3, Block 3, Weil Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On May 15, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 3, Block 3, Weil Subdivision, which contains two lots on approximately 1.1 acres for commercial development. The subject property is located east of Mallowney Lane on the east side of Weil Street one half block north of Holiday Avenue. The property is vacant land and is zoned Highway Commercial (HC). The owner is Scott Winchell 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 July 3, 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 subsequent minor plat of Amended Lot 3, Block 3, Weil Subdivision 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 15, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 3, Block 3, Weil Subdivision, which contains two lots on approximately 1.1 acres for commercial development. The subject property is located east of Mullowney Lane on the east side of Weil Street one half block north of Holiday Avenue. The property is vacant land and the properties around the subject property have been developed as commercial and industrial businesses. The owner is Scott Winchell and Engineering, Inc. is the agent. The subject property is zoned HC.

PROCEDURAL HISTORY

- On February 21, 2008, a pre-application meeting was conducted for the proposed subdivision.
- On May 15, 2008, an application for a preliminary subsequent minor subdivision was submitted to the Planning Division.
- On June 23, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed minor subdivision.

BACKGROUND

General location:	East of Mullowney Lane on the east side of Weil Street one half block north of Holiday Avenue.
Legal Description:	Lot 3, Block 3, Weil Subdivision
Subdivider/Owner:	Scott Winchell
Engineer and Surveyor:	Engineering Incorporated
Existing Zoning:	HC
Existing land use:	Vacant Land
Proposed land use:	Commercial Development
Gross area:	1.1 acres
Net area:	1.1 acres
Proposed number of lots:	2
Lot size:	Max: .6 acres Min.: .5 acres
Parkland requirements:	Parkland dedication is not required as this is a commercial subdivision.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. *(Recommended by the Engineering Division)*
2. 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.
3. 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

None

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 subsequent minor plat of Amended Lot 3, Block 3, Weil Subdivision and adopt the Findings of Fact as presented in the staff report to the City Council.

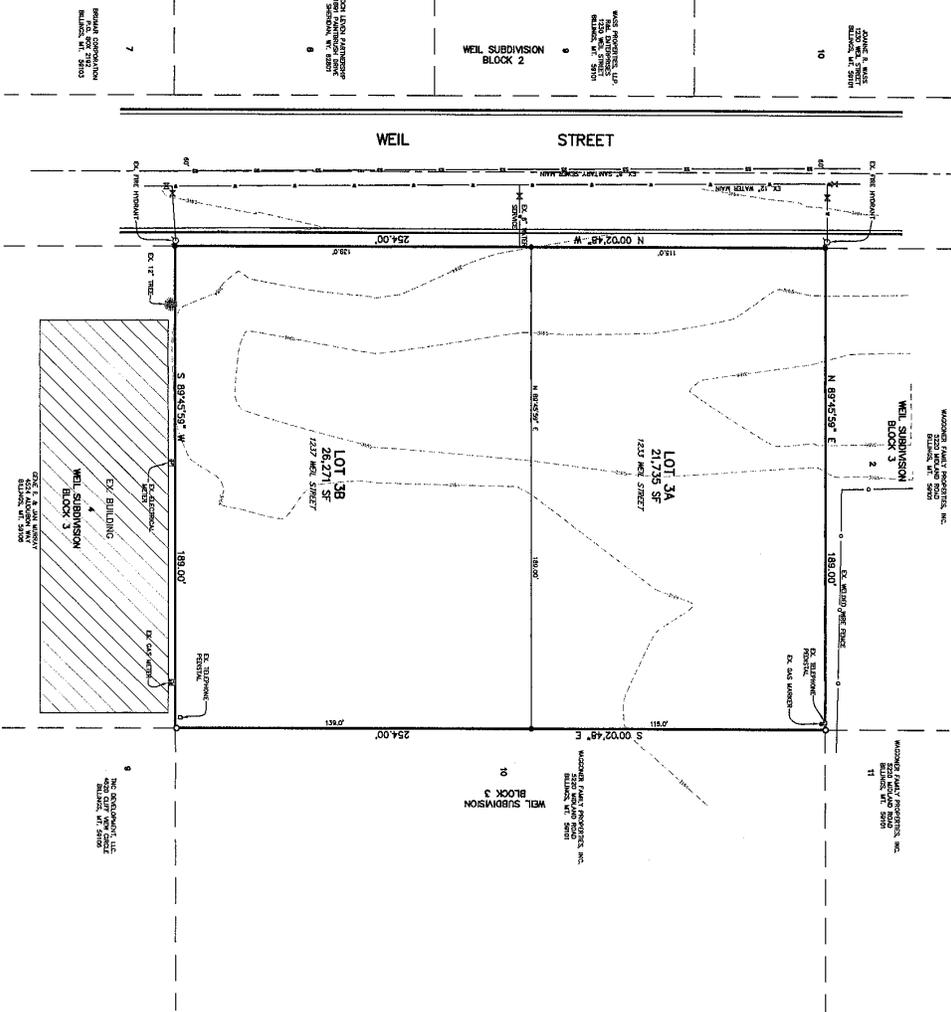
ATTACHMENTS

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

ATTACHMENT A

PRELIMINARY PLAT OF AMENDED LOT 3, BLOCK 3
WEIL SUBDIVISION
 SITUATED IN THE SW 1/4 OF SECTION 17, T. 1 S., R. 26 E., P.M.M.
 BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: SCOTT WINCHELL
 PREPARED BY: ENGINEERING, INC.
 SCALE: 1" = 20'



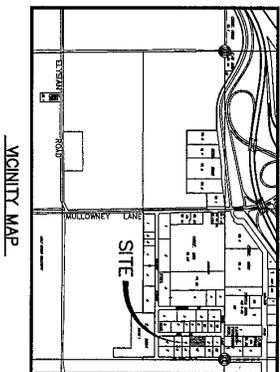
MAY 2008
 BILLINGS, MONTANA



BASIS OF BEARING: ORIGINAL PLAT OF WEIL SUBDIVISION
 ○ = FOUND SURVEY MONUMENT, AS NOTED
 ● = SET 5/8" X 1/4" REBAR WITH CAP MARKED
 "ENGINEERING, INC. BILLINGS, MT"

PLAT DATA

GROSS AREA	= 48,006 SF
NET AREA	= 48,006 SF
NUMBER OF LOTS	= 2
MINIMUM LOT SIZE	= 21,735 SF
LINEAL FEET OF STREETS	= 28,271 SF
PARKLAND REQUIREMENT	= N/A
PARKLAND DEDICATION	= N/A
STREETS	= HIGHWAY COMMERCIAL
EXISTING LAND USE	= HIGHWAY COMMERCIAL
PROPOSED LAND USE	= HIGHWAY COMMERCIAL
	= HIGHWAY COMMERCIAL
	= VACANT
	= FUTURE COMMERCIAL DEVELOPMENT



ATTACHMENT B

Findings of Fact

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 3, Block 3, Weil 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 12 inch water line that is in Weil Street at the time of lot development. There is currently one water service to one of the proposed lots in this subdivision, one additional service will be required to the second lot. Sanitary sewer will be extended from an 8 inch sanitary sewer line also within Weil Street. There is currently one sanitary sewer service to one of the proposed lots in this subdivision, one additional service will be required to the second lot. These services will be installed at the time of development.
- 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 accesses from Weil Street. Weil Street is a paved road with curb and gutter. There will be no other street improvements required at this time.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5).
- f. **Parks and Recreation** – As this is a commercial development the subdivider is not required to provide parkland.

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 commercial and industrial uses surrounding the subject property.

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element Goal, Page 6)

The subject property is compatible with the commercial and industrial uses 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 a developed portion of the city and development of the subject property is considered infill development.

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan. No improvements are required for Weil Street at this time.

3. Heritage Trail Plan

The Heritage Trail does not identify a trail corridor within this subdivision.

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 Weil Street so it will conform to sanitary requirements.

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 27-309, BMCC for the HC zoning district.

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

The City Engineering 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 from Weil Street.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lot 3, Block 3, Weil 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 23, 2008

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

June 23, 2008

Scott Winchell
P.O. Box 22967
Billings, MT 59104

Dear Property Owner:

On June 23, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 3, Block 3, Weil 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. 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.
3. 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

Sincerely,

Ron Tussing, Mayor

pc: Peter Knapp, Engineering Incorporated

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Final Plat of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The final plat of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing, is being presented to the City Council for approval. The subject property is zoned Residential 6000 (R-60) and is located on the northeast corner of the intersection of North 23rd Street and 10th Avenue South. On February 23, 2008, the City Council conditionally approved the 2-lot subsequent minor plat on 14,000 square feet of land for residential development. The owners are Dennis, Marlene, Nikki, and Michael Olson. The representing agent is Soelter Survey.

The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

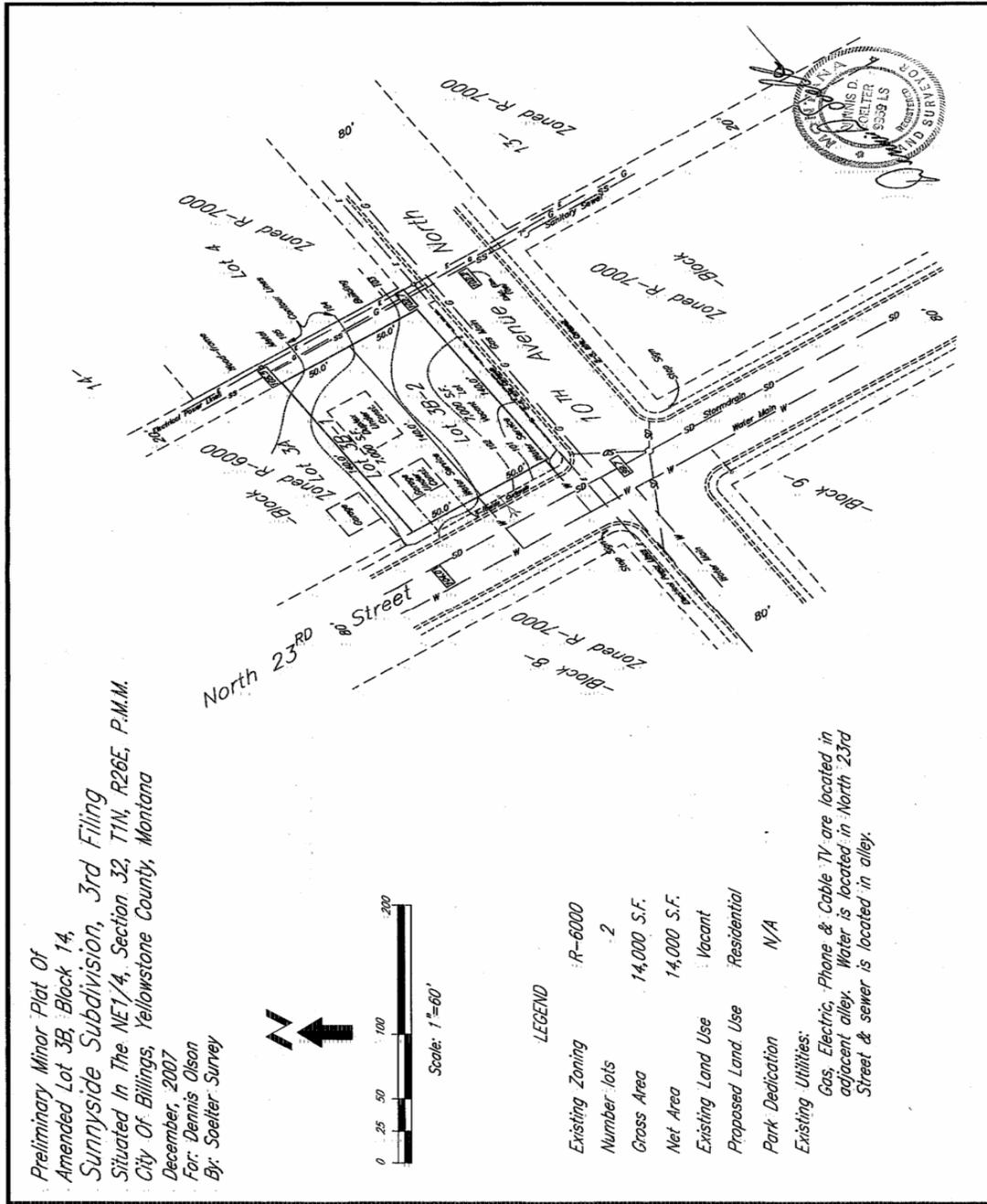
Staff recommends that the City Council approve the final plat of Amended Lot 3B, Block 14, Sunnyside Subdivision, 3rd Filing.

Approved By: City Administrator _____ City Attorney _____

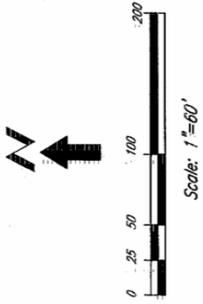
ATTACHMENT

A: Final Plat

ATTACHMENT A



Preliminary Minor Plat Of
 Amended Lot 3B, Block 14,
 Sunnyside Subdivision, 3rd Filing
 Situated In The NE1/4, Section 32, T1N, R26E, P.M.M.
 City Of Billings, Yellowstone County, Montana
 December, 2007
 For: Dennis Olson
 By: Soelster Survey



LEGEND

Existing Zoning	R-6000
Number lots	2
Gross Area	14,000 S.F.
Net Area	14,000 S.F.
Existing Land Use	Vacant
Proposed Land Use	Residential
Park Dedication	N/A
Existing Utilities:	
Gas, Electric, Phone & Cable TV	are located in adjacent alley.
Water	is located in North 23rd Street & sewer is located in alley.

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

Y1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 23, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$3,321,371.24 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 23, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

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

Y2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$834,127.03 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 30, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Housing Authority's Westchester Square Project - HOME Allocation
DEPARTMENT: Planning & Community Services Department
PRESENTED BY: Brenda Beckett, Community Development Manager
 Candi Beaudry, Planning & Community Services Director

PROBLEM/ISSUE STATEMENT:

The Community Development Division received a proposal from the Housing Authority of Billings for \$300,000 to fund the construction of three affordable rental housing units located at 1546 Westchester Square in the Billings Heights area. The project will consist of a duplex and a single-family unit as per the zoning requirements and will serve those households considered very low income at less than 50% of the area median income for Billings. The project will be affordable for very low income households for a minimum of 30 years, meeting a need identified in the December 2004 Housing Needs Analysis.

Two of the units will have two bedrooms and one unit will have three bedrooms. The three-bedroom unit will be fully handicap accessible. In addition, all three units will be constructed utilizing Universal Design concepts to ensure the units can accommodate the disabled. Staff is recommending a total funding allocation of \$200,000 which is 36% of total project costs.

ALTERNATIVES ANALYZED: 1) Fund the request and secure the City's affordable housing investment in Billings, which would ensure HUD commitment compliance for allocations through FY2008-2009; (2) To not assist with funds for the project. By not funding this project, the Housing Authority would have to secure conventional financing to complete the project which would increase costs which would be passed on to the renters.

FINANCIAL IMPACT:

HOME Investment Partnership program funds are provided by HUD to the City for affordable housing projects. Funding the \$200,000 to the Housing Authority from CDBG and HOME funds allocate available affordable housing funds for FY2008-2009.

RECOMMENDATION

Staff recommends that Council approve the Community Development Board's recommendation and authorize a \$200,000 grant from FY2008-2009 funding to the Housing Authority for the Westchester Square project. These funds will be used by the Housing Authority to construct three units of affordable rental housing at 1546 Westchester Square in the Billings Heights.

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

ATTACHMENTS

A: Vicinity Map and Site Plans for 1546 Westchester Square (4)

INTRODUCTION

The City of Billings conducted a Housing Needs Analysis in December 2004 in which the combination of the household forecast and housing needs surveys were the basis for the housing needs assessment and the determination of the priorities to meet those needs. This report lists the critical concerns identified related to rental housing. They were affordability, condition and rental deposits and application fees. Mail survey respondents indicated that low income residents, elderly residents and single mothers / parents with children were three of the four top groups of people in the community that have the greatest unmet housing need. With the variety of bedroom sizes, including the larger ones this project is proposing, it would help to meet those needs.

The 2005 Housing Needs Assessment indicates that twice as many renters as homeowners are cost burdened or paying more than 30% of their income for their housing costs. It also showed two-thirds of renter households are considered low income and 32% of the total renter households are cost burdened, and living in overcrowded and / or substandard housing.

There are 5,637 renter households under 50% of the median family income. This report indicates 67.5%, of the renter households with incomes at or below 50% area median income (which is the income group this project is targeting) are cost burdened. This translates into approximately 3,805 households that could benefit from this project.

Almost 34% of the survey respondents indicated that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community; the second most needed housing type, only behind affordable single family homes for purchase. The Census Tract the project is located in is 70 - 100% low to moderate income.

This project meets the following three strategies in the City's Consolidated Plan:

- Promote new affordable housing opportunities; and
- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.

Additionally, this project will create in-fill development in an existing neighborhood and will provide much-needed affordable housing options in the Heights with access to the local bus routes.

PROCEDURAL HISTORY

- April 3, 2002 - The Housing Authority of Billings purchased the 16,000 square foot vacant lot for \$31,000. The property was appraised in April 2008 for \$63,000.
- March 4, 2008 - The Housing Authority made a presentation to the Community Development Board in preparation for grant application submittal.
- March 27, 2008 - The Community Development Division receives a completed application for \$300,000 in HOME funding for the construction of the project.

- May 12, 2008 - City Council approves the final budget recommendations made by the Community Development Board which allocates \$200,000 in new HOME funding for FY2008-2009 for affordable housing development.

BACKGROUND

Task Force and Community Input – the Housing Authority has made a presentation to the Heights Task Force. Letters of support for the project submitted with the application include: Congressman Denny Rehberg; Carl Visser / HRDC; Kathy Shandera and Caron Burton / United Way; Paul Chinberg / Family Services, Inc.; and Ramona Bruckner / RSVP Yellowstone County Council on Aging.

HOME Section 504 Requirements call for one unit to be specifically designed for sensory impaired with an additional unit handicap accessible, although all three units will be constructed with Universal Design concepts and the three bedroom unit will be constructed as a fully-accessible unit.

Organizational Strengths

The Housing Authority has successfully managed two City of Billings HOME grants which resulted in 16 units at Spring Gardens and 8 units at Old Town Square. All of their projects have come in on time and on budget. The Housing Authority owns and operates 400 affordable housing units, 274 of which are public housing. The Housing Authority submitted an extensive management plan with their application and they have very well-thought out and fully developed management policies and procedures; all of which comply with the Montana Residential Landlord Tenant Act.

Other considerations during the project review

The property is located within the City limits and is located in the Billings Heights area. Parking & landscaping are required and are being included in the site plan. Utilities are available at the site. Environmental Review issues are not anticipated at the site as the lot is located in a developed residential area in the Billings Heights and is not located adjacent to the airport, PCE contamination site, or a four-lane street.

Financial Plan

Sources of funds to complete the project financing are as follows:

City of Billings HOME funds requested	\$ 300,000
Housing Authority funding	\$ 197,000
<u>Housing Authority’s land - current value</u>	<u>\$ 53,000</u>
Total Sources:	\$ 550,000

The land has been appraised and is now valued at \$66,000 which the City can consider match funding along with the \$197,000 cash allocated to the project, creating a \$263,000 match for the \$200,000 HOME grant. The Housing Authority will either need to dedicate an additional \$100,000 to the project or will secure financing.

HOME Requirements Review

The total square footage of the proposed units is 2,949 and the cost per square foot is \$135 and \$50,000 for the site work. The Housing Authority is proposing all three units be HOME assisted. With a \$200,000 HOME grant, the HOME per unit subsidy is \$66,000; well below the maximum subsidy allowed by Federal Regulation. The maximum allowable HOME allocation for this project is \$397,608 according to Billings' Section 221(d)(3) per-unit subsidy limit at 185% (limit current as of June 2007). Staff is recommending a total funding allocation of \$200,000 which is 36% of total project costs.

Projects previously funded include the Acme for \$143,400 which included 19 units that were HOME assisted and cost per unit was \$7,547. The Housing Authority of Billings, Town Square apartments was funded at \$187,000 for 16 units which was \$11,688 per unit cost. The Schwend apartments final cost per unit was \$27,533.

The HOME 25% match requirement is being met through the Housing Authority's reserve funding and the land donation, which totals \$263,000.

ALTERNATIVES ANALYZED

1) Fund the request and secure the City's affordable housing investment in Billings which would ensure HUD commitment compliance for allocations through FY2008-2009; (2) To not assist with funds for the project. By not funding this project, the Housing Authority would have to secure additional conventional financing to complete the project which would increase costs which would be passed on to the renters.

STAKEHOLDERS

- Heights Community Development Task Force.
- Low Income families and individuals in the community. This project is targeted to families and individuals under 50% AMI.
- Disabled individuals and families in the community. All of the units in the proposed project will be constructed using Universal Design concepts and will be accessible.
- Surrounding property owners. By funding this project, a new, high-quality family housing complex with numerous amenities to complement the neighborhood will be constructed. This will have a positive impact on the surrounding property owners through increasing the value of their homes and the neighborhood as a whole.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

This project meets the following three strategies in the City's Consolidated Plan:

- Promote new affordable housing opportunities; and
- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.

The project would also provide in-fill development in accordance with the 2003 Growth Policy.

SUMMARY

An overall review of the funding for the project reveals it to be consistent with other similar projects that the City has funded. The HOME subsidy amount being requested is consistent with the number of HOME assisted units, and is not over subsidy limitations. Match requirements are being appropriately met, as well as Section 504 requirements and ADA accessibility. This project is also consistent with the City's Consolidated Plan.

There is a demonstrated need for these types of units, as evidenced through data from the recent Housing Needs Assessment. The Housing Authority has extensive experience, both in developing and managing affordable housing projects and is knowledgeable of the HOME program requirements as well. The City has had partnered successfully with the Housing Authority with a number of projects and a positive relationship has been developed.

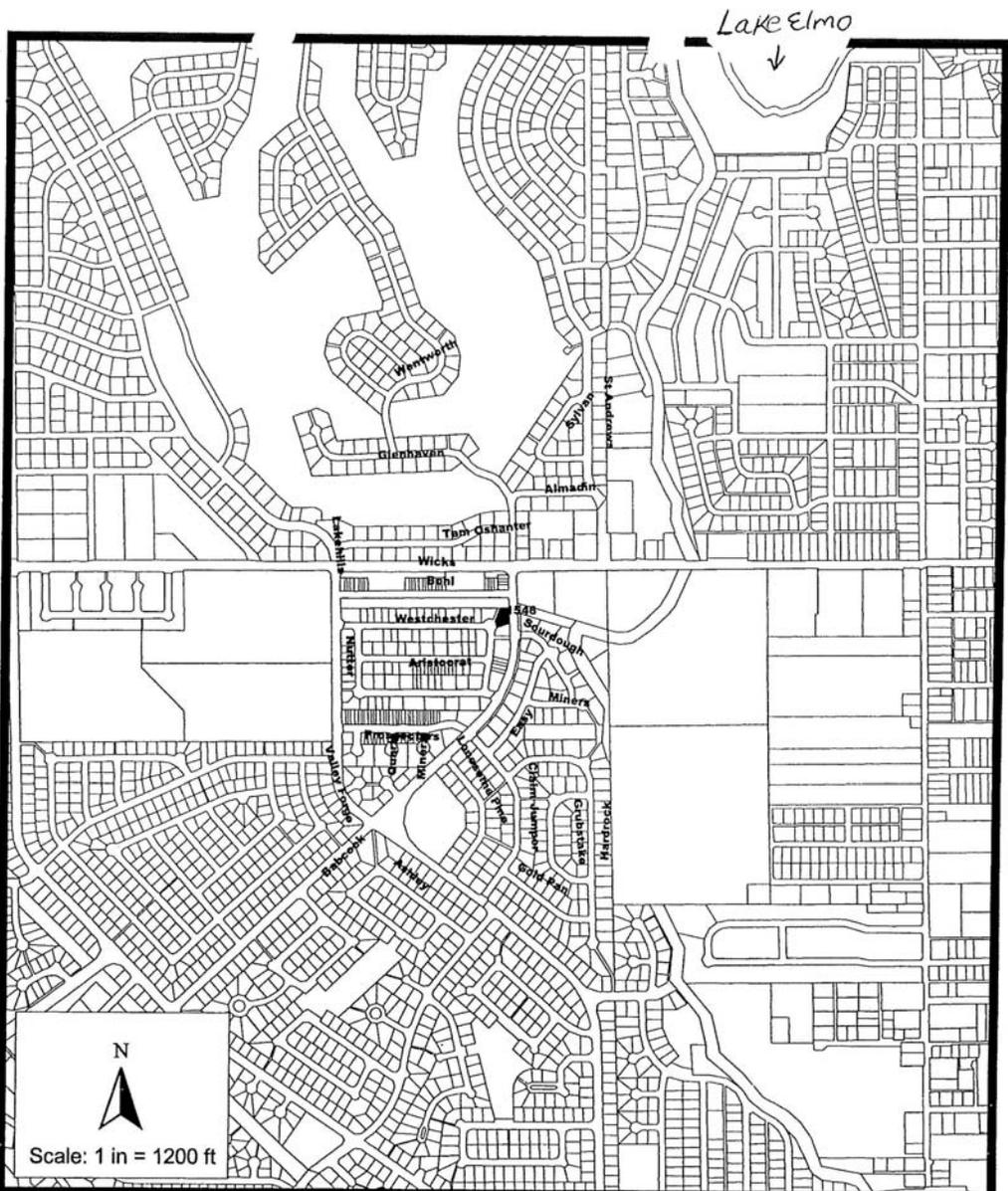
RECOMMENDATION

Staff recommends that Council approve the Community Development Board's recommendation and authorize a \$200,000 grant from FY2008-2009 funding to the Housing Authority for the Westchester Square project. These funds will be used by the Housing Authority to construct three units of affordable rental housing at 1546 Westchester Square in the Billings Heights.

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

ATTACHMENTS

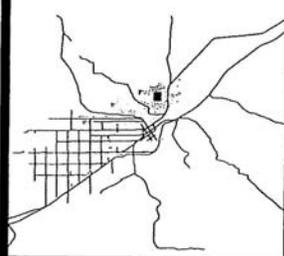
A: Vicinity Map and Site Plans for 1546 Westchester Square (4)



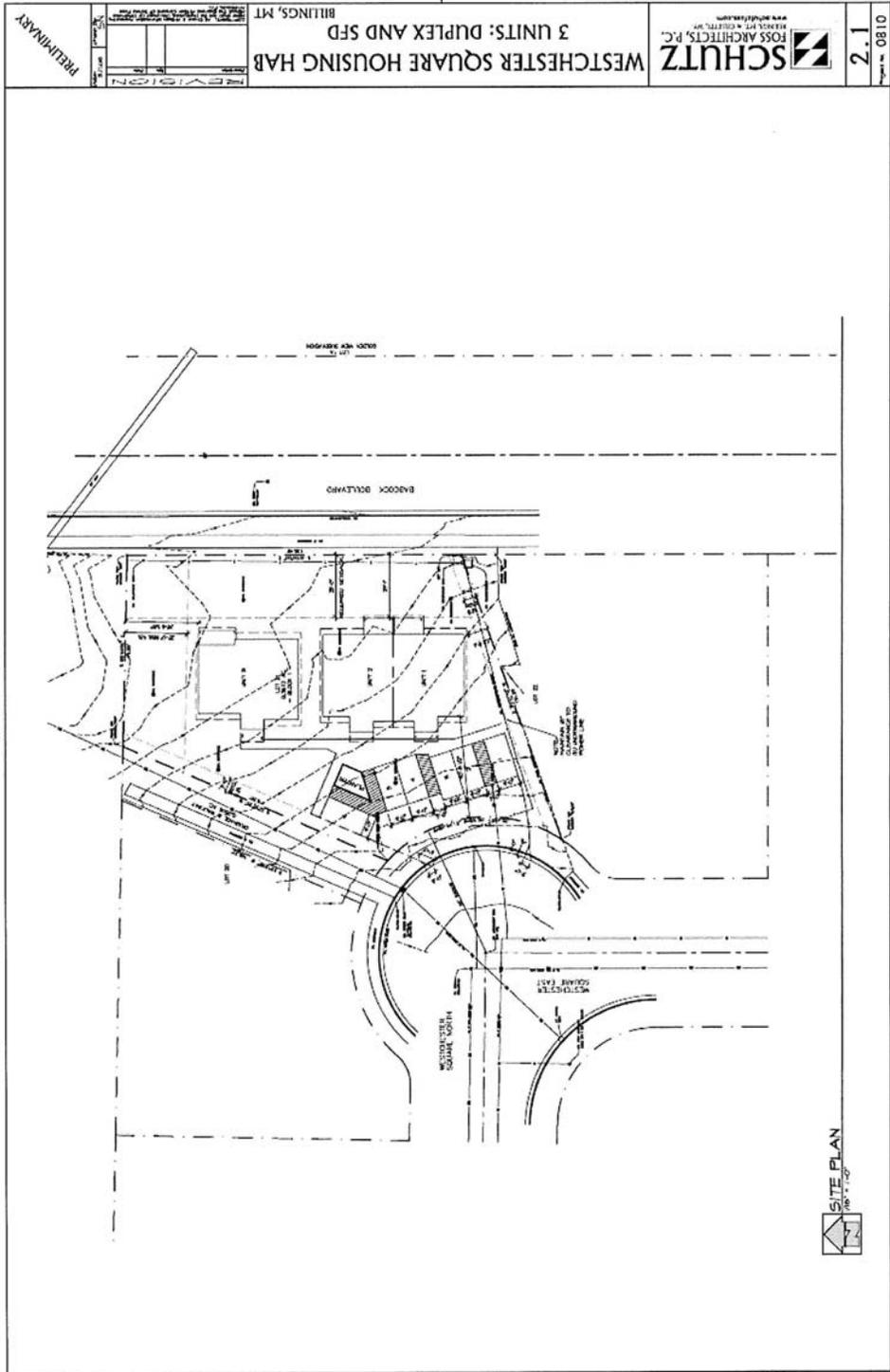
City of Billings
 1546 Westchester Sq. North



Product of Billings Geographic Information System



VICINITY MAP

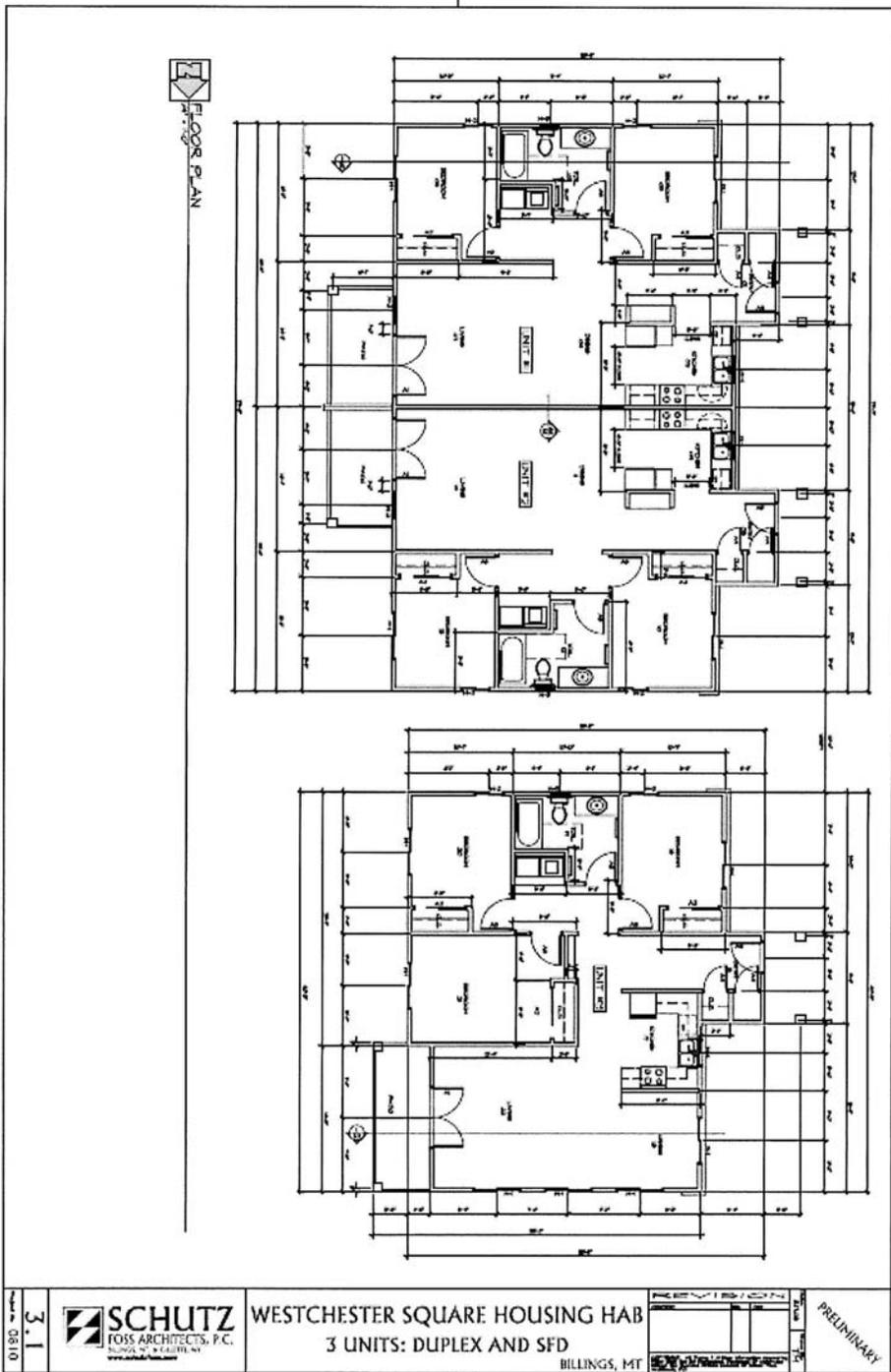


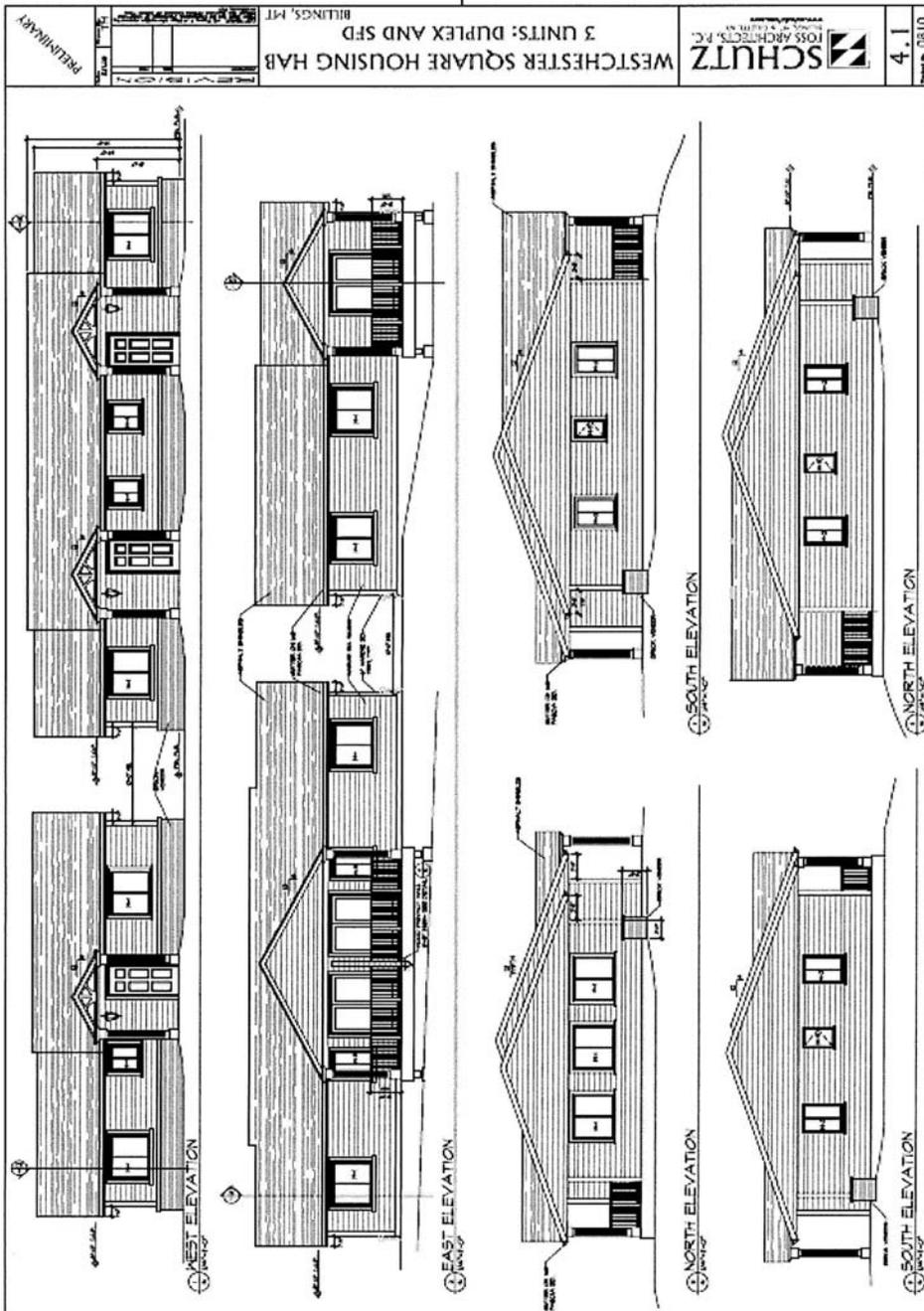
PRELIMINARY

WESTCHESTER SQUARE HOUSING HAB
3 UNITS: DUPLEX AND SFD
BILLINGS, MT

SCHUTZ
FOSS ARCHITECTS, P.C.
www.schutzfoss.com
1000 W. CENTER ST. SUITE 100
BILLINGS, MT 59101

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Page No. 0810





WESTCHESTER SQUARE HOUSING HAB
 3 UNITS: DUPLEX AND SFD
 BILLINGS, MT
 SCHULTZ ARCHITECTS, P.C.
 4.1
 PRELIMINARY

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Volunteers of America's Homeless Veteran's Transitional Housing Project

DEPARTMENT: Planning and Community Services Department

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

PROBLEM/ISSUE STATEMENT:

In April 2008, Volunteers of America (VOA) submitted a grant application to the Veteran's Administration to provide transitional housing for 20 homeless veterans in Billings. VOA representatives made an announcement on June 2, 2008, that they have cleared the first round of application review for this project. For the second round of consideration, the Veteran's Administration has tasked VOA to further site development plans and to gain additional community support for land acquisition.

The current site selected for the project is along the 700 block of Lake Elmo Drive. VOA has allocated \$710,000 in funding toward this project and the total project costs are estimated at over \$2 million. According to CDBG regulations, this project is eligible for CDBG funding as assistance to support the construction of new residential housing to benefit low-moderate income households. Assistance provided for this project will be limited to land acquisition to enable the property to be used for new housing construction. Land costs are estimated at \$415,000.

Funding was allocated in FY2007-2008 for a pilot project, Rehabilitation / Acquisition, which was allocated to support the purchase and rehabilitation of a foreclosed property for resale to a low income first time homebuyer. Staff reviewed foreclosed property listing for the past year and has not found a suitable property for the project.

ALTERNATIVES ANALYZED: 1) Allocate the available \$30,000 as a grant for allowed CDBG land acquisition pending full application should the project be funded through the Veteran's Administration; or 2) Not allocate funding to the project.

FINANCIAL IMPACT: Adverse financial impact is not anticipated. Funding for the Acquisition / Rehab project was allocated at \$30,000 in FY07-08.

RECOMMENDATION

Staff recommends the Council re-allocate the \$30,000 allocated in FY07-08 to the Acquisition / Rehab project to the VOA Homeless Veteran’s Transitional Housing Project for land acquisition, pending full application and subrecipient agreement terms should the project be funded through the Veteran’s Administration.

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

ATTACHMENTS

- A: Billings VA Transitional Housing Prospectus (17)
- B: Vicinity Maps (2)

INTRODUCTION

Local support must be secured for land acquisition in order to further VOA's application to the Veteran's Administration to provide transitional housing for veterans experiencing homelessness.

PROCEDURAL HISTORY

- *February 13, 2008* - VOA approached City staff during the Social Enterprise Conference regarding a request made by the Veteran's Administration's for VOA to apply for the funding for a project in Billings.
- *February 25, 2008* - City staff held an introductory meeting at the Parmly Billings Library for VOA to present the project to local homeless service providers. Providers were asked to supply feedback regarding the project and letters of support.
- *April 2008* - VOA submitted the Veteran's Administration grant with 25 letters of support from local service providers and civic leaders.
- *June 2, 2008* - VOA held a meeting at Magic City Terrace in the Heights to announce the grant's progression through the first review round and noted the Veteran's Administration's request for further site development and community support for land purchase.
- *June 3, 2008* - City staff presented the project to the Community Development Board with VOA, and was approved for a \$30,000 reallocation of CDBG funding to support land acquisition, pending full application through the Affordable Housing Program in the fall should the Veteran's Administration approve VOA's grant.

BACKGROUND

VOA expects notification of grant award in September 2008. If successful, VOA will be expected to submit a full application to the City through the Affordable Housing Program which will be reviewed by both the Community Development Board and City Council. A public hearing will take place and a neighborhood meeting is a requirement of the application process. The CDBG subrecipient agreement will also be reviewed, including the terms of the financing for the project.

The Mayor's Committee on Homelessness and the Billings Area Resource Network have illustrated a need for additional housing for the homeless, particularly those who served our country, in both transitional and permanent housing. The project proposed by the VOA includes supportive services and re-integration strategies for participants in the program.

VOA has a positive history working with the City of Billings for the development of the Magic City Terrace project, which serves very low income elders in 85 units of supportive housing. The project totaled over \$8 million and the City's financial contribution was \$50,000 for the project, less than one percent of the total project cost. VOA brings significant assets to this project, and has met the minimum requirement for the grant to secure 35% of total project costs

by allocating over \$710,000 in cash to the project. Required cash match has been a significant barrier for local service providers to generate to serve this population.

The City of Billings conducted a Housing Needs Analysis in December 2004 in which the combination of the household forecast and housing needs surveys were the basis for the housing needs assessment and the determination of the priorities to meet those needs. This report lists the critical concerns identified related to rental housing. They were affordability, condition and rental deposits and application fees. Mail survey respondents indicated that low income residents, elderly residents and single mothers / parents with children were three of the four top groups of people in the community that have the greatest unmet housing need. With the variety of bedroom sizes, including the larger ones this project is proposing, it would help to meet those needs.

The 2005 Housing Needs Assessment indicates that twice as many renters as homeowners are cost burdened or paying more than 30% of their income for their housing costs. It also showed two-thirds of renter households are considered low income and 32% of the total renter households are cost burdened, and living in overcrowded and / or substandard housing.

There are 5,637 renter households under 50% of the median family income. This report indicates 67.5%, of the renter households with incomes at or below 50% area median income (which is the income group this project is targeting) are cost burdened. This translates into approximately 3,805 households that could benefit from this project. Almost 34% of the survey respondents indicated that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community; the second most needed housing type, only behind affordable single family homes for purchase. The Census Tract the project is located in is 70 - 100% low to moderate income.

Additionally, this project will create in-fill development in an existing neighborhood and will provided much-needed affordable housing options in the Heights with access to the local bus routes.

ALTERNATIVES ANALYSIS 1) Allocate the available \$30,000 as a grant for allowed CDBG land acquisition pending full application should the project be funded through the Veteran's Administration; or 2) Not allocate funding to the project.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

This project meets the following three strategies in the City's Consolidated Plan:

- Promote new affordable housing opportunities; and
- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.

The project would also provide in-fill development in accordance with the 2003 Growth Policy and is consistent with the direction of the ten-year planning process to impact homelessness in Billings.

RECOMMENDATION

Staff recommends the Council re-allocate the \$30,000 allocated in FY07-08 to the Acquisition / Rehab project to the VOA Homeless Veteran’s Transitional Housing Project for land acquisition, pending full application and subrecipient agreement terms should the project be funded through the Veteran’s Administration.

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

ATTACHMENTS

A: Billings VA Transitional Housing Prospectus (17)

B: Vicinity Maps (2)

Billings VA Transitional Housing Prospectus

Project:

On Monday, June 2nd, Volunteers of America announced the successful first round submission for funding of a 20-bed transitional living facility to serve veterans in Montana, many of which will be homeless. If approved, funding will be provided through the Veterans Affairs Administration's Homeless Providers Grant/Per Diem Program Capital Grant.

This conditional approval represents months of partnership with the Veterans Administration Medical Center at Fort Harrison in Helena, Montana, in addition to many community partners including County Commissioner Bill Kennedy, Senator Jon Tester and Congressman Denny Rehberg. **(See letters of support on pages 9-15.)**

A second submission with finalized budgets, community commitments and operational plans will be submitted within 30 days. The final announcement should be made by the end of the summer. Volunteers of America projects to serve 25 veterans per year through this program of which the ultimate goal is to provide a safe, supportive environment in which veterans can become self-sustaining, contributing members of the community.

Volunteers of America Wyoming & Montana:

Volunteers of America is a national, nonprofit, faith-based organization dedicated to helping those in need rebuild their lives and reach their full potential. Volunteers of America Wyoming & Montana programs and services, include substance abuse treatment, homeless services, affordable housing, children and youth services, adult re-entry services and community enhancement projects.

It is this organization's more than 20 years of experience, relationship with the local community, and nine-year history in serving homeless veterans, that will ensure a successful expansion of our organization's service continuum to include this important transitional housing program for homeless veterans.

Volunteers of America Wyoming & Montana is further supported by the national organization's (VOA, Inc.) commitment to and expertise in providing 33 veterans Grant/Per Diem programs, 11 HVRP programs, 2 transitional housing programs for incarcerated veterans, 2 transitional housing programs specifically for veterans with substance abuse issues, and several other special needs programs.

VOA, Inc. serves more than 6,000 homeless veterans each year through services located in 14 states and more than 28 cities. As further evidence of the organization's capacity and commitment to serving homeless veterans, VOA, Inc., in partnership with the national Coalition for the Homeless Veteran's (NCHVP) and the Corporation for Supportive Housing, co-sponsored and co-authored a

2006 publication entitled, "Ending Homelessness among Veterans through Permanent Supportive Housing." services for more than 20 years.

Target Population:

According to the 2006 CHALENG Point of Contact Action Plan for FY 2007, .25% of the 100,637 veterans living in Montana have been identified as homeless. That survey, the latest federal data for Homeless Veteran Statistics, estimates there are 232 Homeless Veterans in the Ft. Harrison and Eastern Montana region. Of those Veterans, 22 are chronically homeless (homeless for a year or more or had at least four homeless episodes during the past three years AND have mental health or substance abuse disorder). The CHALENG Survey states there are 29 Transitional Housing Beds for Veterans and the Ft. Harrison and Eastern Montana region could use an additional 20 beds. An estimated 30% of Homeless Veterans in this region want to work on or need Transitional Living facilities.

VOA will target those homeless veterans who experience mental illness, a PTSD diagnosis, substance abuse problems, dual diagnosis, Native American population or veterans being released from prison. The veterans we predict serving through the Billings Homeless Veterans Transitional Homes program may be currently homeless due to substance abuse, mental illnesses, PTSD, functional disabilities and/or chronic medical conditions. They may have lost their driver's licenses due to DUI's and/or have lost the ability to perform jobs that they have held in the past. It is hard for them to gain steady employment. They go from job to job, shelter to shelter and outlive their welcome and are cut off from their family circles.

Ninety three percent of the homeless veterans in Montana are males; the average age is 53; 63% are white; 28% are Native American; 2% Hispanic; 2% Black/African American; 3% Native Hawaiian; 50% have been homeless in the last three years.

The Program Model:

The model which we have selected to best meet the transitional housing needs of homeless veterans involves three components: 1) Case management with Wrap Around supportive services; 2) Aspects of the therapeutic community treatment approach; 3) Progression through the program will be individualized and assessed on an ongoing basis. One of the strengths of this proposal is the myriad of additional community agencies whose services will be integrated in a Wrap Around approach to meet the holistic needs of the homeless veterans being served.

Aspects of the therapeutic community model which will be implemented in the proposed Transitional Housing Program include:

--Peers as role models, in which all members of the community are expected to demonstrated the desired behaviors and reflect the values and teachings of the community;

- Structured days, where ordered, routine activities counter the characteristically disordered lives of program participants and distract them from negative thinking;
- Work as therapy and education, where all participants are responsible for the daily management of the home;
- Community activities, including a schedule of group meetings, team job functions, and organized recreational time;
- Continuity of care, in which completion of the residential portion of the program is not the end, but rather a stage in the transitional process, and follow-up services are an essential component in the continuum.

Overall the purpose of the transitional program will be to provide homeless veteran men, ages 18 and older, a safe and structured living environment that is supportive of their recovery efforts. The ten bedroom/twenty bed facility will provide a drug and alcohol-free homelike environment for individuals who are self-sustaining but who require a minimal level of support and assistance to maintain a stable living environment. The building will operate twenty-four (24) hours per day, 365 days per year with a program designed to maximize opportunities for employment, education, health, recreation, family and social relationships, and overall living skills. A 24 hour on-call case manager will be available at all times, in conjunction with a Case Manager or a Senior Veteran Resident.

Goals of the Transitional Housing Program:

Volunteers of America Wyoming & Montana proposes to establish 20 transitional housing beds, all of which will be designated for male veterans. It is projected that 25 homeless veterans will be served in this transitional housing program each year. Potentially 11% of those classified as homeless veterans for the VAMC Ft. Harrison could also be served by this proposed program within the first year of operation. We estimated that 50 homeless veterans in the VISN 19 area could potentially be served within 2 years.

Following are some of the objectives related to residential stability, increased skill level and/or income and greater self-determination of residents. Success in one goal area positively impacts success in the other areas.

- 85% of program participants will participate in the basic home maintenance-training component of the Life Skills Training curriculum.
- 70% of all program participants exiting the program will enter stable, adequate permanent housing.
- 90% of unemployed homeless veterans in the Transitional Housing Program will participate in Employment Readiness Training.
- 60% of program participants in need of educational enhancement will participate in GED or other educational programs.
- 75% of those participating in a formal job-training program will be gainfully employed before exiting Transitional Housing.

services coupled with supportive services. Services that will be provided directly by VOA are listed below; all of these services will be provided on-site:

--Case Management. This will be the organizing hub for all services provided to the homeless veterans. The Case Manager will work with program participants to assess needs/strengths and develop an individualized service and housing plan.

Goals will be developed based on a general systems approach, where all areas that influence the individual's life are addressed; these goals will include the areas of employment, education, physical health, mental health, family relations, social supports and permanent housing planning. Progress on the service plan will be monitored and reviewed at least weekly. The ratio of Case Managers to program participants will be no more than 1:10.

--Senior Transitional Resident Leadership. A select individual within the program will be chosen based upon their furtherance in the continuum of care, self sufficiency, leadership potential, military rank and ability to be a Senior Resident. That Senior Resident, when staff is not on the premise, will help provide accountability within the home, aid fellow residents with awareness of community resources, and encourage social interaction. Through this innovative structure, it is our hope to motivate residents to realize their full potential through a structure they feel comfortable with to help them achieve the three VA goals of residential stability, increased skills and income and greater self determination.

--Life Skills Training. This will be conducted daily through both Case Manager instruction and/or hands on experience. Participants will learn (or re-learn) such critical skills as budgeting, fiscal management, stress management, social coping, home maintenance, anger management, conflict resolution, meal planning and preparation, and relapse prevention.

--Employment Readiness Training. Barriers to employment will be addressed, as participants learn pre-employment skills such as interviewing, developing a resume, dealing with authority and presenting yourself with confidence.

--Permanent Housing Placement. Through the case management process, VOA's Case Managers and program participants will explore appropriate options for permanent housing upon program completion, as well as address barriers to maintaining that housing.

--Aftercare Counseling. Before being placed in permanent housing, the program participant and Case Manager will develop an aftercare plan. This plan will outline services and resources which the formerly homeless veteran will secure to reduce the likeliness of a return to homelessness. Once in permanent housing, the veteran will continue to have contact with VOA staff through structured aftercare programs.

Many of these services will be provided on-site. Supportive services provided by other agencies will include:

- Substance Abuse and Mental Health Treatment: provided through the VA and through referral to the VA Full Service Medical Center and other community organizations.
- Job Training and Placement: provided on and off-site through VA Compensated Work Therapy.

- Medical Care: provided off site through VA Clinical Nurse Specialists and at the Ft. Harrison VAMC.
- Educational Services: provided through referral to the Veterans Upward Bound Program, the Housing Authority of Billings, Yellowstone County Family Drug Treatment Court, St. Vincent de Paul, the Billings Mental Health Center, the Yellowstone County Council on aging, the Downtown Billings Alliance, Montana Rescue Mission, Planned Parenthood of Montana, the Native American Development Council, the Montana Migrant Council, the Interfaith Hospitality Network, the Yellowstone AIDS project, the Rimrock Foundation, the Friendship House, RSVP of Yellowstone County, District 7 HRDC, T.E.A.M. Mentoring, Inc., Healthcare for the Homeless, the Social Security Administration and Montana State University.

Program Participants Housing Role:

Program participants with staff oversight, will have primary responsibility for operating and maintaining the transitional housing facility. The members themselves will be given responsibility for the daily management of the facility, including cleaning, coordinating schedules, preparing for group meetings, developing the house rules, and planning and preparing some of the meals. This assignment of job functions will provide opportunities for skills development and personal growth. As such, giving program participant's responsibility for maintaining and operating the transitional housing facility is one way in which the formerly homeless veterans being served will develop a sense of ownership, pride, dignity and self-determination in their environment.

In addition to the role of participants operating and maintaining the housing, a select individual within the program will be chosen based upon their furtherance in the continuum of care, self sufficiency, leadership potential and ability to be a Senior Resident that will help to answer questions and be available to problem solve minor issues within the transitional home. This resident will typically be a high ranking veteran within the military and capable to call a Case Manager and/or the 24 hour on-call system within VOA when the Case Managers are not in the facility, especially during the night.

VOA staff will assume ultimate responsibility for ensuring the transitional housing is safe and in compliance with federal, state, local and other regulatory requirements; however, they will fulfill this responsibility by training and empowering residents to understand and adhere to these applicable codes. In other words, residents will assume responsibility for operating and maintaining the home; staff will help teach residents the tools they need to meet this responsibility and will offer the checks and balances necessary to ensure essential issues do not fall through the cracks.

Experience has taught VOA staff that the more we can help our program participants learn to access neighborhood activities, services and community businesses, the greater the likelihood that they will be able to maintain their

permanent housing long-term. Thus, integrating participants into community resources is an ongoing goal of all VOA programs. In addition to all of the supportive services which we will help our residents access, many of which will be on-site, we will also help homeless veterans connect with more informal support systems in the community. VOA will foster independence of program participants by prompting them to develop a support system of sponsors, mentors, and recovering individuals outside of the VOA auspices. We will maintain a community news board in a main room of the facility, where information regarding community supports, providers, activities, a calendar and transportation will be readily available.

Program participants will be accountable for looking outside themselves and beginning to discover ways in which they can give back to the community. Many homeless veterans will enter the program feeling isolated, resentful and fearful of the community in general. To address this, all residents will be required, in a safe and incremental manner, to become involved in volunteer community service work. This will generally be conducted in groups and will be tailored to meet the needs and skills of the participant. Special emphasis will be placed on activities that demonstrate being good neighbors in the immediate vicinity of the Transitional Housing facility.

Community Interface:

VOA staff will demonstrate to program participants that they are full participating members of the Billings community and, as such, have a right to enjoy all the activities available to the general public. Regular activities will be scheduled to show residents the many positive things our community has to offer. Outings will include trips to Yellowstone National Park, Custer's Battlefield and Reenactment, Pompey's Pillar Historical Monument, Zoo Montana or a number of major sporting events held at the Metra Park in Billings, as well as feature films, community fairs, museums and other community events.

By becoming actively involved in the community and its activities, program participants learn that the community does not have to be a fearful, uninviting place. Assimilation into the Billings community will be an important part of the growth of program participants, increasing the likelihood of residential stability once they leave the Transitional Housing Program. The proposed facility will have direct access to a bus line, therefore in cases when our proposed van transportation is not available or appropriate, residents will be able to self serve their transportation needs. All residents will be expected to save enough money to purchase transportation including a bicycle or car at some point in the program.

The affordable housing system in the Billings, Montana area has been outlined for inclusion into the VOA Transitional Housing Program and for linkage to individuals who are ready to live independently. The primary permanent housing options that VOA will use for Transitional Housing Program residents are: Montana Affordable Housing and the Housing Authority of Billings, the Human

Resource Development Council (HRDC) District 7, homeWORD (an affordable housing development in Billings), and the Native American Development Council.

As mentioned previously under the Services Provided section, we will plan to partner with many State and local entities in relation to the VOA Veterans Transitional Housing Program.

Program Staffing:

Two full-time employees will be employed by VOA to train, mentor and transition resident veterans into societal re-entry.

Site & Facility Description:

The site plan includes construction of a 6,550 square foot facility on the 2.015 acre community commercial property at 700 Lake Elmo Road, Billings. (See page 17.) The facility will be within minimal distance of local destinations, such as restaurants, convenience stores, parks and health services and Veteran's Administration facilities.



The structure will accommodate 10 bedrooms with shower facilities, common living areas, recreational space, a laundry room, a kitchen, office and meeting room space and a dining room. (See page 16.)

Project Budget:

Total Project Cost	65% of Total Cost (VA)	35% of Total Cost (VOA)
\$2,031,600.00	\$1,320,540.00	\$711,060.00

JON TESTER
MONTANA

COMMITTEES:
SMALL BUSINESS
BANKING
INDIAN AFFAIRS
VETERANS' AFFAIRS
ENERGY AND
NATURAL RESOURCES
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

United States Senate

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SUITE 204
WASHINGTON, DC 20510
202-224-2644

MONTANA TOLL FREE NUMBER
1-866-554-4403

INTERNET:
<http://tester.senate.gov/contact>

May 29, 2008

Volunteers of America Wyoming & Montana
1439 Main Street, Suite 1B
Billings, MT 59105

Dear Friends,

I want to congratulate and praise the Volunteers of America on their success in reaching a critical stage in their effort to establish a good facility for homeless veterans here in Billings.

I wrote to the VA in April to encourage quick approval of this proposal and I am glad to see that things are moving along. I was proud to support this project from the get-go and look forward to seeing it through to completion.

Programs like this one are critically important to our communities. Thanks to folks like you, we're providing better opportunities and brighter futures for those veterans most in need.

I want to say thank you to the entire Billings community and everyone else who has worked hard to make this happen. I look forward to following your progress as we move ahead.

Respectfully,



Jon Tester
United States Senator

BOZEMAN
(406) 586-4450

BUTTE
(406) 723-3277

GLENDIVE
(406) 365-2391

GREAT FALLS
(406) 452-9585

HELENA
(406) 449-5401

KALISPELL
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BILLINGS
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JON TESTER
MONTANA

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MONTANA TOLL FREE NUMBER
1-888-554-4403

INTERNET:
<http://tester.senate.gov/contact>

April 3, 2008

VA Homeless Providers Grant and Per Diem Program
Department of Veterans Affairs
10770 N. 46th Street, Suite C-200
Tampa, FL 33617

Re: Transitional Housing for Veterans in Sheridan, WY

I am writing in strong support for a grant application being submitted by Volunteers of America Wyoming & Montana to provide transitional housing to veterans. The grant being sought by Volunteers of America is a Homeless Providers Grant and Per Diem Program Capital Grant through the Department of Veteran Affairs.

Volunteers of America Wyoming & Montana in partnership with the Veterans Administration Medical Center (in Sheridan, Wyoming), and with the active involvement of community-based agencies, seeks to establish a 10-bed transitional housing program with Wrap Around supportive services for the substantial population of homeless veterans in the VISN 19 area. According to the most recent CHALENG Survey Results Summary (2006), there is the need for a 10-bed operation in Sheridan. This data coupled with the fact that young veterans from Iraq and Afghanistan are now entering the homeless cycle in both states challenges Volunteers of America to employ methods to stabilize all aspects of veteran health.

Volunteers of America has a long-standing experience in serving veterans with disabilities and disadvantages through its comprehensive community homeless shelter services, correctional programs and community enhancement. It is this experience, their relationship with the local community, and their nine-year history in serving homeless veterans that will ensure a successful expansion of the organization's service to include this important housing program for homeless veterans.

I urge you to give every consideration to this grant application, and I appreciate your attention to this matter.

Respectfully,



Jon Tester
United States Senator

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(406) 586-4450

BUTTE
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GLENDIVE
(406) 365-2391

GREAT FALLS
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KAUSPELL
(406) 257-3360

MISSOULA

10

MISSOULA

Denny Rehberg
State of Montana

Appropriations Committee
Labor, Health and Human
Services, and Education
Financial Services

Congress of the United States
House of Representatives
Washington, DC 20515

February 27, 2008

Jessica A. Flahive
Communications Coordinator
Volunteers of America Wyoming & Montana
1309 Coffeen Ave., Suite A
Sheridan, WY 82801

Dear Jessica:

I am writing this letter on behalf of the Volunteers of America Wyoming & Montana as they seek a Department of Veteran Affairs grant to provide transitional housing to Montana Veterans.

Volunteers of America Wyoming & Montana, in partnership with Fort Harrison, seek to establish a 20-bed Transitional Housing Program with supportive services for the substantial population of homeless veterans in Wyoming and Montana. According to recent surveys there is currently a need for a 20-bed operation in Billings. With young veterans returning home from Iraq and Afghanistan, the need for this type of service is becoming even more evident.

Volunteers of America has a long-standing experience in serving veterans with disabilities and disadvantages through its comprehensive community homeless shelter services, correctional programs and community enhancement. I urge you to give every consideration to this grant application and I appreciate your attention to this matter.

Sincerely,


Denny Rehberg
Montana's Congressman

DRR:ksm

11

516 Cannon House Office Building
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(202) 225-9211

1201 Grand Avenue, Suite 1
Billings, MT 59102
(406) 255-1019
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(406) 454-1066

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Yellowstone County



COMMISSIONERS
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(406) 256-2777 (FAX)

P.O. Box 35000
Billings, MT 59107-5000
commission@co.yellowstone.mt.us

March 7, 2008

VA Homeless Providers Grant and Per Diem Program
Department of Veterans Affairs
10770 N. 46th Street, Suite C-200
Tampa, FL 33617

Re: Transitional Housing for Veterans in Billings, MT

To Whom It May Concern:

We are writing in strong support for a grant application being submitted by Volunteers of America Wyoming & Montana to provide transitional housing to Montana Veterans. The grant being sought by Volunteers of America is a Homeless Providers Grant and Per Diem Program Capital Grant through the Department of Veteran Affairs.

Volunteers of America Wyoming & Montana in partnership with the Veterans Administration Medical Center (Ft. Harrison), with the active involvement of community-based agencies, seeks to establish a 20-bed Transitional Housing Program with Wrap Around supportive services for the substantial population of homeless veterans in the VISN 19 area. According to the most recent CHALENG Survey Results Summary (2006), there is the need for a 20-bed operation in Billings. This data, coupled with the fact that young veterans from Iraq and Afghanistan are now entering the homeless cycle in both states, challenges Volunteers of America, as the service provider of choice, to employ methods to stabilize all aspects of veteran health.

Volunteers of America have long-standing experience in serving veterans with disabilities and disadvantages through its comprehensive community homeless shelter services, correctional programs and community enhancement. It is this experience, their relationship with the local community, and their nine-year history in serving homeless veterans, that will ensure a successful expansion of the organization's service continuum to include this important transitional housing program for homeless veterans.

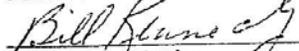
We appreciate your attention to this matter and urge you to give every consideration to this grant application.

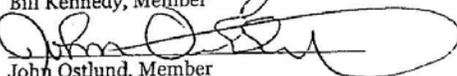
Sincerely,

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

Absent

James E. Reno, Chairman


Bill Kennedy, Member


John Ostlund, Member

BOCC/ptb

Yellowstone County



COMMISSIONERS
(406) 256-2701
(406) 256-2777 (FAX)

P.O. Box 35000
Billings, MT 59107-5000
commission@co.yellowstone.mt.gov

February 26, 2008

To Whom It May Concern:

I am writing in strong support for a grant application being submitted by Volunteers of America Wyoming & Montana to provide transitional housing to Montana Veterans. The grant being sought by Volunteers of America is a Homeless Providers Grant and Per Diem Program Capital Grant through the Department of Veteran Affairs.

Volunteers of America Wyoming & Montana in partnership with the Veterans Administration Medical Center (Ft. Harrison), with the active involvement of community-based agencies, seeks to establish a 20-bed Transitional Housing Program with Wrap Around supportive services for the substantial population of homeless veterans in the VISN 19 area. According to the most recent CHALENG Survey Results Summary (2006), there is the need for a 20-bed operation in Billings. This data coupled with the fact that young veterans from Iraq and Afghanistan are now entering the homeless cycle in both states challenges Volunteers of America, as the service provider of choice, to employ methods to stabilize all aspects of veteran health.

Volunteers of America has a long-standing experience in serving veterans with disabilities and disadvantages through its comprehensive community homeless shelter services, correctional programs and community enhancement. It is this experience, their relationship with the local community, and their nine-year history in serving homeless veterans, that will ensure a successful expansion of the organization's service continuum to include this important transitional housing program for homeless veterans.

I urge you to give every consideration to this grant application, and I appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Bill Kennedy". The signature is written in a cursive style.

Bill Kennedy
County Commissioner



CITY OF BILLINGS POLICE DEPARTMENT

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



March 17, 2008

VA Homeless Providers Grant and Per Diem Program
Department of Veterans Affairs
10770 N. 46th Street, Suite C-200
Tampa, FL 33617

Re: Transitional Housing for Veterans in Billings, MT

To Whom It May Concern:

I am writing in support for a grant application being submitted by Volunteers of America Wyoming & Montana to provide transitional housing to Montana Veterans. The grant being sought by Volunteers of America is a Homeless Providers Grant and Per Diem Program Capital Grant through the Department of Veteran Affairs.

Volunteers of America Wyoming & Montana in partnership with the Veterans Administration Medical Center (Ft. Harrison), with the active involvement of community-based agencies, seeks to establish a 20-bed Transitional Housing Program with Wrap Around supportive services for the substantial population of homeless veterans in the VISN 19 area. According to the most recent CHALENG Survey Results Summary (2006), there is the need for a 20-bed operation in Billings. This data coupled with the fact that young veterans from Iraq and Afghanistan are now entering the homeless cycle in both states challenges Volunteers of America, as the service provider of choice, to employ methods to stabilize all aspects of veteran health.

Volunteers of America has a long-standing experience in serving veterans with disabilities and disadvantages through its comprehensive community homeless shelter services, correctional programs and community enhancement. It is this experience, their relationship with the local community, and their nine-year history in serving homeless veterans, that will ensure a successful expansion of the organization's service continuum to include this important transitional housing program for homeless veterans.

I urge you to give every consideration to this grant application, and I appreciate your attention to this matter.

Sincerely,

Rich St. John
Chief of Police

14

*Billings Pride:
City-wide*



COMMUNITY DEVELOPMENT DIVISION
510 NORTH BROADWAY, 4TH FLOOR
PO BOX 1178
BILLINGS, MONTANA 59103



March 10, 2008

VA Homeless Providers Grant and Per Diem Program
Department of Veterans Affairs
10770 N. 46th Street, Suite C-200
Tampa, FL 33617

Re: Transitional Housing for Veterans in Billings, MT

To Whom It May Concern:

It is with pleasure I write this letter of support for a proposed Veteran's Housing project in Billings. The City of Billings supports increasing our affordable housing stock to address housing needs in our community. This type of project meets a priority goal of the Consolidated Plan to increase and maintain the stock of affordable rental housing for low to moderate income residents.

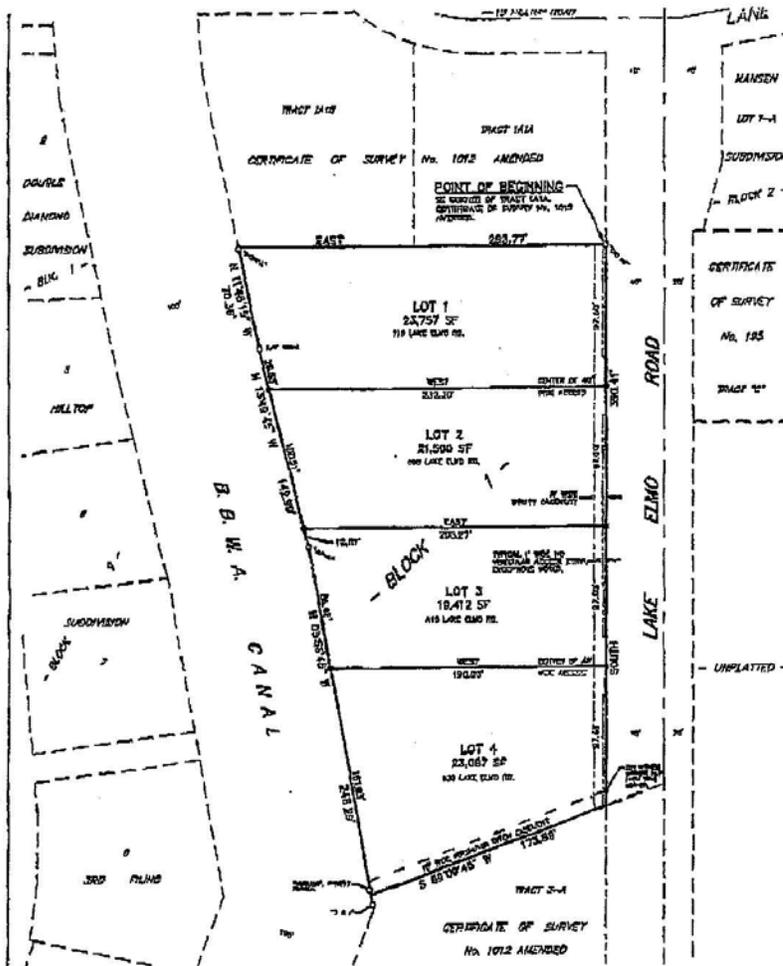
As the facilitator of the Mayor's Committee on Homelessness, the need for transitional housing for veterans has been demonstrated anecdotally and through local Continuum of Care surveys. At any given time, almost 50 veterans are living in Billings without housing and suffer from addiction, unemployment and disabilities.

The Community Development Division administers Community Development Block Grant and HOME Investment Partnerships Program as an entitlement through the U.S. Department of Housing and Urban Development. Our Consolidated Plan strategies focus on increasing and maintaining the affordable housing stock in Billings, neighborhood revitalization, and creating partnerships to promote affordable housing and economic opportunity for low income residents.

Should you have questions or require additional information, please contact me at 406.657.8286 or beckettb@ci.billings.mt.us.

Sincerely,

Brenda Beckett
Community Development Manager



BASES OF BEARRING CERTIFICATE OF SURVEY No. 101
 o = FOUND 2 1/2" REBAR OR REBAR WITH CAP MARK
 * = SET 2 1/2" REBAR WITH CAP MARKED WITH UNRECORDED AND SURVEYOR AND ENGINEER

CERTIFICATE OF OPIFICATION
 STATE OF MONTANA
 County of Yellowstone
 KNOW ALL MEN BY THESE PRESENTS, that Edward M. Hansen, owner of the following described lots of land, to-wit: a certain, subdivided and platted into lots, blocks and blocks being situated in the NW 1/4 of Section 22, T. 1 N., R. 10 W., and tract being more particularly described as follows:
 Beginning at a point which is the southeast corner of TRACT 1-A, Block 2, and the west subdivision of 28.41 AC. BEARING AND DISTANCE S 89°50' E 107.00 FT. to a distance of 242.28 feet from a true bearing of 114°45' W a distance of 70.25 feet to the point of beginning.
 There is no park requirement for this minor subdivision.
 The undersigned hereby grants into full and complete title by Montana Law, and under favorable conditions, an easement right and interest in the above described and across the "ELMO ROAD" to have and hold forever.
 This tract to be known and designated as BLOCK 2 subdivision with the subdivision.

STATE OF Montana
 County of Yellowstone
 On this 17th day of August, 2006, before me, Notary Public for the State of Montana, Edward M. Hansen, known to me to be the person who signed and acknowledged to me that they executed the same. Wherein both states within:
 Notary Public is and for the State of Montana
 Edward M. Hansen

CERTIFICATE OF SURVEYOR
 STATE OF MONTANA
 County of Yellowstone
 The undersigned, a Montana Registered Land Surveyor and was that during the month of July, 2006, a survey was of a tract of land to be shown as BEARING AND DISTANCE S 89°50' E 107.00 FT. to a distance of 242.28 feet from a true bearing of 114°45' W a distance of 70.25 feet to the point of beginning and as shown on the enclosed plat out of the above and county the conditions shown and not over 27,000 square feet.
 ENGINEERING, INC.
 By: *[Signature]*
 Montana Registration No. 8273

Subscribed and sworn to before me, a Notary Public on this 17th day of August, 2006.
[Signature]
 Notary Public is and for the State of Montana
 Edward M. Hansen
 Notary Public is and for the State of Montana
 My commission expires 2/14/10

NOTICE OF PLANNING BOARD APPROVAL
 STATE OF MONTANA
 County of Yellowstone
 This plat has been approved by the City of Elmo Planning and Zoning Commission on this 17th day of August, 2006.
 Date: 8/17/06
[Signature]
 Planning Board
 City of Elmo

ADDRESS AND DIMENSIONS REVIEW
 I hereby certify that I have compared the proposed plat for errors and omissions in subdivisions and divisions in the City of Elmo.
[Signature]
 City Engineer

CERTIFICATE OF COUNTY TREASURER
 I hereby certify that all fees and deposits have been paid for this subdivision.
 Date: 8-16-2006
[Signature]
 County Treasurer

CERTIFICATE OF CITY ATTORNEY
 This document has been reviewed by the City Attorney and is acceptable as to form.

CERTIFICATE OF APPROVAL BY CITY ENGINEER
 STATE OF MONTANA
 County of Yellowstone
 I hereby certify that the enclosed and foregoing plat conforms with Section 26-2-101(2)(a), M.C.A. for the proposed subdivision since the plat is found to conform to the provisions and the plat will be provided with required notices for the property and the division of space and with notes.
 IN WITNESS WHEREOF, I have executed this CERTIFICATE OF APPROVAL on this 17th day of August, 2006.
[Signature]
 City Engineer

CERTIFICATE OF CITY COUNCIL APPROVAL
 STATE OF MONTANA
 County of Yellowstone
 We hereby certify that we have examined the enclosed and foregoing PLAT OF BEARING AND DISTANCE S 89°50' E 107.00 FT. to a distance of 242.28 feet from a true bearing of 114°45' W a distance of 70.25 feet to the point of beginning and as shown on the enclosed plat out of the above and county the conditions shown and not over 27,000 square feet.
 IN WITNESS WHEREOF, we have set our hands and the seal of the CITY OF ELMO, MONTANA, this 17th day of August, 2006.



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Public Hearing and Resolution Authorizing Filing of the Annual Federal Transit Administration Section 5307 Grant
DEPARTMENT: Aviation and Transit Department
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Each year the City of Billings MET Transit Division applies for a Federal Transit Administration (FTA) Section 5307 formula grant through the U.S. Department of Transportation's Federal Transit Act, SAFETEA-LU. Through this Act, grant funds are allocated each year for the MET, which can be utilized for both operating costs and capital assistance. For FY 08/09, as we have for a number of years, the MET is intending to utilize this grant for assistance with operating costs. This grant is funded on a 50% Federal, 50% local basis. The FTA will reimburse the City for 50% of MET's eligible operating expenses, up to the apportioned allocation for the year, which will be \$1,336,479 for FY 08/09.

In order to apply for this grant, it is necessary to include with the grant application, a resolution formally authorizing the Mayor to execute the grant agreement with the Department of Transportation (DOT). There is also a requirement for a public hearing for this grant application. Public hearing notices were published in the Billings Times on May 22 and June 5, advertising a public hearing on June 23, 2008.

FINANCIAL IMPACT: For FY 08/09, the Section 5307 Federal grant application for operating assistance is \$1,336,479, which represents approximately 30% of the MET's operating revenue. Without this grant revenue to offset operating costs, the MET would need to drastically reduce the service it provides to the community. This amount was budgeted in our proposed FY 08/09 budget.

RECOMMENDATION

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

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

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

ATTACHMENT

A - Authorizing Resolution (2 pages).

AUTHORIZING RESOLUTION

RESOLUTION NO. 08-

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

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

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

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

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

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

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

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

APPROVED this 23rd day of June 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, CITY CLERK

CERTIFICATE

The undersigned duly qualified and acting City Clerk of the City of Billings certifies that the foregoing is a true and correct copy of a Resolution, adopted at a legally convened meeting of the Billings City Council held on June 23, 2008.

If applicant has an Official Seal, impress here.

(Seal)

Signature of Recording Officer

Title of Recording Clerk

Date

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 23, 2008

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

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

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

1. General Fund (010)-City Attorney (16) – This request is to increase the salaries budget by \$65,000 for the City Attorney in the General Fund. The attorney position was approved in the 2008 budget, but the salaries for this position were not budgeted. The revenue has been collected in FY 08 through the Cost Allocation Plan.
2. General Fund (010)-Municipal Court (12) – This request is to increase the budget for Municipal Court. Court is requesting budget amendments for teamster overtime of \$13,000, office supplies of \$10,000, contract services of \$5,000, and contract labor of \$26,000. The advertising budget for employee recruitment needs to be increased by \$10,000. The budget also needs to increase for employee parking of \$1,700 and telephone of \$5,000 because the original budget was estimated too low. The transfer to the Municipal Drug Court Grant needs to be increased by \$9,600 due to increase in the cost of testing the participants. Reserves will be used since there won't be any additional revenue.
3. General Fund (010)-Nondepartmental (14)/Development Services Grants (280)-Home Program – A transfer from the General Fund to the Home Program is needed to reimburse it for expenditures that were not paid by federal grants. Money was spent on Kings Green in the early 2000's from the Home Program. The criterion was never met to allow a reimbursement from the grant program. This budget amendment

- request increases the General Fund-Nondepartmental budget by \$150,000 for the transfer to the Home Program. The Home Program revenue item increases by the same amount. Reserves will be used since there won't be any additional revenue.
4. General Fund (010)-Nondepartmental (14) – This request is to increase the budget for Nondepartmental for Website services \$17,500. There is no increase in the revenue budget. Reserves will be used since there won't be any additional revenue.
 5. General Fund (010)-Code Enforcement (43) – The contracted service \$9,000 original budget for mowing weeds needs additional budget authority of \$62,000. About \$42,000 of this budget increase is from mowing services during July, August, and September of 2007. The other \$20,000 of the budget is from mowing services to be paid for in May and June of 2008. The weed cutting charges up to now have been billed to the property owner on file at the County. Charges incurred with future weed cutting will be billed to the property owner on file at the time the weed cutting takes place. Training services are over budget by \$1,000. Also, Salaries are projected to be over budget by \$7,000 and the related benefits are projected to be over budget by \$3,000 due to employees cashing out compensatory time.
 6. Public Safety (150)-Police (21) – The Police department has had numerous retirements. An increase in the sick & vacation payoffs budget of \$0 is requested to cover the costs created by the unanticipated retirements. Reserves will be used since there won't be any additional revenue.
 7. Public Safety (150)-Fire /Fire Programs (221) – The FEMA grant for the confined space equipment has a 20% local match. This request is to transfer the local match of \$5,062 from the Public Safety Fund to the Fire Programs Fund. Reserves will be used since there won't be any additional revenue.
 8. Municipal Drug Court Grant (248) – The DUI task force from Yellowstone County gave Drug Court \$5,000. Thus, this request is to increase both revenue and expenditure budgets by \$5,000.
 9. Police Programs Fund (718)-Drug Fines and Forfeitures – The Police Department is requesting a budget amendment to spend the drug fines and forfeitures collections for additional mobile data equipment including a server for \$8,000, repair and upgrade to the firearms simulator for \$17,700, DNA testing for \$5,000, advanced undercover training for \$4,000, and SWAT team equipment for \$20,000. On June 28, 2007, the Department of Criminal Investigation redirected \$20,000 of a large forfeiture to the Billings Police Department. They asked that the City spend it on specific items for the City SWAT Team, including: 8 handgun conversion kits, 13 shoulder fired weapon conversion kits, protective equipment, Simunition ammunition, and a storage cage. Revenue will not increase because there is sufficient cash to cover these expenditures.

10. Parks Programs Fund (769) – The Parks department is requesting an increase in the budget for the Parks Program Fund for ground maintenance for Dehler Park of \$33,000 and Park & Recreation Capital Improvements for completion of the Central Park Playground of \$58,000. Revenue will not increase because there is sufficient cash to cover these expenditures.
11. Parks Maintenance District Fund – PMD – (872) – The PMD budget is projected to need additional budget authority in electricity of \$12,000. Water services for the parks are over budget by \$15,000. Due to increasing costs in the ground maintenance line item, this line item needs additional budget of \$15,000. The parks charge for services budget for charges from other city departments needs additional budget of \$43,000. Also, the special assessments for the parks annual taxes needs additional budget of \$1,000. Revenue will not increase because there is sufficient cash to cover these expenditures.
12. Street Light Maintenance Districts Fund (810) – Public Works is requesting a budget amendment to increase the electricity budget by \$35,000 because the costs are significantly more than estimated. Revenue will not increase because there is sufficient cash to cover these expenditures.
13. Central Services Fund (605) – This budget amendment is requested to add budget authority for a copier in the office equipment account. One of the copiers failed unexpectedly and needed replacement immediately. Revenue will not increase because there is sufficient cash to cover these expenditures.
14. South Tax Increment #5 Construction Fund (432) – This budget amendment request is for right-of-way purchases, easements, equipment and financing costs in the amount of \$300,000 for King Avenue East. There is no revenue budget because financing will not occur until July 2008. In the interim, expenditures will be covered by interfund loans from the Gas Tax Fund.
15. Public Works - 2004A Street Improvements Construction Fund (493) – The final payment from this fund for construction for Alkali Creek Road Improvements has been determined. Budget authority of \$7,700 is needed. This payment will use the last of the cash in this fund.
16. Golf Course Fund (550) – The debt service was completed from the loan for the construction of the club house at the Exchange Club Par 3 Golf Course. Principle and interest payments of \$44,000 were paid in advance in FY2008 to save on interest in future years and additional budget authority is needed for \$44,000.

RECOMMENDATION

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

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

ATTACHMENT

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

RESOLUTION 08-

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

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

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

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT A)

PASSED AND APPROVED by the City Council, this 23rd day of June, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

EXHIBIT A

Revenue Expenditure

010- General Fund-City Attorney (16)

This request is to increase payroll for City Attorney in the General Fund. There is no increase in the revenue budget.

010-1611-416	1110		65,000	Salaries
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010- General Fund – Municipal Court (12)

This request is to increase the budget for Municipal Court for teamster overtime, contract services, office supplies, contract labor, advertising, telephone, employee parking, and transfer to other funds. There is no increase in the revenue budget, general fund reserves will be used.

010-1212-412	3990		5,000	Contract Servcies
010-1220-412	2190		10,000	Office Supplies
010-1212-412	1240		13,000	Teamster Overtime
010-1220-412	3581		26,000	Contract Labor
010-1220-412	3370		10,000	Advertising
010-1220-412	3450		5,000	Telephone
010-1220-412	3963		1,700	Employee Parking
010-1220-412	8225		9,600	Transfer to other

010- General Fund – Nondepartmental (14)

280 – Development Services Grants Fund - Home Program

A transfer from the General Fund to the Home Program is needed to reimburse it for expenditures that were not paid by federal grants. This budget amendment request is an increase to the General Fund-Nondepartmental budget for the transfer to the Home Program.

010-1412-414	8225		150,000	Transfer to other Funds
280-6581-383	7515	150,000		Transfer from General Fund

EXHIBIT A (continued)

Revenue Expenditure

010- General Fund – Nondepartmental (14)

This request is to increase the budget for Nondepartmental for Website services by \$17,500. There is no increase in the revenue budget, general fund reserves will be used.

010-1412-414	3552	17,500	Website Services
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010- General Fund – Code Enforcement (43)

The contracted service for mowing weeds needs additional budget of \$62,000. About \$42,000 of this budget increase is from mowing services during July, August, and September of 2007. The other \$20,000 of the budget is from mowing services to be paid for in May and June.

010-4321-419	3586	62,000	Mowing / weed abatement
010-4321-419	3822	1,000	Technical training
010-4321-419	1110	7,000	Salaries
010-4321-419	1430	3,000	Benefits

150- Public Safety Fund - Police (21)

This request is to increase the Public Safety Fund / Police department sick & vacation payoff budget to pay accumulated sick and vacation time to police department employees retiring in fiscal year 2008. There is no increase in the revenue budget, general fund reserves will be used.

150-2111-421	#	1500	- Sick & Vacation Payoffs
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EXHIBIT A (continued)

Revenue Expenditure

150– Public Safety Fund - Fire (22)

221 – Fire Programs Fund

The FEMA grant for the confined space equipment has a 20% local match. The budget amendment is requested for \$5,062 to transfer the local match from the Public Safety Fund to the Fire Programs Fund.

150-2229-422	#	8225		5,062	Transfer to other Funds
221-2238-383	#	7553	5,062		Transfer from Public Safety

248 – Municipal Court Drug Grant Fund

The DUI Task Force from Yellowstone County has donated \$5,000 for Drug Court. The money will be spent on medical services.

248-1252-334	#	2060	5,000		Intergovernmental revenue
248-1252-419	#	3910		5,000	Medical services

718 – Police Programs Fund-Drug Fines and Forfeitures

The Police department is requesting that money collected from drug fines and forfeitures be spent on training, DNA testing, small items of equipment, and computer equipment. Revenue will not increase because there is sufficient cash to cover these expenditures.

718-2160-421	#	3824		4,000	Training
718-2160-421	#	3569		5,000	DNA testing
718-2160-421	#	2120		28,000	Small Items
718-2160-421	#	9480		17,700	Computer Equipment

EXHIBIT A (continued)

Revenue Expenditure

769– Parks Programs Fund

The Parks department is requesting an increase to the budget for the Parks Program Fund for ground maintenance for Dehler Park and Park & Recreation Capital Improvements for completion of the Central Park Playground. Revenue will not increase because there is sufficient cash.

769-5182-452	#	3650	33,000	Ground Maintenance
769-5182-452	#	9370	58,000	Parks & Recreation Capital Improvements

872 - Parks Maintenance District Fund

Parks Maintenance District Fund – PMD – (872) – The PMD budget is projected to need additional budget authority in electricity of \$12,000. Water services for the parks are over budget by \$15,000. Due to increasing costs in the ground maintenance line item.

872-5198-452		3410	12,000	Electricity
872-5198-452		3420	15,000	Water
872-5198-452		3650	15,000	Ground maintenance
872-5198-452		3968	43,000	Parks charges for services
872-5198-452		5410	1,000	Special assessments

EXHIBIT A (continued)

Revenue Expenditure

493 - Public Works - 2004A Street Improvements Construction Fund

The final payment from this fund for construction for Alkali Creek Road Improvements has been determined. Budget authority of \$7,700 is needed.

493-3112-431 9310 7,700 Capital outlay

550 - Golf Course Fund

The debt service was completed from the loan for the construction of the club house at the Exchange Club Par 3 Golf Course. Principle and interest payments of \$44,000 were paid in advance in FY2008 to save on interest in future years and additional budget authority is needed.

550-5152-451 6100 44,000 Principal and interest

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Public Hearing to Vacate Portions of Lake Hills Subdivision 25th Filing, Right-of-Way

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The plat of Lake Hills Subdivision 25th Filing Amended is reconfiguring lots within the existing Lake Hills Subdivision 25th Filing. The property owners include Sue Lovely, Steve Judd, and Laurie Taylor. Vacation of above mentioned right of way is contingent on approval of the preliminary subdivision plat. This subdivision will require right-of-way to be vacated for portions of the existing Lake Hills Subdivision 25th Filing. The attached Exhibit A shows the right-of-way to be dedicated and vacated.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There will be no financial impact to the City. The City Engineer's Office recommends the right-of-way be vacated at no cost due to the fact that the right of way to be dedicated with the Amended Plat of Lake Hills Subdivision 25th Filing is larger than the right of way proposed to be vacated.

RECOMMENDATION

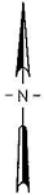
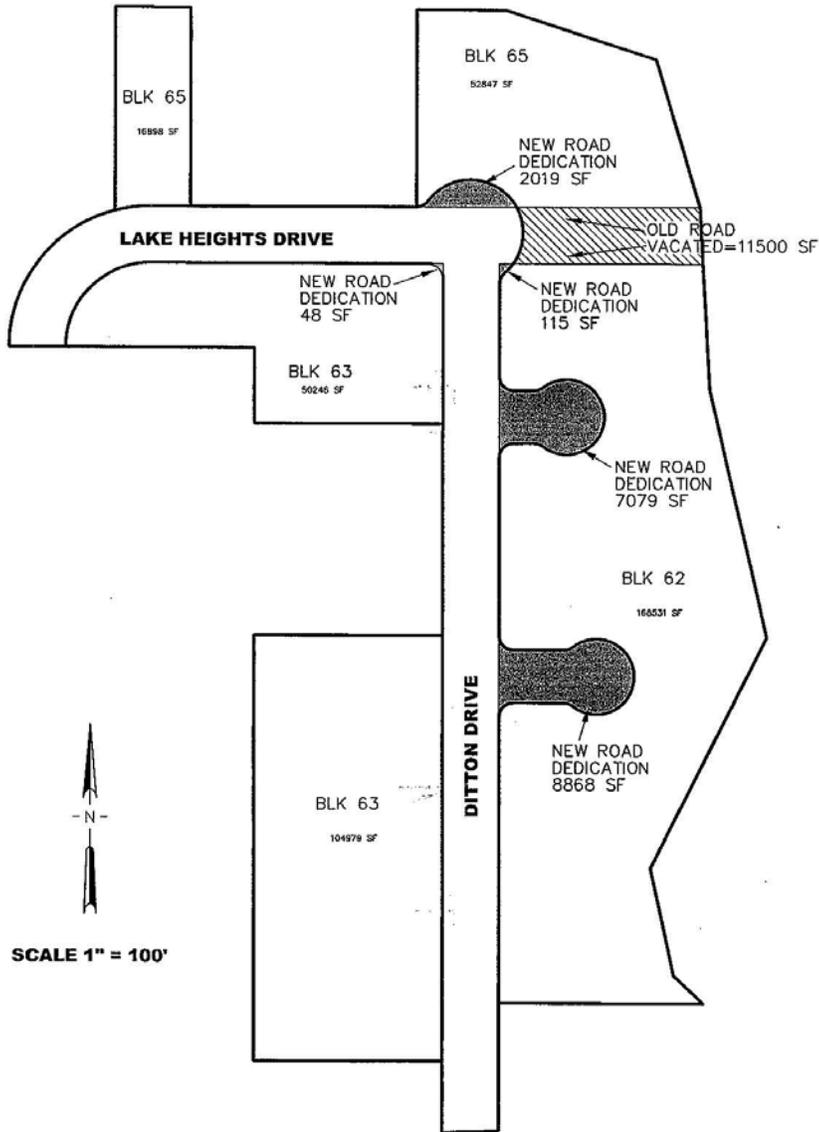
After the public hearing, staff recommends that Council approve the vacation of portions of Lake Hills Subdivision 25th Filing.

Approved By: City Administrator _____ City Attorney ____

ATTACHMENTS

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

LAKE HILLS SUBDIVISION - TWENTY-FIFTH FILING AMENDED
EXHIBIT SHOWING AREAS OF VACATED ROAD RIGHT-OF-WAY
AND NEW DEDICATED RIGHT-OF-WAY



SCALE 1" = 100'

- TOTAL AREA OF NEW DEDICATED ROAD = 18129 SF
- TOTAL AREA OF VACATED ROAD = 11500 SF

RESOLUTION NO. 08-_____

A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING **a portion of
Right of Way within Lake Hills Subdivision 25th Filing.**

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of **a portion of Right of Way within Lake Hills Subdivision 25th Filing** as described hereinafter; and

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

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

1. **DISCONTINUANCE AND VACATION.** Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., **a portion of Right of Way within Lake Hills Subdivision 25th Filing** more particularly described as follows:

A tract of land being approximately 200 feet of the East end of Lake Heights Drive right-of-way (60' wide) located in Lake Hills Subdivision 25th Filing in the southeast quarter of Section 9, T.1N., R.26E., P.M.M., Yellowstone County, Montana more particularly described as follows:

Beginning at the southeast corner of Lot 1, Block 65, Lake Hills Subdivision 25th filing; Then S03°04'24"E, 60.09 feet along the East line of Lake Hills 25th to the northeast corner of Lot 1, Block 62 Lake Hills 25th; then

N89°51'27"W, 200.98 feet along the north line of said Lot 1, Block 62; then along a 56.00 foot radius curve to the left with a delta of 64°53'56" and a chord bearing N03°20'58"E, 60.09 feet to a point on the south line of Lot 2, Block 65, Lake Hills 25th; then S89°51'27"E, 194.24 feet along the south lines of Lots 2 and 1, Block 65 to the Point of Beginning. The herein described area to be vacated is 11500 square feet.

Is hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described **a portion of Right of Way within Lake Hills Subdivision 25th Filing** is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 23rd day of June 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Cari Martin CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Preliminary Plat of Lake Hills Subdivision, 25th Filing, Amended
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On April 1, 2008, subdividers, Susan Lovely, Inc. and Laure Taylor, Inc., applied for preliminary major plat approval for Lake Hills Subdivision, 25th Filing, Amended Lots 1, 2, 3, and 7, of Block 65, Lots 1 through 11, of Block 62, and Lots 1, 2, and 6 through 11, and Lot 28, of Block 63. The proposed subdivision re-plats 24 lots originally platted in the Lake Hills Subdivision, 25th Filing into 28 lots. The subject property is located along Ditton Drive and Lake Heights Drive at the north end of Lake Hills Subdivision in the Heights. The property is zoned Residential-9600 (R-96). One variance from the Subdivision Regulations has been requested to permit curb-style sidewalks in lieu of boulevard-style sidewalks. The Planning Board held a public hearing at its meeting on May 28, 2008. The City Council will review the preliminary plat and variance request, and approve, conditionally approve, or deny the proposed subdivision at the June 23, 2008 meeting. The representing agent is HKM Engineering, Inc.

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

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

RECOMMENDATION

The Planning Board on an 8-0 vote recommends approval of the requested variance from Section 23.406.B.13, BMCC, conditional approval of the preliminary plat of Lake Hills Subdivision, 25th

Filing, Amended, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

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

INTRODUCTION

On April 1, 2008, Susan Lovely, Inc. and Laure Taylor, Inc., applied for preliminary major plat approval for Lake Hills Subdivision, 25th Filing, Amended Lots 1, 2, 3, and 7, of Block 65, Lots 1 through 11, of Block 62, and Lots 1, 2, and 6 through 11, and Lot 28, of Block 63. The proposed subdivision re-plats 24 lots originally platted in the Lake Hills Subdivision, 25th Filing into 28 lots. The subject property is located along Ditton Drive and Lake Heights Drive at the north end of Lake Hills Subdivision in the Heights. The property is zoned R-96. One variance from the Subdivision Regulations has been requested.

PROCEDURAL HISTORY

- A pre-application meeting was held on December 6, 2007 to discuss the proposal.
- The preliminary plat application was submitted to the Planning Division on April 1, 2008.
- A departmental review meeting was conducted on April 17, 2008.
- The Planning Board reviewed the plat on May 13, 2008.
- The Planning Board conducted a public hearing on May 28, 2008, and forwarded a recommendation to the City Council.
- The City Council will consider the preliminary plat on June 23, 2008.

BACKGROUND

The proposed amended plat rearranges 24 lots originally platted in 1962 into 28 lots. The subject property is bordered on the north and east by the BBWA’s main canal and is otherwise surrounded by single-family residential lots. There is a concurrent proposal to vacate a small dead-end portion of Lake Heights Drive; this proposal is being processed by the Engineering Division.

General location: On both sides of Lake Heights Drive and Ditton Drive, north of Greenbriar Road in the Lake Hills Subdivision.

Legal Description: Lots 1, 2, 3, and 7, of Block 65, Lots 1 through 11, of Block 62, and Lots 1, 2, 6 through 11, and Lot 28, of Block 63 of Lake Hills Subdivision, 25th Filing located in the SE ¼, Section 9, T1N, R26E

Subdivider/Owner: Susan B. Lovely, Inc. and Laure Taylor, Inc.

Engineer and Surveyor: HKM Engineering

Existing Zoning: R-96

Existing land use: Platted vacant lots

Proposed land use: Single-family residential

Gross and Net area: 9.44 acres/ 9.03 acres

Proposed number of lots: 28

Lot size: Max: 19,334 square feet
Min.: 9,999 square feet

Parkland requirements: Parkland dedication was previously met.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

5. In order to comply with the Montana Subdivision and Platting Act, the title of the plat shall reflect only the lots affected by the amendment.
6. In order to mitigate impacts on local services, the proposed storm water retention facility within Sally Ann Park shall be acceptable to the City Parks, Recreation and Public Lands Department.
7. In order to mitigate impacts on public health and safety, a note shall be added to the Conditions that Run with the Land section of the SIA that states: Lot owners should be aware, according to the submitted HKM Engineering Preliminary Geotechnical Report - Portions of the 25th and 13th Filings of the Lake Hills Subdivisions Billings, Montana (October 10, 2007), "building foundations and slabs should be limited to 3 feet or more above seasonal high groundwater elevations."
8. In order to mitigate impacts on local services, Section III.A. of the SIA shall be amended to indicate a street width of 37 feet back-of-curb to back-of-curb.
9. 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.

10. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

Variance from Section 23.406.B.13 of the City Subdivision Regulations, to allow for standard curb-style sidewalks in lieu of boulevard-style sidewalks.

STAKEHOLDERS

At its May 28, 2008 meeting, the Planning Board held a public hearing to gather public input on the proposal. Councilmember Stevens attended the meeting. Nine adjacent property owners spoke in regard to the amended plat proposal—eight had concerns and questions, and one commended the proposed changes. The discussion generally focused on storm water management and use of existing parkland for a retention pond, the width of the proposed streets, soil stability and groundwater levels, how the SID for improvements would be assessed, and effects on wildlife.

In regard to the use of a portion of Sally Ann Park for a storm water retention pond, neighbors had concerns over the amount of the park that would be used and the depth of the proposed pond. Also, concerns over standing water, mosquitoes, and child safety were voiced. The applicants provided a letter that they had received in December of 2004 from former PRPL Director, Don Kearney, indicating that the Parks and Public Works Departments had reached a preliminary agreement to allow Sally Ann Park to be used as a temporary stormwater detention area. The applicants' engineer indicated that drainage to the park would be achieved by re-grading the existing lay of the land so that a new large-diameter underground storm drain pipe would slowly take the water to the retention facility to be constructed. The engineer also indicated that the retention pond would be a maximum of 18 inches deep with gradually sloping sides over a sixty foot span and also would be 1/3 the size as originally planned, as water will no longer be draining from the west. He thought it would be still possible to use the pond area as programmable park space. Staff indicated that discussions between the City Public Works and Parks Departments are still underway to decide how to best situate a storm water management facility in the park (Condition #2).

In reference to the street improvements, area neighbors were concerned that the current allowable 34-foot width would not look consistent with the existing streets. The applicant indicated that they were willing to construct 37-foot wide streets to match up with the existing street (Condition #4).

In reference to soil stability and groundwater levels, it was pointed out that a geotechnical study had been completed and indicated lot-specific recommendations that will need to be implemented at the time of building permit. These recommendations address depths of foundations, groundwater levels and other structural recommendations.

Lastly, it was discussed that the SID for funding of the street and utility improvements for these lots and nine others along this street would be assessed on a per lot basis. The applicants pointed out that there would be 4 additional lots to spread the cost over. An affected neighbor was concerned that the additional improvements required due to the 2 new cul-de-sacs would increase the costs. Staff is uncertain of those costs until the SID goes to bid later this fall.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

The Planning Board on an 8-0 vote recommends approval of the requested variance from Section 23.406.B.13, BMCC, conditional approval of the preliminary plat of Lake Hills Subdivision, 25th Filing, Amended, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

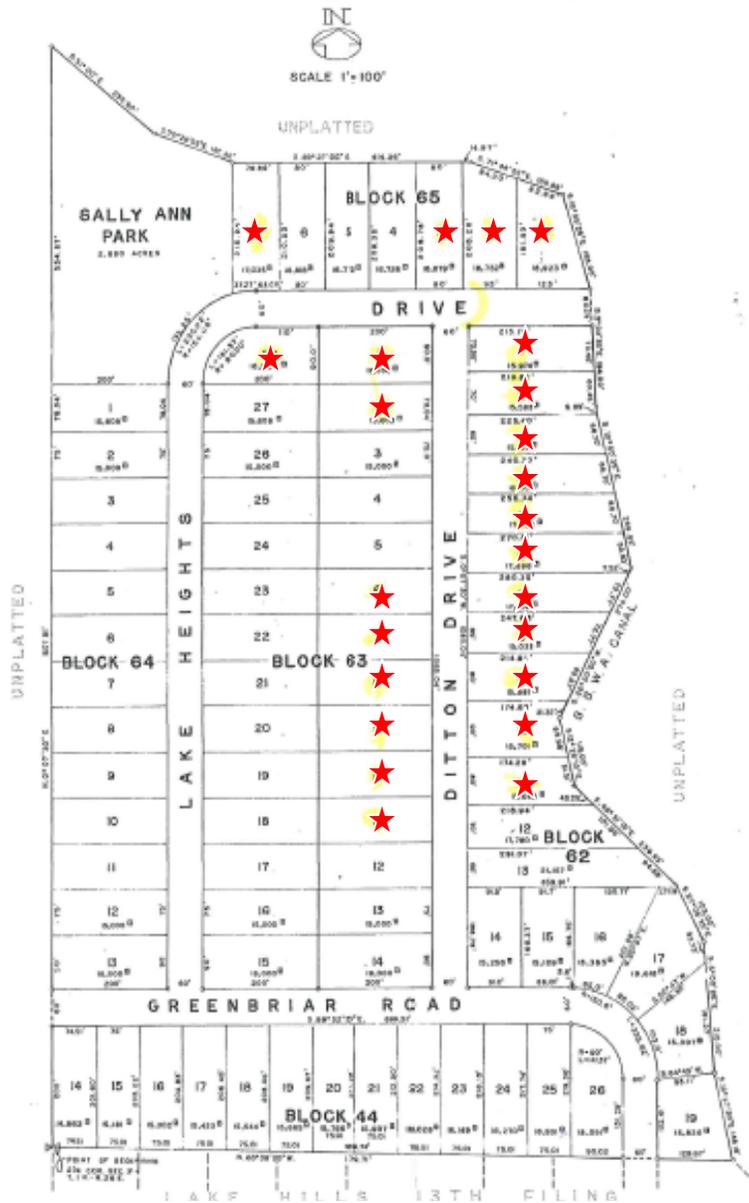
ATTACHMENT A

Preliminary Plat of Lake Hills Subdivision, 25th Filing Amended

Original Lot Configuration (affected lots are starred)

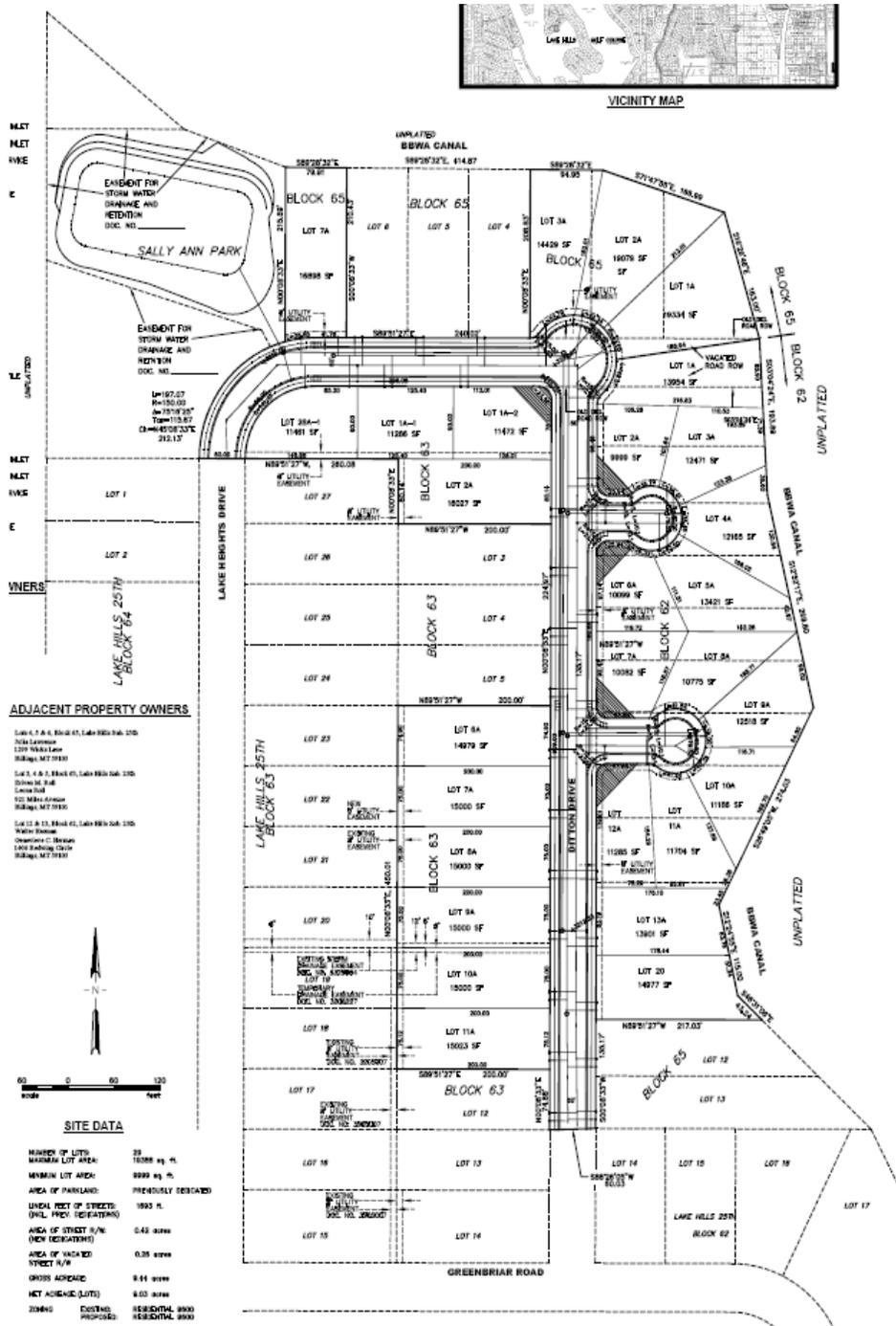
LAKE HILLS SUBDIVISION - TWENTY-FIFTH FILING
LOCATED IN THE W½SE¼ SECTION 9 - T.1N.-R.2&E.,M.P.M.
YELLOWSTONE COUNTY, MONTANA.

BY: ATLAS ENGINEERS INCORPORATED,
BILLINGS, MONTANA, APRIL - 1962



ATTACHMENT A continued

New Lot Configuration



ATTACHMENT B
Site Photographs



Figure 1:
Looking north
at current end
of Ditton Drive
toward subject
property.



Figure 2:
From end of
Ditton Drive
looking
northwest at
houses along
Lake Heights
Drive.



Figure 3:
Looking north
at current end
of Lake
Heights Drive,
toward Sally
Ann Park and
BBWA.

ATTACHMENT C

Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for Lake Hills Subdivision, 25th Filing, Amended 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? [MCA 76-3-608 (3) (a) and BMCC 23-304 (c) (1)]

1. Effect on agriculture and agricultural water user facilities

The subject property is located in the City limits and has been slated for residential development since it was originally platted in 1962. It should not have a negative effect on the agricultural industry.

The BBWA irrigation ditch borders the property on the north and east. This subdivision does not contain any ditches or water shares, and therefore should have a minimal effect on agricultural water user facilities.

2. Effect on local services

- g. **Utilities** – Water services are provided by the County Water District of Billings Heights. The subdivider will extend an 8-inch water main from the existing main line within Ditton Drive. The improvements will be subject to the review and approval of the water district during the time of construction. As proposed, the Heights Water District finds that the water mains are acceptable.

Sanitary sewer service will be provided by connecting to the existing sewer main near the south end of Ditton Drive. The subdivider will install an 8-inch sewer main in Ditton Drive and add manholes to the dead end sewer mains in each cul-de-sac. As proposed, the City of Billings Public Works Distribution and Collection Division finds the proposed sewer main extension to be acceptable.

MDU will provide gas services, and Yellowstone Valley Electric Cooperative will provide electric services to the subdivision. Easements have been shown on the face of the plat that are acceptable to these utility providers.

- h. **Stormwater** – Currently there is not a stormwater sewer system in the area so on-site retention is necessary until a future connection to a City storm drain can be made. Stormwater discharge will be provided through a combination of surface drainage, curb and gutters and storm drain piping to a retention pond located in a portion of Sally Ann Park, at the northwest corner of the subdivision. All drainage improvements shall satisfy

the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department. Also, the proposed retention facility shall be acceptable to the City Parks, Recreation and Public Lands Department (recommended Condition #2).

- i. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- j. **Streets** – The proposed subdivision fronts Lake Heights Drive and Ditton Drive, which are local residential streets. As platted, both streets have a 60-foot wide dedicated right-of-way and the subdivider has proposed to construct 37-foot wide back-of-curb to back-of-curb paved streets with standard curb, gutter and curb-style sidewalk. The City Subdivision Regulations, recently amended in 2006, require boulevard-style sidewalks to provide streetscape and safety enhancements within subdivisions. The subdivider has requested a variance from the boulevard requirement, and proposed curbs to match the existing sidewalks in the area. Further discussion regarding this requested variance is found in Attachment D. City Engineering has reviewed the variance proposal and finds it acceptable.
- k. **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 Drive (Station #6). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- l. **Schools** –School District #52—Independent School provides educational services to elementary students. While the proposed subdivision is not on a bus route and will not be provided bussing service, the school has capacity for additional students at this time. School District #2 serves middle and high school students. Castle Rock Middle School and Skyview High School will serve the children in this subdivision. Responses from these schools were not received at the time this report was written.
- m. **Parks and Recreation** – Parkland dedication requirements for this subdivision were met when this subdivision was originally platted in 1962.
- n. **Mail Delivery** - The United States Postal Service has requested individual mailboxes for each lot. The subdivider has proposed to meet that request.

3. Effect on the natural environment

The subject property has been planned for urban development since its original platting in 1962. A geotechnical evaluation was done for the subject area in October of 2007, which evaluated the effects of groundwater and the suitability of the soils for residential construction. The study indicated a number of recommendations for construction integrity that the City Building Division will implement at the time building permits are sought. Specifically, the study recommends that future structures on Lots 7-12 of Block 63, Lots 7-13 of Block 62, and Lot 1 of Block 39 be

constructed near site grades, and that structures on Lots 1-6, Block 62 be constructed no deeper than 5 feet below grade. The Planning Board recommends that specific language be added to the SIA forewarning future lot owners of these requirements (Condition #3). If these recommendations are followed, the re-platting of these lots should have minimal effects on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. There is a note in the SIA that warns future lot owners of the presence of deer and antelope in the area, which may cause damage to their landscaping. This subdivision should have a minimal effect on wildlife and wildlife habitat, as it is in an urbanized area.

5. Effect on the public health, safety and welfare

The subdivision is located in an area with no known natural hazards.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-304 (c) (1)]

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 200 Transportation Plan Update and the Heritage Trail Plan? [BMCC 23-304 (c) (3)]

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- a. **Goal: More housing and business choices within each neighborhood (p. 6).**
The proposed subdivision would provide for more housing choices within this portion of the city.
- b. **Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).**
The subject property is adjacent to similar sized residential lots.
- c. **Goal: Contiguous development focused in and around existing population centers separated by open space (p. 6).**
The subject property is an infill development within the City and its development will help to complete road and utility loops, and create a neighborhood.

- d. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (p. 10).**

The proposed subdivision will provide public streets improved to city standards that connect with existing streets. Thus, creating more efficient transportation connections and ease of traffic flow.

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. No trail corridors are identified on the plan within this subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-304 (c) (4)]

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? [BMCC 23-304 (c) (5)]

The subdivision will utilize Heights Water District water, and the City's sanitary sewer, and solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-304 (c) (6)]

The subject property is located within the R-96 zoning district and shall comply with the standards set forth in Section 27-308, BMCC.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-304 9 (c) (7)]

The subdivider has provided utility easements as requested by MDU and YVE on the face of 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? [MCA 76-3-608 (3) (d) and BMCC 23-304 9 (c) (8)]

Legal and physical access is provided to all of the proposed lots from Lake Heights and Ditton Drive.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Lake Hills Subdivision, 25th Filing Amended does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, June 23, 2008.

Ron Tussing, Mayor

ATTACHMENT D
Variance Review Criteria

Section 23-1101 of the City Subdivision Regulations states that the City Council may grant reasonable variances from the design and improvement standards of these regulations. In order to do so, the applicant must provide a written statement demonstrating that the request satisfies the following criteria:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.
2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.
3. The variance will not result in an increase in tax payer burden.
4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations.
5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.

ATTACHMENT D continued

Applicant's Written Statement

VARIANCE REQUEST

*Section 23.406, Streets and Roads: B. Streets and Roads
Design and Improvement Standards, 13. Sidewalks, MCC*

Lake Hills Subdivision 25th Filing Amended
Curb style walk variance from boulevard walk requirement

1. *The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.*

The curb style walk compared to the boulevard style walk will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. Curb style walk exists in most of Lake Hills Subdivision. The curb style walk will be 5-feet in width and will be on a low traffic volume residential collector street.

2. *Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.*

There is no undue hardship if the strict letter of the regulation was enforced. Past subdivisions in Lake Hills have almost all been curb walk style and this variance would help Lake Hills Subdivision 25th Filing fit into the existing neighborhoods. The curb style walk would eliminate the maintenance for the 5-foot boulevard that would exist within the City's right-of-way.

3. *The variance will not result in an increase in tax payer burden.*

There will be no increased tax-payer burden because the right-of-way widths don't change. There may actually be less of a burden because there will be no grass or landscaping in the right-of-way to maintain.

4. *The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations.*

The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

5. *The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.*

The curb style walk will provide pedestrian access just as effectively as a boulevard style walk would. The objective of the sidewalk is to allow pedestrians safe access within the public right-of-way, and either style of sidewalk will meet this objective.

ATTACHMENT D continued

Planning Board Analysis of Variance Request

The proposed subdivision is the amendment of a previously platted subdivision. The subject lots are mid-block of two existing streets known as Lake Heights Drive and Ditton Drive. These streets form a loop, and have no potential to be extended in any direction in the future, due to the physical barrier created by the BBWA main canal. Therefore, the traffic on these streets should be limited to those residents living on the street who have an invested interest in the neighborhood safety.

The existing streets in this neighborhood were constructed under the previous design standards which allowed curb-style sidewalks, therefore the new sidewalks would match the existing sidewalks. There would be no increase in tax payer burden by allowing this design variance, and the curb-style sidewalks should function equally effective in this instance due to the limited traffic load and large lots within this subdivision.

For the above reasons, the Planning Board is recommending that the City Council approve the requested variance from Section 23.406.B.13, to allow curb-style sidewalks within the subdivision.

ATTACHMENT E
Mayor's Approval Letter

June 24, 2008

Susan Lovely, Inc.
Laure Taylor, Inc.
1550 Poly Drive
Billings, MT 59102

Dear Applicants:

On June 23, 2008, the Billings City Council conditionally approved the preliminary plat of Lake Hills Subdivision, 25th Filing, Amended. The conditions of approval are as follows:

1. In order to comply with the Montana Subdivision and Platting Act, the title of the plat shall reflect only the lots affected by the amendment.
2. In order to mitigate impacts on local services, the proposed storm water retention facility within Sally Ann Park shall be acceptable to the City Parks, Recreation and Public Lands Department.
3. A note shall be added to the Conditions that Run with the Land section of the SIA that states: Lot owners should be aware, according to the submitted HKM Engineering Preliminary Geotechnical Report - Portions of the 25th and 13th Filings of the Lake Hills Subdivisions Billings, Montana (October 10, 2007), "building foundations and slabs should be limited to 3 feet or more above seasonal high groundwater elevations."
4. In order to mitigate impacts on local services, Section III.A. of the SIA shall be amended to indicate a street width of 37 feet back-of-curb to back-of-curb.
5. 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.
6. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

Ron Tussing, Mayor

Pc: Rick Selensky, HKM Engineering, Inc.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 23, 2008

TITLE: Public Hearing for Site Development Ordinance Variance # CC-08-01
 DEPARTMENT: Public Works/Engineering
 PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Billings Clinic Cancer Center requests a variance from Section 1208 (h) (5) of the site development ordinance pertaining to the number of curb cuts allowed by regulations. The Billings Clinic is currently constructing a new Cancer Center Facility. The building is located at 715 North 29th Street, on Lots 1 - 24, Block 26 of Garlows Subdivision of Fosters Addition, and Lots 1 – 21, Block 36, Fosters Addition and the vacated alley of Block 36 of Fosters Addition and a vacated section of 8th Avenue North between North 29th Street and North 28th Street, Southeast ¼ of Section 32 T.I.N., Range 26 East, Billings, Montana. This property is located between 7th Avenue North and 9th Avenue North between North 29th Street and North 28th Street (see Attachment C for site location). There are two approaches allowed from the facility onto North 29th Street which will be the main entrance circular drive. The Cancer Center is asking for approval of one additional approach onto North 29th Street south of the main entrance to access the parking lot and one additional approach north of the main entrance onto North 29th Street for a service entrance (see Attachment D for approach locations).

ALTERNATIVES ANALYZED:

1. Approve the variance. Approval of this variance will allow the Billings Clinic to operate the new Cancer Center facility using two additional access points than are allowed by the City Code and with no conditions or restrictions.
2. Approve the variance. Approval of the variance for the two additional curb cuts with the following conditions and restrictions: the main circular drive entrance must be maintained, signed and remain as one way traffic circulation only. The service entrance approach north of the main entrance be restricted to and signed as a service entrance drive only and will have signage for one way traffic circulation.

3. Do not approve the variance. If this variance is denied, the owner's options to meet the requirements of the Site Development Ordinances will require redesign of the facility with a reduction in the number of allowable curb cuts to the two allowed by City Code.

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

RECOMMENDATION:

Staff recommends that Council approve the variance using option # 2 above with conditions and restrictions recommended by the City's Traffic Engineer allowing the additional number of additional curb cuts.

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

ATTACHMENTS

- A. Application for Variance
- B. Letter From Engineering requesting Approach Variance
- C. Site Plan of Existing Site Location
- D. Proposed Final Site Plan Layout

INTRODUCTION

The Billings Clinic Cancer Center requests a variance from Section 1208 (h) (5) of the site development ordinance pertaining to the number of curb cuts allowed by regulations. The Billings Clinic is currently constructing a new Cancer Center Facility. The building is located at 715 North 29th Street, on Lots 1 - 24, Block 26 of Garlows Subdivision of Fosters Addition, and Lots 1 – 21, Block 36, Fosters Addition and the vacated alley of Block 36 of Fosters Addition and a vacated section of 8th Avenue North between North 29th Street and North 28th Street, Southeast ¼ of Section 32 T.I.N., Range 26 East, Billings, Montana. This property is located between 7th Avenue North and 9th Avenue North between North 29th Street and North 28th Street (see Attachment C for site location). There are two approaches allowed from the facility onto North 29th Street which will be the main entrance circular drive. The Cancer Center is asking for approval of one additional approach onto North 29th Street south of the main entrance to access the parking lot and one additional approach north of the main entrance onto North 29th Street for a service entrance (see Attachment D for approach locations).

BACKGROUND

CTA Architects Engineers and Engineering Inc. are the consultants for the design of the Billings Clinic Cancer Center and Engineering has provided a Proposed Final Site Plan Layout (Attachment D) for the variance showing the placement of the proposed curb cuts.

The number of allowable curb cuts for the proposed site in accordance with the city codes based on Section 6-1208 Curb Cut Regulations is two (2).

Section 6-1208 (h) Allowable curb cut widths:

(5) Frontages of sixty (60) feet or less shall be limited to one (1) driveway. Not more than two (2) driveways shall be provided to any single property tract or business establishment, except where the property frontage exceeds six-hundred (600) feet, there may be one (1) additional driveway for each additional three hundred (300) feet of frontage. In cases where parcels have more than one street frontage, each frontage shall be treated separately when determining the allowed number of driveways.

The new Cancer Center's main entrance is to be a circle drive access located approximately where 8th Avenue North crossed North 29th Street and ran between North 29th Street and North 28th Street with two (2) curb cuts. During the presite development process, and at a number of additional meetings and discussions involving the site, it was noted that the drawings showed the location of the main entrance access points and where they were to be constructed along with the two (2) temporary construction approaches with one to the north and one to the south of the main entrance. During that progression of the site process staff noted and reaffirmed that only two (2) curb cuts would be allowed on the North 29th Street frontage as per City Code and that the two (2) approaches being used in the construction process north and south of the main

entrance access were temporary and would need to be removed in order to meet the City's Codes for the number of allowable curb cuts.

The most recently provided proposed site plans now shows that the two (2) temporary curb cuts are not to be closed (Attachment D). The one approach on the north side of the main entrance, which is one of the curb cuts that the variance is being requested for currently serves as access to the clinics service elevator. This was previously a restricted access. However, the current proposed site plan would allow this access point to be entered from either direction. The second approach for which a variance is being requested accesses the parking lot area and is located south of the main entrance.

Therefore, Engineering Inc. and CTA Architects Engineers on behalf of the Billings Clinic is requesting a variance City Codes Section 1208 (h) (5) for an increase in the number of allowable curb cuts.

Engineering Inc. has provided a letter requesting a variance City Codes Section 1208 (h) (5) for an increase in the number of allowable curb cuts (Attachment B).

ALTERNATIVES ANALYSIS

1. Approve the variance. Approval of this variance will allow the Billings Clinic to operate the new Cancer Center facility using two additional access points than are allowed by the City Code and with no conditions or restrictions.
2. Approve the variance. Approval the variance for the additional curb cuts with the following conditions and restrictions: the main circular drive entrance must be maintained, signed and remain as one way traffic circulation only. That the service entrance approach north of the main entrance be restricted to and signed as a service entrance drive only and will have signage for one way traffic circulation.
3. Do not approve the variance. If this variance is denied, the owner's options to meet the requirements of the Site Development Ordinances will require redesign of the facility with a reduction in the number of allowable curb cuts to the two allowed by City Code.

SUMMARY

Therefore, Engineering Inc. and CTA Architects Engineers on behalf of the Billings Clinic is requesting a variance for an increase in the number of allowable curb cuts from two to four. The City's Traffic Engineer recommends that the following conditions and restrictions be place on the additional approaches: The main circular drive entrance to be maintained, signed and remain as a one way traffic circulation only and that the service entrance approach north of the main entrance be restricted to and signed as a service entrance drive only and signage for one way traffic circulation only.

RECOMMENDATION

Staff recommends that Council approve the variance using option # 2 above with conditions and restrictions recommended by the City's Traffic Engineer allowing the additional number of additional curb cuts.

ATTACHMENTS

- A. Application for Variance
- B. Letter From Engineering requesting Approach Variance
- C. Site Plan of Existing Site Location
- D. Proposed Final Site Plan Layout

Attachment "A"

Application # CC-08-01

APPLICATION FOR VARIANCE

1. Legal description of property: Block 26 of Garlow's Sub of Block 26 in Foster Addition and Lots 1-21 Block 36 in Foster Addition plus a vacated portion of 8th Ave N. and Vacated Alley, SE 1/4 of Sect. 32 T.1.N., R. 26.E, Billings, MT

2. Address (if unknown, contact the City Engineer's office) or general location: East side of N. 29th Street from 7th Ave N. to 9th Ave N.

3. Owner(s): BILLINGS CLINIC
(Recorded Owner)
2800 10th Ave N., Billings, MT 59101
(Address)
406/657-4036
(Phone Number)

4. Agent(s): ENGINEERING, INC.
(Name)
1300 N. TRANSTECH Way, Billings, MT 59102
(Address)
406/656-5255
(Phone Number)

5. Section of the Site Development Ordinance that this request for variance applies to: SECTION 6-1208(H)(5)

6. Reason for request: TO ALLOW SITE TO FUNCTION PROPERLY AS DESIGNED TO ACCOMMODATE VEHICULAR AND PEDESTRIAN TRAFFIC.

7. Covenants for deed restrictions on the property: Yes ___ No X
(if yes, please include a copy)

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

Signature: [Signature] Date: 5/20/08
(Recorded Owner)

Fee: 60.00

Receipt #: 334668 CK 6/202

Hearing Date: _____

Variance # CC - 08 - 01 - Attachment B



ENGINEERING, INC.

Consulting Engineers and Land Surveyors



May 6, 2008

Ms. Candi Beaudry
Planning and Community Services Department
City of Billings
510 North Broadway, 4th Floor
Billings, MT 59101

Reference: Billings Clinic Cancer Center – Approach Variance Request
E.I. No. 87018.49

Dear Candi:

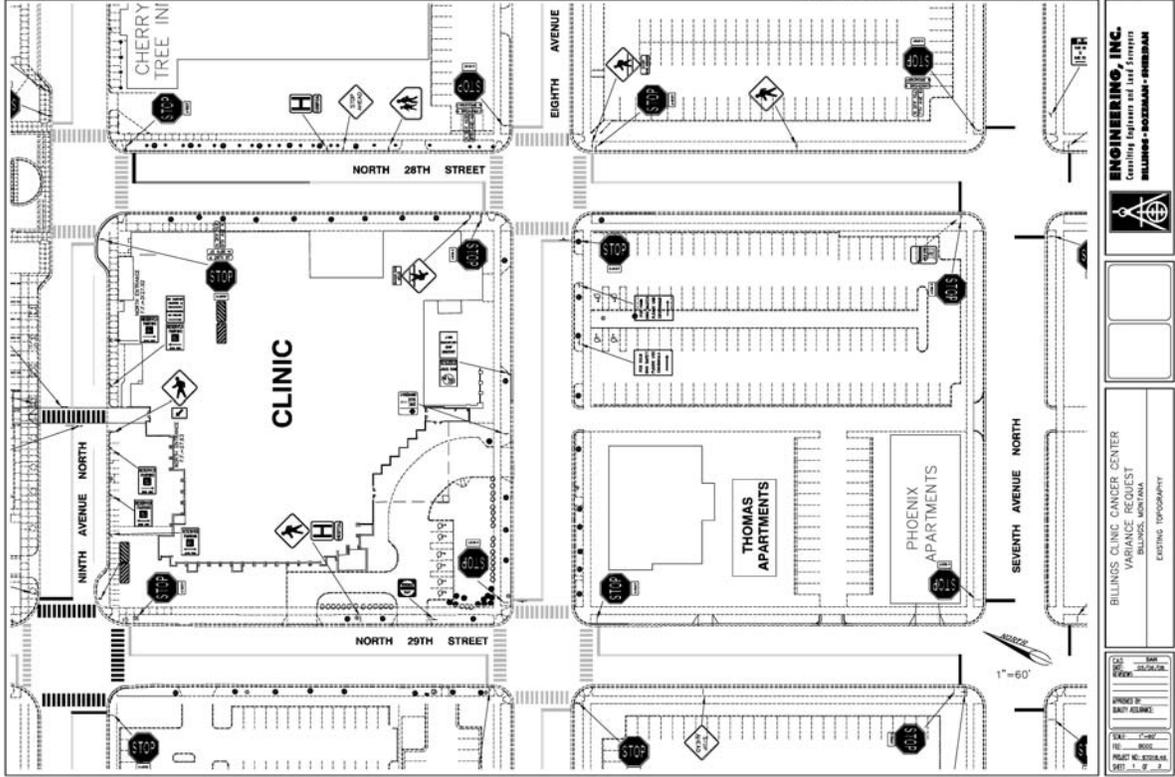
We are requesting a variance from the provisions of Section 6-1208 (H)(5) of the City of Billings Code that requires not more than two driveways/approaches to any single property tract or business establishment, except where the property frontage exceeds 600 feet. The Billings Clinic Cancer Center is being constructed on a site consisting of the recently vacated Eighth Avenue North (between North 28th and North 29th Streets) and several lots formerly serving the Planned Parenthood and Thomas Apartment buildings.

Prior to construction of the Cancer Center, five approaches entered the east side of North 29th Street between Seventh and Ninth Avenues North, in addition to the east leg of the North 29th Street and Eighth Avenue North intersection. The proposed site design reduces the number of approaches to four, and the west leg of the North 29th Street and Eighth Avenue North intersection will be closed.

Of the four new approaches, one will provide full access to the new Cancer Center parking lot and will be placed in the same general location as the approach that previously served the Planned Parenthood parking lot.

Two of the approaches will be part of the one-way patient drop-off/pick-up driveway.

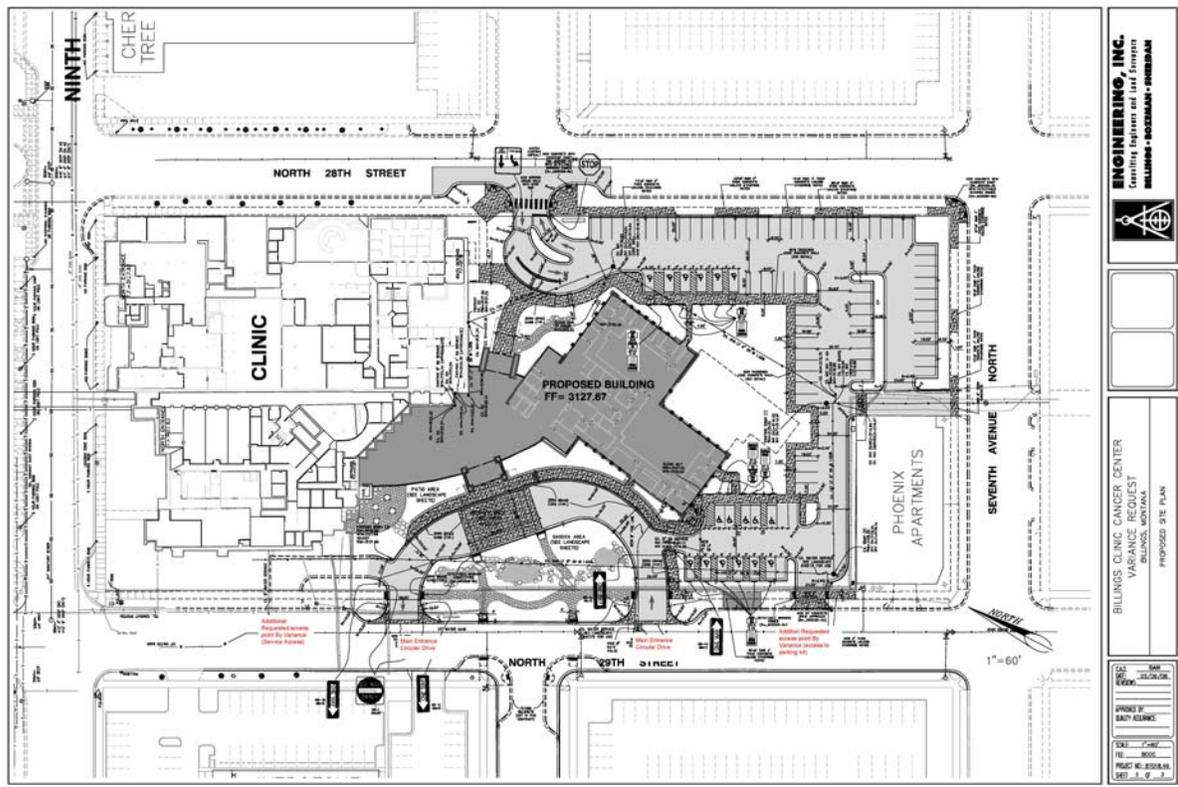
The fourth approach is a pre-existing, restricted access driveway to the Clinic building's service elevator.



ENGINEERING, INC.
 Consulting Engineers and Land Surveyors
 BILLINGS - BOZEMAN - GREAT FALLS

BILLINGS CLINIC CANCER CENTER
 VARIANCE REQUEST
 BILLINGS, MONTANA
 EXISTING TOPOGRAPHY

DATE	ISSUE
REV	BY
PROJECT	NO.
SHEET	OF



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Public Hearing for Special Review #860 – 5435 Midland Road
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a special review request to add an outdoor patio lounge to a location with an existing on-premise all beverage liquor license on a 31,493 square foot parcel of land in a Highway Commercial (HC) zone, on Lot 1, Block 1 Vaquero Subdivision. The property is addressed as 5435 Midland Road and is the site of the Maui Nites Casino. Manny 422, LLC, Jon Dehler is the owner and Roger Tuhy is the agent. The Zoning Commission held a public hearing on this request on June 3, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should have no effect on the City’s tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #860 on a 4-0 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

INTRODUCTION

This is a request for a special review to add an outdoor patio on the west side of the existing building for Maui Nites Casino at 5435 Midland Road. The applicant would like to offer outdoor seating to existing patrons. Section 27-613(a) 2. of the BMCC requires a special review approval when a location that has on premise alcohol service adds an outdoor patio lounge. There are no schools, churches or public parks with playground equipment within 600 feet of this proposed location. The site plan shows the patio proposed on the west side of the existing building near the entrance.

PROCEDURAL HISTORY

- A special review application to allow an outdoor patio lounge was received on May 5, 2008.
- The City Zoning Commission held a public hearing on June 3, 2008, and is forwarding a recommendation of conditional approval on a 4-0 vote.
- The City Council will conduct a public hearing and consider this application on June 23, 2008.

BACKGROUND

This is a request for a special review to add an outdoor patio on the west side of the existing building for Maui Nites Casino at 5435 Midland Road. The applicant would like to offer outdoor seating to existing patrons. The proposed addition is 240 square feet on the west side of the existing building. This property is surrounded by commercial uses and the Interstate 90 corridor. There are no churches, schools or public parks with playfields or playground equipment within 600 feet of the proposed patio location.

The Planning Division reviewed this application with other city departments and recommended conditional approval. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within a zoning districts that allows outdoor patio lounges associated with an on-premise alcohol liquor license might be allowed by special review. The form of the application is correct and the submitted site plan appears to be in conformance with site development and zoning regulations for commercial uses.

The application also conforms to the second and third criteria. The zoning regulations

adopted by the City Council have the purpose of promoting health, safety and general welfare. The proposed site plan will meet these objectives. In addition, the Zoning Commission is recommending conditions of approval to minimize and otherwise mitigate any adverse impact the development may pose to the surrounding property.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 BMCC and the Growth Policy.
This application is consistent with the purposes of Chapter 27- Unified Zoning Regulations and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood. The proposed development has arterial street frontage and is an appropriate redevelopment of this property.
3. **Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.**
The proposed location of the outdoor patio lounge is appropriate and conditions of approval are recommended.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #860 on a 4-0 vote.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 1, Block 1, Vaquero Subdivision as shown on the site plan submitted with the application.
2. This special review approval is for an outdoor patio lounge and no other use or expansion of this use is approved or implied with this authorization.
3. Development of the site shall be in substantial conformance with the site plan submitted. Deviations from the approved site plan that change the location of structures, parking lot access or parking areas will require additional special review approval.
4. Any expansion of the gross floor area of the patio or number of parking stalls greater than 10 percent will require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.
5. The owner shall provide a sight obscuring fence of at least 4.5 feet in height around the outdoor patio lounge. The fence shall have at least one exit-only gate to provide an emergency exit. Access to the outdoor patio lounge area shall be through the main indoor area of the business.
6. The owner is allowed to have background music and un-amplified live outdoor entertainment on the outdoor patio lounge. Background music is defined as amplified music and must not audible beyond the outdoor patio lounge.
7. There shall be no outdoor public address system or outside announcement system of any kind.
8. All new exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
9. The existing Electronic Message Display (EMD) sign does not conform to the current City Sign Code for size and operation of an EMD sign. On or before June 23, 2014, the sign owner will bring this EMD sign in to conformance with the then existing City Sign Code. Until that time, the owner shall be required to adequately maintain and operate the sign according to all applicable zoning regulations.
10. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
11. Failure to comply with these conditions of approval of the special review use shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.
12. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City regulations that apply.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Division points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

A public hearing before the City Zoning Commission was held on June 3, 2008. Staff forwarded a recommendation of conditional approval. Roger Tuhy appeared before the Zoning Commission and explained the proposed development. No other persons testified in favor or in opposition to the application.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. The Zoning Commission discussed a Planning staff recommended condition relating to the operation of the lighting of the artificial trees. The Zoning Commission voted to not recommend this condition to the City Council. The Zoning Commission agreed the operation of the artificial tree lighting is acceptable and is not an issue to be addressed through the special review application. The Zoning Commission moved to recommend conditional approval of the special review request and voted 4-0 to forward this recommendation to the City Council.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

Consistency with plans and policies is discussed in the Alternatives Analysis section above.

RECOMMENDATION

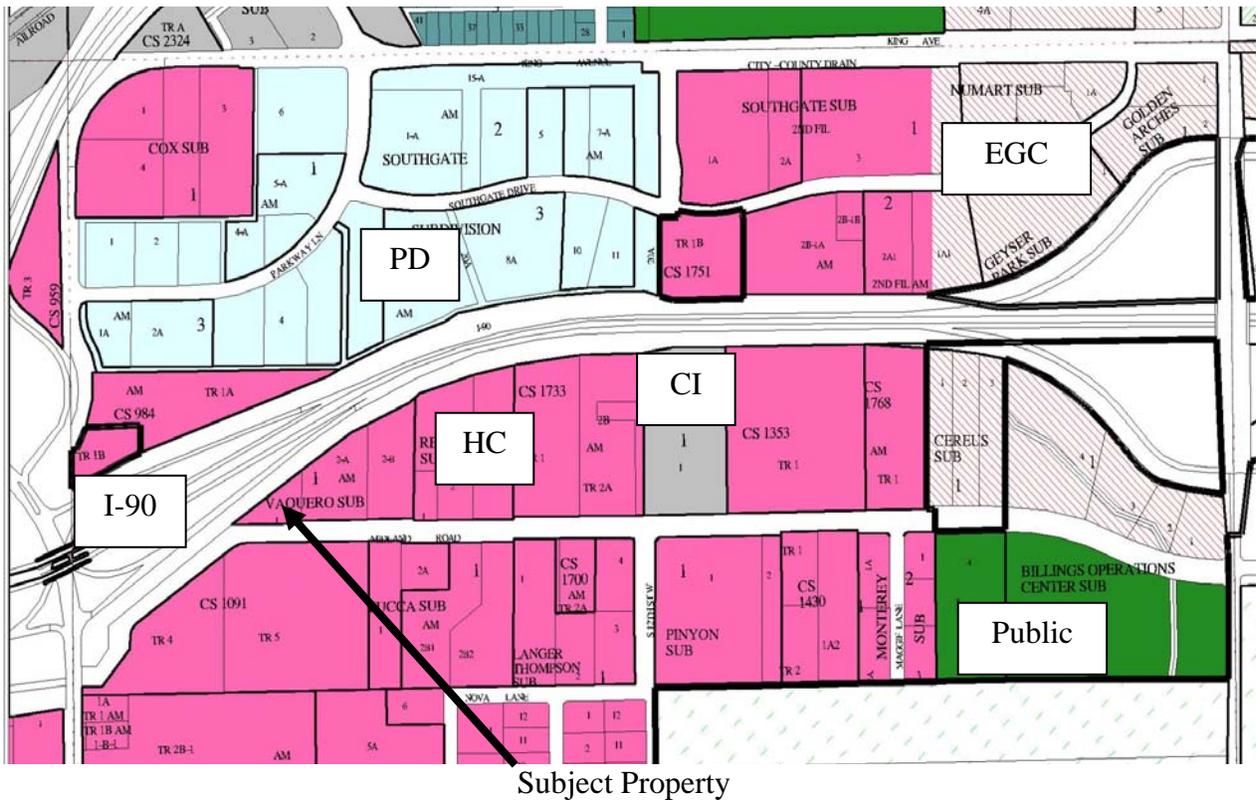
The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #860 on a 4-0 vote.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

ATTACHMENT A

Zoning Map – Special Review #860



ATTACHMENT B

Site photos –Special Review #860



View north across property from Midland Road



View of existing west elevation of Maui Nites Casino

ATTACHMENT C

Site Plan –Special Review #860
Available for viewing in the City Clerk’s Office

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Public Hearing for Special Review #861 – 543 Milton Road
DEPARTMENT: Planning and Community Services
PRESENTED BY: Dave Green, Planner I

PROBLEM/ISSUE STATEMENT: This is a special review request to allow a public parking lot on a 24,000 square foot parcel of land in a Residential Multi-Family (RMF) zone, on Lot 4, Block 1, of Keller Subdivision. The property is addressed as 543 Milton Road and is currently a vacant lot on the east side with a duplex, built in 1969, on the west side of the lot. The lot is just west of the intersection of Main Street and Milton Road in the Heights. For the applicant to have a food service type business as a tenant in the retail mall he needs to have more parking stalls to meet the parking requirements of the City. First Interstate Bank is the owner, and Jeff Essman is the agent. The Zoning Commission held a public hearing on this request on June 3, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should have no effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #861 on a 4-0 vote.

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

ATTACHMENTS

A: Zoning/Location Map.

B: Site Plan

C: Letter of Support for Special Review #861

INTRODUCTION

This is a special review request to allow a public parking lot on a 24,000 square foot parcel of land in a Residential Multi-Family (RMF) zone, on Lot 4, Block 1, of Keller Subdivision. The property is addressed as 543 Milton Road and is currently a vacant on the east side of the lot with a duplex, built in 1969, on the west side of the lot.

PROCEDURAL HISTORY

- A special review application to allow a public parking lot on a 24,000 square foot parcel of land in a Residential Multi-family (RMF) zone was submitted on May 1, 2008.
- The City Zoning Commission held a public hearing on June 3, 2008, and is forwarding a recommendation of conditional approval.
- The City Council will conduct a public hearing and consider this application on June 23, 2008.

BACKGROUND

This is a request for a special review to allow a public parking lot on a 24,000 square foot parcel of land in a Residential Multi-family (RMF) zone, on Lot 4, Block 1 of Keller Subdivision. The property is addressed as 543 Milton Road and is currently a vacant lot on the east side with a duplex, built in 1969, on the west side of the lot. The lot is just west of the intersection of Main Street and Milton Road in the Heights.

The applicants have stated in a letter that it is their intent to pave a portion of the lot to accommodate more parking that is required by code so they can have a food service type business as a tenant in the 10,000 square foot shopping mall to the east of this lot. With the additional parking, they could have tenants that serve food such as a bakery and coffee vendor with table service. Also in the letter from the applicants they state that there is currently no sidewalk, curb or gutter along the frontage of this parcel. With the special review approval they will be providing sidewalk, curb and gutter along Milton Road. This is a route for students walking to Bench Elementary School and the completion of the sidewalk, curb and gutter along Milton Road will make a safer walk to the school.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The

application does encourage land uses that are sensitive to and compatible with the character of the surrounding neighborhood.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The zoning regulations adopted by the City Council require separation of uses and also include requirements for landscape and fencing to provide separation from non-compatible uses.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #861 on a 4-0 vote.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 4, Block 1, of Keller Subdivision addressed at 543 Milton Road, .55 acres west of the intersection of Main Street and Milton Road.
2. Any expansion of the building, building occupancy or parking lot greater than 10 percent of what is shown on the site plan submitted with this application on May 1, 2008, shall require another special review as per BMCC 27-613(c).
3. The development of Lot 4, Block 1, of Keller Subdivision shall be in complete accordance with all provisions of Section 27-1100 Landscaping.
4. Dumpsters shall be enclosed in a three sided sight obscuring enclosure with sight obscuring gates, Section 27-1107 BMCC.
5. All parking lot lighting shall be bollard lighting, no overhead lighting, with the exception of sign lighting, so light is near the ground plain and not spilling onto adjacent property.
6. The access shown for the new parking lot addition shall not be allowed. All traffic must enter and exit out of existing access points for the retail mall.
7. The proposed fence shown on the site plan submitted with this application on May 1, 2008, between the existing duplex and the new parking lot must be a maximum height of 3 feet for the first 20 feet of fencing from Milton Lane as required by Section 27-604 (c) BMCC.

8. The sidewalk curb and gutter must be installed the entire length of the frontage along Milton Lane for this property, to connect existing sidewalk curb and gutter from the retail mall to the sidewalk curb and gutter on the Bench Elementary School property.
9. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on June 3, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote. The applicant was present at the Zoning Commission meeting. The applicant stated that he needed to have more parking available to have a food service type business move into his mini mall. His current parking lot does not have enough spaces to meet the city parking requirements.

The applicant requested that reference to the expansion of the building in condition number 2 be removed and only have reference to parking expansion that would trigger an additional special review. He also asked that condition number 6 be removed completely. The applicant stated that according to current code, engineering would allow 2 exits onto Milton. He also stated that he didn't see that there would be any conflict because Milton is not a collector or arterial street. There was no other public comment at the meeting after the applicant.

The Planning Division has received two emails from surrounding property owners stating their approval of the new parking area, see Attachment C.

Zoning Commission member Michael Larson asked for clarification concerning the reason for condition number 6. Staff responded that although current engineering practice may be to allow 2 exits from the property onto Milton Road the issue is not the number of accesses but the fact that there are 3 accesses so close together. Engineering's objection to the three accesses is the fact they are so close together and present potential traffic conflicts to traffic movement from the property onto Milton Road and from Milton Road onto the property.

Mr. Larson also asked about condition number 2. He stated that it was his understanding that the wording of condition number 2 was from Billings zoning code. Staff responded that the wording was taken from Section 27-613 (c) BMCC and was a standard condition with all special reviews.

There was no further discussion from the zoning commission; a motion to forward a recommendation of conditional approval to the City Council was made a seconded followed by a vote of 4-0 to approve.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- The project does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #861 on a 4-0 vote.

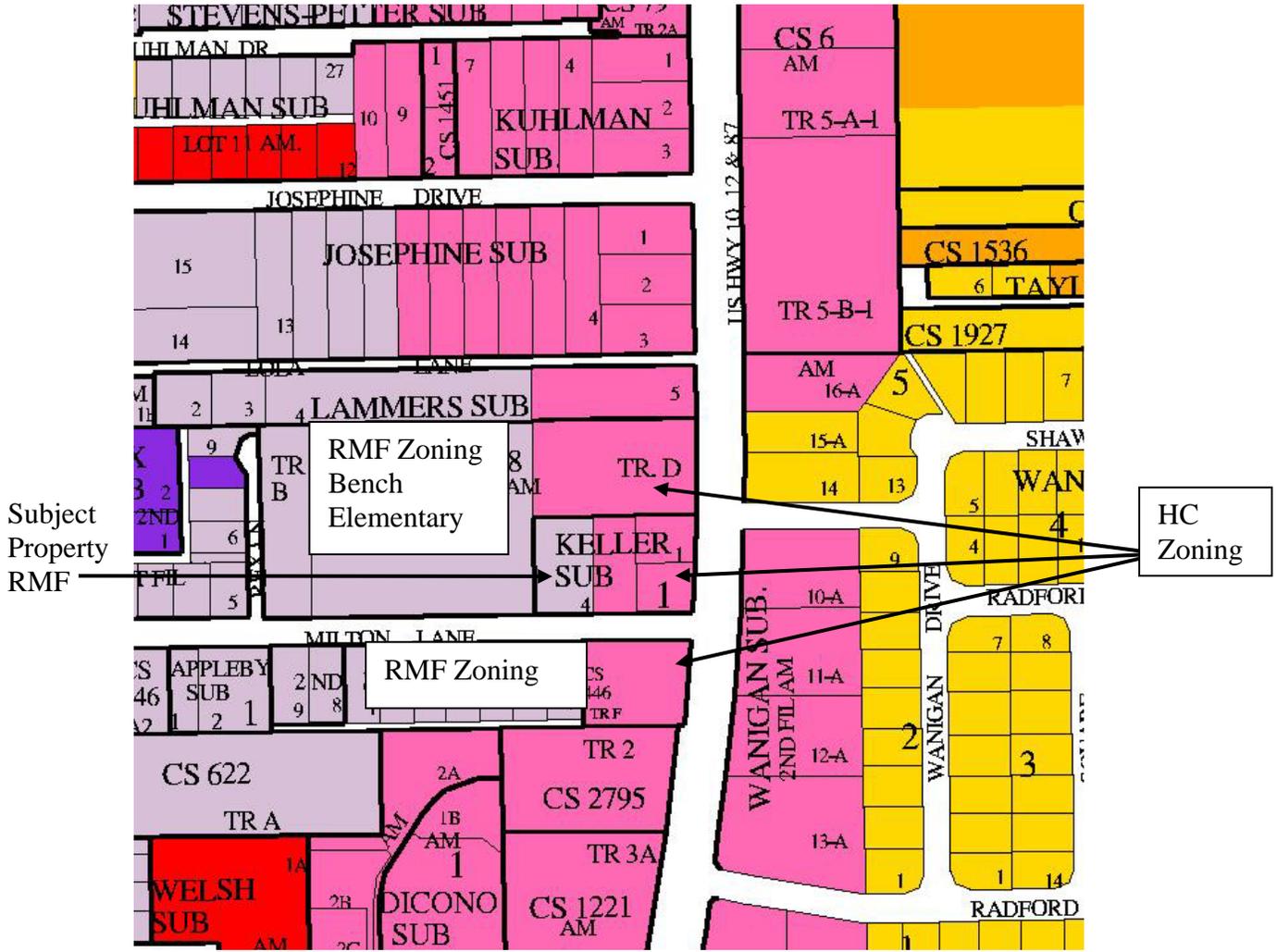
ATTACHMENTS

A: Zoning/Location Map.

B: Site Plan

C: Letter of Support for Special Review #861

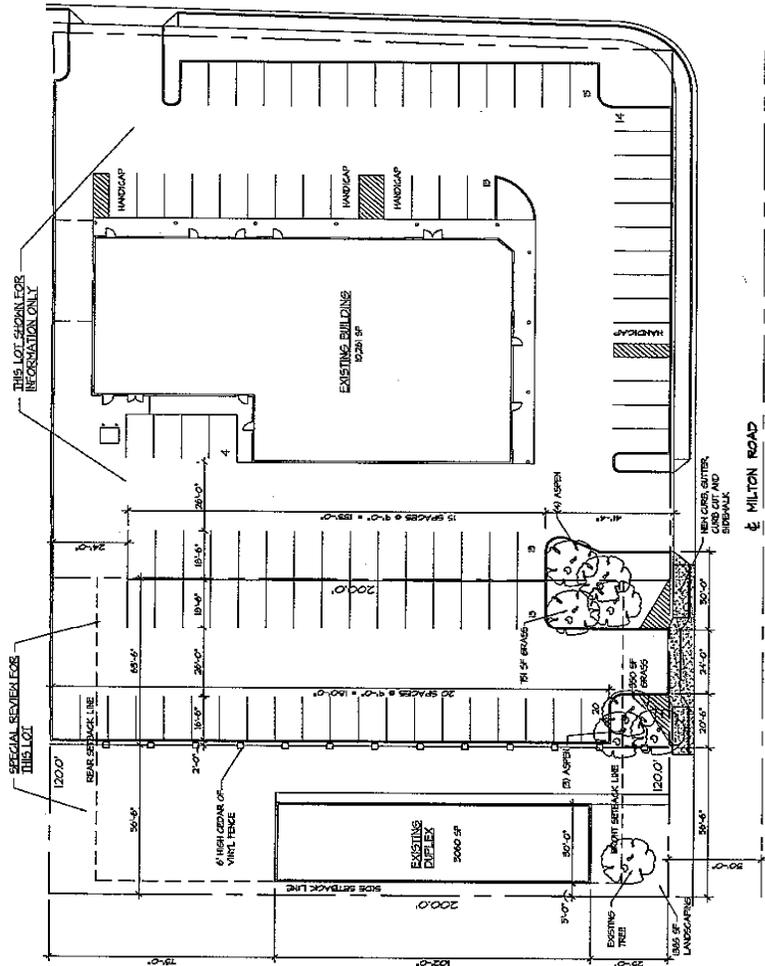
ATTACHMENT A
Zoning Map - Special Review #861



ATTACHMENT B

Site Plan Special Review #861

U.S. HIGHWAY 10 EAST
MAIN STREET EAST



1 SITE PLAN
SRU SCALE 1" = 30'

ZONING REQUIREMENTS

ZONING: RESIDENTIAL NEURBAN
 LOT SIZE: 4600 SF
 BUILDING SIZE: 3000 SF
 YARDS:
 FRONT: 15'-0"
 REAR: 15'
 PLACEMENT HEIGHT: 45'-0"
 LANDSCAPING:
 15% OF 15' x 15' - 2% OF 45' REQ'D
 15% OF 15' x 15' - 2% OF 45' REQ'D
 2% OF 45' REQ'D
 ONE TREE IS BURNING HILL AND 1 TREE

SPECIAL REVIEW APPLICATION:

ACD 30 NEAR PARKING SPACES

ATTACHMENT C

Letters in support of Special Review #861

From: Steve Nitz [mailto:snitz@epsimanagement.com]
Sent: Monday, May 12, 2008 11:06 AM
To: jeff@jeffessmann.com
Subject: 543 Milton Rd

Jeff,

I just received your package with the request for the parking lot adjacent to the retail mall at 904 Main. I fully support your request to put in a parking lot at this location. I can see where the lack of sufficient parking would be an issue for this property.

Let me know if I can be of any further assistance.

Steven M. Nitz

Executive Property Services Inc.
513 Hilltop Rd, Ste 7
406-248-5166
406-248-1445 (fax)
snitz@epsimanagement.com

-----Original Message-----

From: Doug Haacke [<mailto:dhaacke@gmail.com>]
Sent: Monday, May 12, 2008 10:19 AM
To: jeff@jeffessmann.com
Subject: 543 Milton Road

Jeff:

Small world! I own and work out of one of the offices across the street in the 848 Main complex.

I think expanding the parking back there is a great idea!

Hope you are well, my friend, and staying out of trouble!

-Doug Haacke

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Public Hearing for Special Review #862 – 1911 King Avenue West
DEPARTMENT: Planning and Community Services
PRESENTED BY: Dave Green, Planner I

PROBLEM/ISSUE STATEMENT: This is a special review request to remove a condition of approval from Special Review (SR) #836 and SR #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone, on Lot 11A-1, CBH Industrial Park Subdivision. The property is addressed as 1911 King Avenue West and is currently a developed commercial property. The property is located on the northwest corner of the intersection of King Avenue West and Carbon Street. KRP, LLC, is the owner, and Blueline Engineering, is the agent. The Zoning Commission held a public hearing on this request on June 3, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should have no effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #862 on a 4-0 vote.

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

ATTACHMENTS

A: Zoning/Location Map.

B: Site Plan

C: Letter of support

INTRODUCTION

This is a special review request to remove the condition of approval for Special Review (SR) #836 and SR #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone, on Lot 11A-1, CBH Industrial Park Subdivision. The property is addressed as 1911 King Avenue West.

PROCEDURAL HISTORY

- A special review application to modify the condition of approval for Special Review (SR) #836 and SR #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone was submitted on May 1, 2008.
- The City Zoning Commission held a public hearing on June 3, 2008, and is forwarding a recommendation of conditional approval.
- The City Council will conduct a public hearing and consider this application on June 23, 2008.

BACKGROUND

This is a special review request to remove the condition of approval for Special Review (SR) #836 and SR #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone, on Lot 11A-1, CBH Industrial Park Subdivision. The property is addressed as 1911 King Avenue West and is currently a developed commercial property. The property is located on the northwest corner of the intersection of King Avenue West and Carbon Street.

Special Review #836 and #841 required the applicant to close the north parking lot, on the west end, to prevent traffic from cutting through to South 20th Street West from Carbon Street.

The applicants have stated in a letter that they have signed a reciprocal parking and access agreement with the owner of the adjacent property northwest of their property with the intention of improving the lot south of Perkins Restaurant. The proposed layout of the parking will allow access to South 20th Street West but will not be a “straight shot” that causes traffic conflicts. The proposed parking lot addition prevents access to the Holiday Station parking, and the access that currently exist at the Holiday Station on the north west corner of the lot and accesses South 20th Street West will be narrowed to approximately 24 feet wide.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage land uses that are sensitive to and compatible with the character of the surrounding uses.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The zoning regulations adopted by the City Council require separations and landscaping to reduce negative impacts on surrounding properties. Since this is an addition to a parking lot surrounded by businesses the impact to the neighborhood will be minimal. There are no existing residential developments immediately adjacent to this property.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #862 on a 4-0 vote.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lots 11A and 12A, of Block 1, of CBH Industrial Park Subdivision for a parking lot addition on Lot 11A-2, Block 1, CBH Industrial Park Subdivision as shown on the site plan submitted with this application on May 1, 2008.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application on May 1, 2008. Deviations from the approved site plan that change the location of the proposed parking lot, the parking lot circulation, layout and access will require additional special review approval.
3. Directional signs shall be installed in the proposed parking lot south of Perkins Restaurant to direct traffic from the parking lot behind the building on the subject property, Lots 11A and 12A of Block 1 of CBH Industrial Park Subdivision, that they must turn right to exit to South 20th Street West.
4. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.

5. Landscaping shall be provided in the new parking lot area as required by Section 27-1101 (Landscaping) of the Unified Zoning Regulations.
6. There shall be permanent bollards provided from the northwestern corner of the existing building at 1911 King Avenue West installed along the back of curb of the new parking lot addition every 5 feet going west. The final bollard shall be installed directly across from the center of the first angled parking stall in the proposed additional parking or a fence may be installed in place of the bollard in the same location as described. This is to discourage cut-through traffic from the Holiday property or from the new parking lot being proposed.
7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on June 3, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote.

The applicants' agent, Marshall Phil from Blueline Engineering, was present at the Zoning Commission meeting and spoke in favor of the special review. Mr. Phil stated that he had a copy of an email from a surrounding property owner in support of this special review report. He provided copies of the email to all commission members. (See Attachment C) He stated that the previous special reviews had conditions placed on them in response to concerns the Police Department had about cut through drivers and the unsafe situation this created. Mr. Phil stated that the owners developed this new plan and discussed it with the police. He stated that the police felt this was a workable solution to the traffic concerns they originally had about cut through traffic.

Mr. Phil asked that condition number 6 be modified to allow a fence instead of bollards along a portion of the south edge of the new parking area. He stated that the bollards would take up too much space to install and that it may make it so they were not able to get the clearances they needed for the drive isle along the angled parking stalls. He stated that the owners also felt the fence would look better than the bollards.

There was no other public comment at the meeting.

A motion was made to approve the special review with a modification to condition number 6 to allow either bollards or a fence along a portion of the south side of the new parking lot. The Zoning Commission voted 4-0 to forward a recommendation of conditional approval with one modification to condition 6 to the city council.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- The project does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #862 on a 4-0 vote.

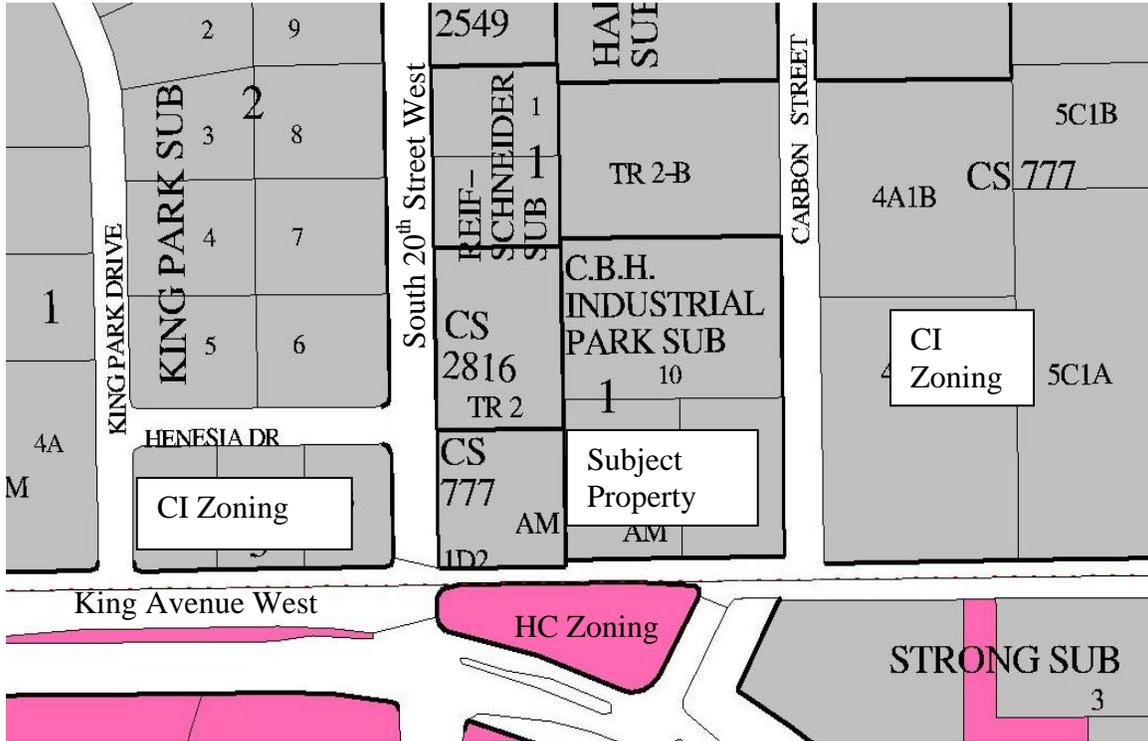
ATTACHMENTS

A: Zoning/Location Map.

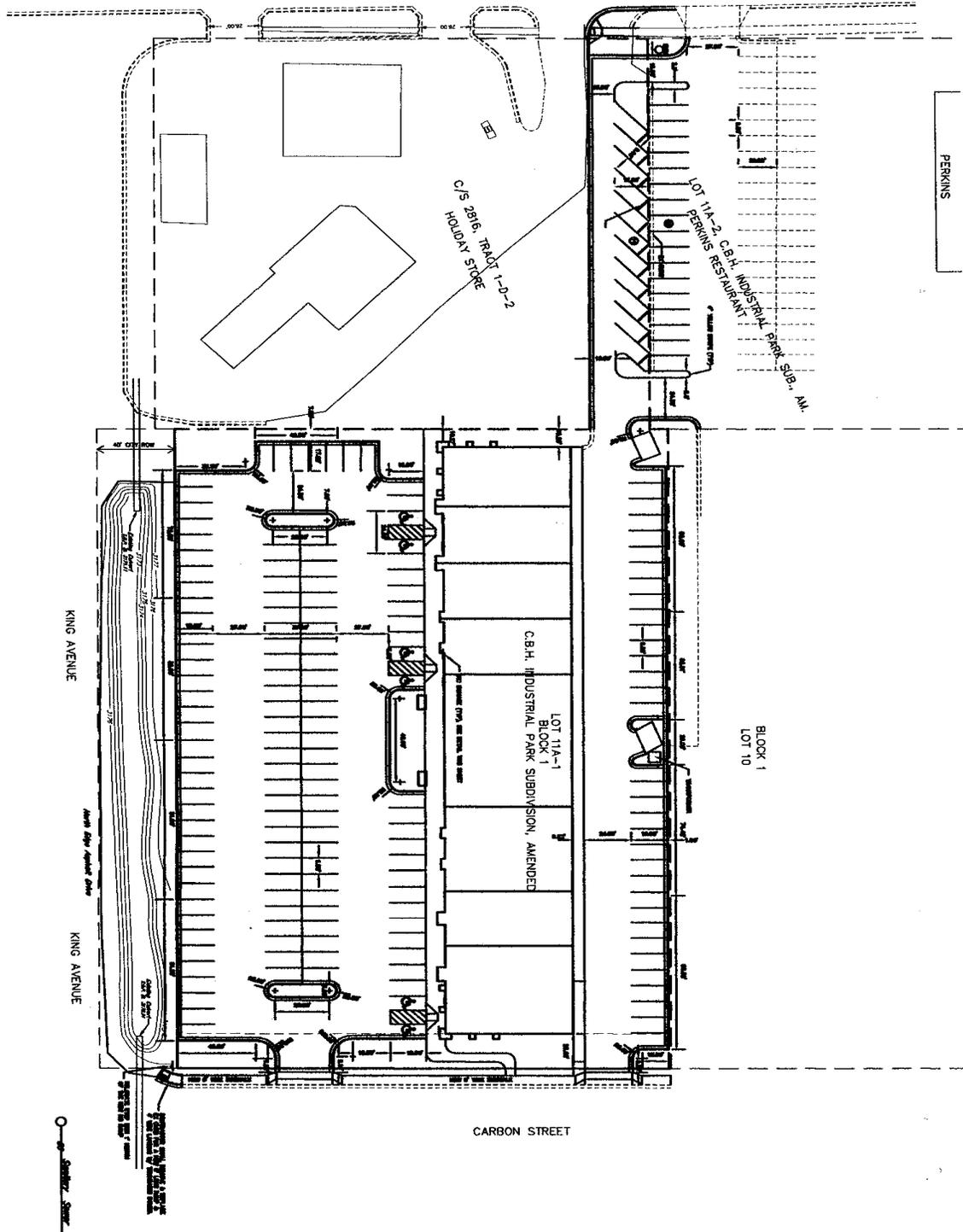
B: Site Plan

C: Letter of support

ATTACHMENT A
Zoning Map - Special Review #862



ATTACHMENT B
Site Plan Special Review #862



ATTACHMENT C

Letter of support

Marshall Phil

From: KW Signature Homes [kwhomes@kwsignature.com]
Sent: Tuesday, June 03, 2008 3:10 PM
To: Bluline Engineering
Subject: FW: Special Review Application

From: GUN30@aol.com [mailto:GUN30@aol.com]
Sent: Tuesday, June 03, 2008 3:02 PM
To: kwhomes@kwsignature.com
Subject: Special Review Application

Dear Shawn,

My name is Paul Gunville, I'm one of the partners that own the building that Conlin Furniture is the tenant. I have reviewed your plans under city SR#862 and both our partners as property owners and the tenant, Conlin Furniture are very excited about the improvements you plan to do to this property. We think this is a great plan and we are sure the city will approve this. Best of luck, Paul

Get trade secrets for amazing burgers. Watch "Cooking with Tyler Florence" on AOL Food.
<http://food.aol.com/tyler-florence?video=4?&NCID=aolfod00030000000002>

6/3/2008

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Zone Change #844 and 1st Reading of Ordinance, 5900 Rimrock Road
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential 9,600 (R-96) to Residential Multi-Family-Restricted (RMF-R) on the West ½ of Lot 5, Sunny Cove Fruit Farms located south of Rimrock Road near Yellowstone Club Estates. The parcel is located in the 5900 block of Rimrock Road. This site is a 5.35 acre parcel of land. The property is owned by Thomas Romine and Blaine Poppler is the agent. The owner and agent conducted two pre-application neighborhood meetings. The Zoning Commission conducted a public hearing on June 3, 2008, and is forwarding no recommendation on a 2-2 vote on a motion to recommend approval.

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

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

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

RECOMMENDATION

The Zoning Commission is forwarding no recommendation to the City Council for Zone Change #844 on a 2-2 vote on a motion to recommend approval.

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

ATTACHMENTS:

- A: Surrounding Zoning
- B: Letter from Margie Peery
- C: Written testimony from applicant Thomas Romine
- D: Ordinance

INTRODUCTION

The applicant is requesting to rezone the west half of Lot 5 in Sunny Cove Fruit Farms Subdivision from R-96 to RMF-R in order to construct 62 dwelling units in 11 structures. The property is located south of Rimrock Road just west of the intersection of 58th Street West. All of the surrounding property is zoned R-96. Rimrock Road is a principal arterial street and currently carries approximately 4,000 vehicle trips per day. Subdivisions to the west and north of the subject property will likely add to this traffic. The applicant, Thomas Romine, is proposing to construct multi-family housing with 4-plex and 6-plex buildings. Property at the intersection of Rimrock Road and 62nd Street West was re-zoned in 2005 to accommodate Community Commercial uses and multifamily dwelling units.

PROCEDURAL HISTORY

- On February 25, 2008, the first pre-application neighborhood meeting for the proposed zoning application was conducted at the Lillis Center on Shiloh Road.
- On April 28, 2008, the second pre-application meeting for the proposed zoning application was conducted at the Lillis Center on Shiloh Road.
- On May 5, 2008, a zone change application was submitted to the Planning Division.
- On June 3, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and is forwarding no recommendation to the City Council on a 2-2 vote on a motion to recommend approval.
- On June 23, 2008, the City Council will conduct the public hearing and first reading of the zone change.
- On July 14, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The proposed RMF-R zoning district could allow a higher density residential development on this 5.35 acre property. Multifamily dwellings could be developed that would allow up to 28 dwellings units per acre. If the zoning is approved, the developer could construct up to the maximum number of dwelling units allowed while meeting all the required site development standards for off-street parking, setbacks, building heights and lot coverage. Any development of the property for multifamily structures would require the provision of adequate off-street parking and landscaping to commercial development standards.

The West Billings Neighborhood Plan, the 2003 Growth Policy and the Northwest Shiloh Area Plan all encourage the location of commercial nodes at the intersection of arterial streets with professional offices or higher density residential along arterials between intersections. This goal must be balanced with existing and potential future land uses and compatible with current neighborhood character. There is no similar zoning in the immediate area and similar development is not likely to the north or east of the subject property since these properties have been developed already as low density residential neighborhoods. The surrounding developments include single family homes on lots ranging from 12,000 square feet to over an acre of land per dwelling unit.

The applicant held two pre-application meetings with the surrounding neighbors. The first meeting on February 25, 2008, at the Lillis Center on Shiloh Road, was attended by 12 surrounding property owners. The second neighborhood meeting was held on April 28, 2008, and 7 surrounding property owners attended. According to the minutes submitted from the meetings, the neighbors had several concerns with the proposed zone change. Some of the concerns from the surrounding neighbors were the potential to effect water wells, noise and trash from construction operations, traffic increases, and the height of new buildings and setbacks of the new buildings to the property lines.

Planning staff forwarded a recommendation of denial to the Zoning Commission for this application. The Planning Division believes this zone change may constitute a spot zoning. Due to the size and location of the parcel, this proposal may meet the criteria for the creation of an illegal spot zoning. Spot zoning - as defined by the Montana Supreme Court - is a three-prong test and each prong should be evaluated separately but weighed as a whole. A "yes" answer to each of the three tests is usually required before determining that a spot zoning has occurred. The precedent case is *Little v Board of County Commissioners of Flathead County* in 1981. The first test or criteria to determine a spot zoning is whether the requested use is significantly different than the prevailing use in the area. The Planning staff believes the requested use is significantly different than the prevailing single family use in the area. The proposed site plan and limitation of 11 dwelling units per acre cannot be conditioned through a zone change approval. The zone change could allow the present or future owner to construct as many as 28 dwelling units per acre. Two members of the Zoning Commission did not agree with this opinion. The members noted the City Council approved a similar zone change to multi-family residential uses in 2004 and 2005 for the Falcon Ridge and Golden Acres Subdivision at the intersection of 62nd Street West and Rimrock Road.

The second criterion to determine a spot zoning is whether the area for the requested use is small. This factor is more concerned with the number of benefited landowners rather than physical size of the property. The Planning staff believes the requested use only applies to the owner's property of 5.35 acres and the physical area affected is rather small. Two members of the Zoning Commission also did not agree with this determination. The members believe the area benefited includes all surrounding property owners since values will increase when the property is developed.

The third criterion is whether the zoning is designed to benefit only one landowner at the expense of the surrounding property owners or the general public. The Planning staff believes the re-zoning does benefit one land owner and it appears that the request is at the expense of the surrounding property owners. The surrounding market values of single family homes may be detrimentally affected by the new zoning. Two members of the Zoning Commission disagreed with this opinion. The members believe that many property owners will benefit from the new zoning and that it provides a housing type and service not currently available in this area of West Billings.

The Zoning Commission conducted a public hearing on June 3, 2008 and is forwarding no recommendation to the City Council on a 2-2 vote on a motion to recommend approval. The Zoning Commission's recommendations are made and discussed in the 12 criteria for zone changes below.

ALTERNATIVES ANALYSIS

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

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed zone change may be consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would permit up to 28 dwelling units per acre, which may not be consistent with the surrounding single-family and agricultural uses.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The proposed zoning may be consistent with the surrounding character of the neighborhood.

- The proposed zone may or may not meet the three tests for creation of an illegal spot zone.
 1. The requested use is significantly different than the prevailing use in the area.
 2. The area requested for the use is small in area.
 3. The requested zoning benefits a single owner and not the community and may be at the expense of surrounding owners.

- *Development in the West Billings planning area shall provide for a variety of housing types and densities. (Planned Growth, West Billings Neighborhood Plan, page 22)*

The proposed zoning allows for a larger variety of housing types and densities in this area along an arterial street between major intersections.

2. *Is the new zoning designed to lessen congestion in the streets?*

The additional traffic that could be produced by the proposed increase in density is approximately 380 additional vehicle trips per day on Rimrock Road. This estimate is based on the proposed 62 dwelling units.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

The subject property is currently serviced by City Fire and Police. Any development will require a minimum width for access roads and provision of water for fire protection.

4. *Will the new zoning promote health and general welfare?*

The proposed zoning would permit a density increase from the current allowed maximum of 4 units per acre in the R-96 zoning district. The Unified Zoning Regulations do specify

minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-96 zone allows 30% lot coverage and the RMF-R zone allows 55% lot coverage. The proposed density of 11.5 units an acre for the 4-plex and 6-plex structures does allow for adequate open area and should not overcrowd the property.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning will allow the introduction of multifamily residential uses in an area surrounded by low density single-family and agricultural uses. The 2003 Growth Policy and the West Billings Neighborhood Plan encourage higher density residential uses along arterial streets between intersections. The proposed zoning does not unduly concentrate population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

- | | |
|--------------------|--|
| Transportation: | The proposed zoning may impact the surrounding streets, as the only way in and out of the development is Rimrock Road. Necessary traffic control shall be installed at the time of development. |
| Water and Sewer: | The City will provide water and sewer to the property through existing lines on Rimrock Road. |
| Schools and Parks: | School District #2 will provide education to students within the development. Most elementary schools in this area are over crowded. The School District did not provide comment on the application. |
| Fire and Police: | The subject property is currently served by the City of Billings fire and police departments. |

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will permit multifamily uses, which are not alike in character to the surrounding single-family and agricultural uses. The future character of this area of West Billings will include similar development densities as well as professional offices along arterial streets.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property may not be suitable for the requested zoning district. A portion of the property that has frontage on Rimrock Road may be able to support a small multi-family development. The remaining acreage is surrounded by single-family uses and agricultural uses.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

Higher density multifamily dwellings may negatively affect single-family market prices on an individual basis however; most surrounding properties may see an increase in value from the proposed development.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning will permit more dense development that is not alike in character to the current surrounding single-family residential uses. The character of this area of West Billings is changing as development occurs that has city services available. This may be the most appropriate use of land on this arterial street.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan and Billings and is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

Planning Division staff received two phone calls regarding the proposed zone change application. One person requested a zone change protest form and instructions. A protest petition has not been filed as of June 4, 2008. Margie Peery, owner of a fraction of Tract 6, Certificate of Survey 836 north and west of the subject property, submitted a letter against the proposed zone change (Attachment B).

The Zoning Commission conducted a public hearing on June 3, 2008, and is forwarding no recommendation to the City Council on a 2-2 vote on a motion to recommend approval. Two members of the Zoning Commission believe the proposed zone change was the most likely use of the property given the city services available in Rimrock Road, the arterial street frontage and commitment by the applicant to a high quality development that offers a type of housing not currently available in this area of West Billings. Two members of the Zoning Commission were concerned with the incompatibility of the surrounding zoning and the proposed zoning might be an illegal spot zoning. These two members believed the previous zone changes for Falcon Ridge and Golden Acres were part of a much larger zoning master plan that is not similar to this proposed zone change.

Thomas Romine, applicant and owner of the subject property, testified that he disagreed with the Planning Staff recommendation of denial. He stated the area is no longer viable for agricultural uses and that city services are available. He annexed the property with the intent of developing

all of the 60 acres for various urban land uses including multi-family residences. The property has frontage on Rimrock Road a principal arterial street that will have ever increasing amounts of traffic. Mr. Romine submitted written testimony to the Zoning Commission (Attachment C). Mr. Romine testified that the proposed site plan has changed significantly since originally introduced to the neighbors in February. The number of units is less than originally proposed, the dwelling units are slightly larger and the buildings will be no taller than a single story. Mr. Romine testified this will be the lead off development for his total of 60 acres. Mr. Romine stated his zone change is no different than those proposed and approved for Golden Acres and Falcon Ridge Subdivision where 33 acres of Residential Multi-Family is located 3 blocks west at 62nd Street West and Rimrock Road. Mr. Romine stated the Growth Policy encourages higher density residential uses along arterial streets between commercial nodes at intersections. The development of multi-family housing in those areas would benefit many other people not just the owner and developer.

Mr. Blaine Poppler, agent for the owner, testified in favor of the zone change. Mr. Poppler stated he believes this location is appropriate for multifamily housing. The proposed units will be 1 bedroom units, with an attached single car garage and a single story structure. Mr. Poppler presented three displays of the proposed site and building elevations. Mr. Poppler noted the subject property is only 3 blocks from similar zoning in Golden Acres and Falcon Ridge subdivisions. Mr. Poppler stated the West Billings Plan encourages a variety of housing types and higher density along arterial streets. Mr. Poppler disagreed with the Planning staff proposed determination for zone change criteria #11 and #12. Criteria #11 is whether the new zoning would conserve the value of buildings in the area. Mr. Poppler stated that he believes the new development will increase the value of existing homes in the area. The current residents are negatively affected by the lack of city services, agricultural operations directly adjacent to the homes and lack of maintenance of some adjoining properties. Criteria #12 is whether the new zoning is the most appropriate use of land throughout this area of the city. The Growth Policy and West Billings Plan both support this type of zoning and housing type along arterial streets. Mr. Poppler testified this zone change application is no different than Zone Change #738 recommended for approval by the Planning staff in August 2004. This application included over 13 acres of Residential Multi-Family zoning. The City Council approved that zone change.

Travis McDowell of Homesite Designers testified in favor of the zone change. He stated he is working with Cal Kunkel and Blaine Poppler on the design of these attached single family rental units. Mr. McDowell testified he spoke with Terry Smith, City Traffic Engineer, concerning the projected traffic generation from the proposed 62 units. He stated Mr. Smith stated the traffic would be much less than the Planning staff prediction of an additional 380 trips per day. He stated the traffic would be closer to an additional 240 trips per day. He stated he worked with the surrounding owners to design the proposed 4-plex and 6-plex structures to meet their concerns. The buildings are a single story, are larger than standard single bedroom units and will have a low profile.

Cal Kunkel, 3310 Laredo Drive, testified in favor of the zone change. He stated there simply are no rental units available in this area of West Billings. The population of this area is about 10,000

people and there are no rental apartments available. He stated the Golden Acres property has not developed apartments because the owner will only sell the entire parcel at an estimated asking price of \$20 million. This is not a viable project for most developers. The approved 13 acres of Residential Multi-Family zoning in Falcon Ridge is for a patio home development with units for sale but not for rent. The zoning in this area should be more diverse with more housing choices for all residents. Mr. Kunkel testified he disagreed with the Planning staff that the zone change only benefits the owner and developer. Many residents will benefit from having this type of housing choice in the area.

Jim Bowyer, 2704 58th Street West, testified in opposition to the zone change. He stated he attended both pre-application meetings and although the owner agreed to changes to the site plan, there is no way to guarantee these structures would be built. He stated he thought R-96 zoning is more appropriate for this property. He shares a property line with the subject property. The units will be very close to his home about 15 feet away. He testified he spoke with his real estate agent and she stated he would lose between 15% and 25% of the market value of his home if the zoning is changed to multi-family. Mr. Bowyer testified that Rimrock Road is an arterial but is not a high traffic volume compared to other streets. He stated his investment in his property will be jeopardized by the proposed zone change.

Janet Luttschwager of 2616 58th Street West testified in opposition to the zone change. She stated she was once in favor of the zone change but now she is opposed to the zone change. She said that 62 units on 5 acres of ground is too dense for this area. Mrs. Luttschwager testified that 58th Street West is a gravel road and in the county. Everyone will use this road rather than 54th Street West to get down to Grand Avenue. She testified that the rental units would not be appropriate for seniors because they are too remote from any services. Mrs. Luttschwager testified the zoning would devalue the single family homes on 1-acre lots that directly border this property.

Monica Carter of 5818 Mared Street testified she was neither opposed or in favor of the zone change. She is slightly in favor of the project since the current agricultural user of the property is damaging her property and curtailing her enjoyment of her one acre home site. She has had to replace a well because of the damage. She testified the developer has agreed to fencing the development and assuring her the buildings would be single story structures. Her property is right next door and she is more affected than others in the area. She testified the owner and developer have kept everyone well informed of the project and responded to their concerns.

Blaine Poppler provided rebuttal testimony. He stated that residential property values in the area are more affected by the lack of city services. The Residential Multi-Family-Restricted zoning would not negatively affect the surrounding owners. Falcon Ridge subdivision has multi-family zoning directly adjacent to single family zoning. The owner held two neighborhood meetings and they have responded to all the concerns. The lot owners that have 1-acre lots is a personal preference but was a choice by those property owners. City services make density practical for this property. The builder has done two projects in Billings Heights that are high quality and have not received any objections from the adjacent owners on Lincoln Lane and Pemberton

Lane. The proposed density of 11 units an acre is much less than what might be allowed. The units on the property will not be isolated once the Golden Acres commercial area is developed. The commercial area will not develop unless there are more residents in this area. Mr. Poppler disagreed with the written testimony provided by Margie Peery. He stated the principal arterial makes a single family zoning impractical, the proposal is not urban sprawl since there is already city services in the area, support services are available in the area including the new fire station and objects to the use of “affordable rental”. The units will likely rent for about \$750.00 per month not including utilities. These units will be market priced rentals.

Chairman Leonard Dailey Jr., closed the public hearing. Commission member Thomas Grimm made a motion to recommend denial of the zone change. There was no second of Mr. Grimm’s motion. Commission member Barbara Hawkins made a motion to recommend approval of the zone change. The motion was seconded by Commission member Michael Larson. Mrs. Hawkins stated she is in favor of the zone change. She toured the location and noted that several of the existing single family homes are in disrepair, and that new development would benefit more than just the owner of this property but all the owners surrounding the location. Mr. Larson stated he was in favor of the proposed zone change and that he disagreed with the Planning staff determination that this might be spot zoning. The previous zone changes for Golden Acres and Falcon Ridge Subdivision approved multi-family zoning and this application is no different. Mr. Larson stated this would be a good opportunity to provide more housing choices in the area. He stated that additional residences will mean that additional commercial and retail services would be attracted to the area. Chairman Dailey asked staff whether the City Attorney had reviewed the application, in particular the spot zoning concern. Planning staff stated the City Attorney would review the staff report for the City Council public hearing and had not reviewed the application yet. Chairman Dailey stated that there was similar zoning in Falcon Ridge but it may or may not be similar to this zone change. He stated he was still concerned the application could be considered spot zoning. Commission member Grimm stated he would not vote in favor of the recommendation of approval. He stated that Falcon Ridge and Golden Acres were a 300-acre development and master zoning plan. The developers and owners of those properties were not affecting any adjacent land owners with single family homes. Mr. Grimm stated he believes this is a spot zoning.

The commission voted 2-2 on the motion to recommend approval of the zone change.

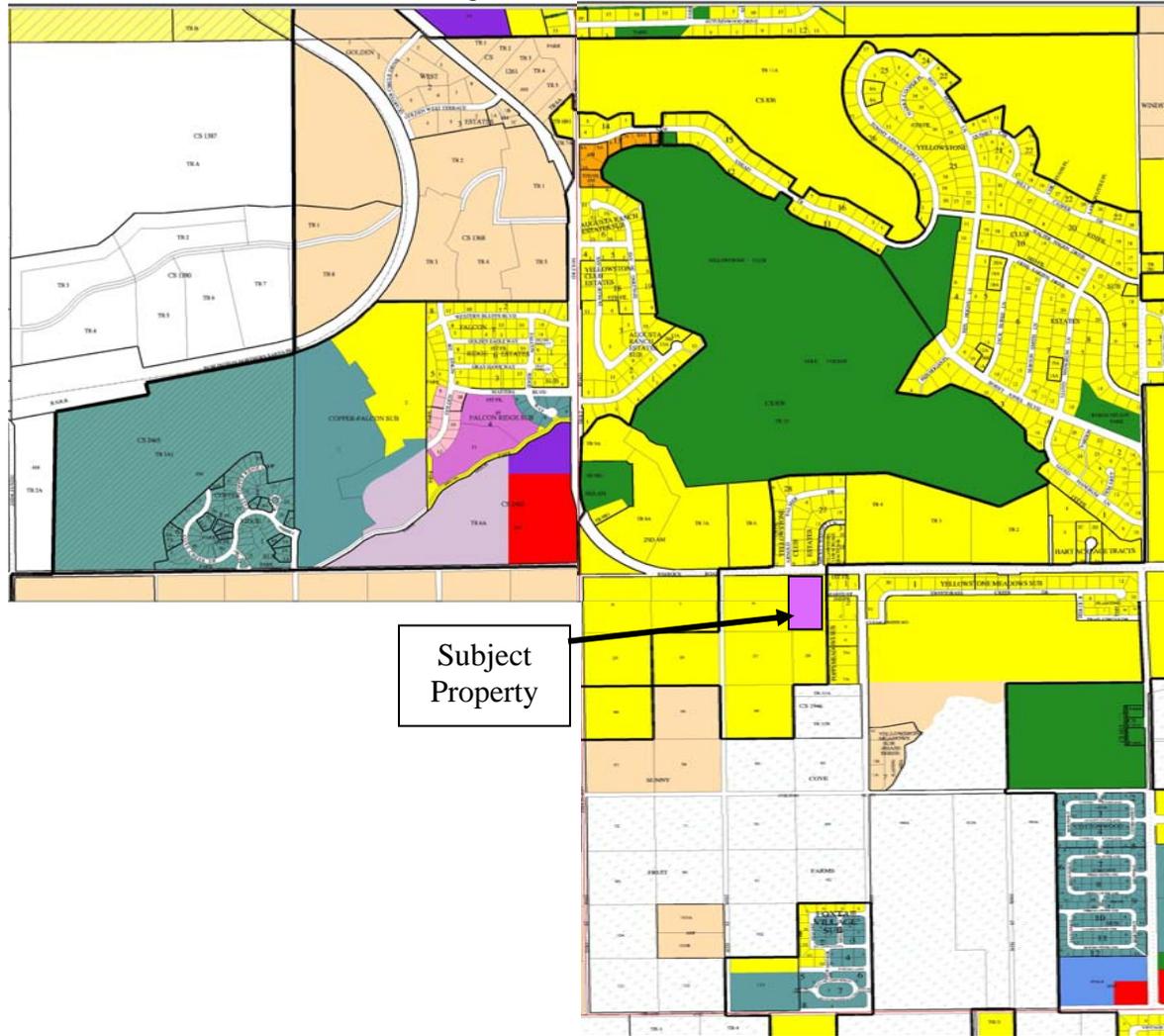
RECOMMENDATION

The Zoning Commission is forwarding no recommendation to the City Council for Zone Change #844 on a 2-2 vote on a motion to recommend approval.

ATTACHMENTS:

- A: Surrounding Zoning
- B: Letter from Margie Peery
- C: Written testimony from applicant Thomas Romine
- D: Ordinance

Attachment A
Zone Change #844 – 5900 Rimrock Road



Attachment B

Comments to: Zone Change #844, 5900 Rimrock Road, West ½ Lot 5, Sunny Cove Fruit Farms
Comments From: Margie Peery
Owner Frac Tract 6, COS 836 30 1N 25E
Located within 300 feet, across Rimrock and northwest of subject property
Date: June 2, 2008

Recommendation: Denial of zone change

Specific comments:

1. The proposed development is not compatible with current low density land uses currently in the area and would unduly set tone for future adjacent land uses, if approved.
2. If approved, the satellite concentration development would promote “urban sprawl” by concentrating a population a significant distance from existing infrastructures of Billings, including, but not limited to, grocery stores, gas stations, schools, banks, churches, post offices, medical facilities and the like.
3. The concentrated population would significantly and unnecessarily increase traffic loads due to its location several miles from existing support services.
4. By design, one bedroom “affordable rentals” will not resemble the current single family owned properties in the area.
5. Common sense tells us that an “affordable rental complex” in a neighborhood will diminish property values.

Attachment C

Written Testimony of Thomas Romine Zone Change #844

COMPARISON OF ZONE CHANGES

On 8/3/04 the Zoning Commission heard zone change request #738 on 21.79 acres zoned R-96 requesting changes that included 13.14 acres of RMF. All of the surrounding property was zoned R-96. The Planning Staff recommended Approval and the Zoning Commission voted 3-0 for approval. Today, 6/3/08, there is zone change request #844 on 5.35 acres zoned R-96 and requesting a change to RMF-R. This property is less than one half mile from the #738 property and is also surrounded by R-96. These are two very similar requests and yet there are quite different comments in the staff report and the recommendation is for denial.

Below is a comparison of comments on these two zone change requests with the #738 comments in bold.

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed zone change is in compliance with the following goals of the Growth Policy:

.New Development that is sensitive to and compatible with the character of adjacent city neighborhoods.

.Contiguous development focused in and around existing population centers separated by open space.

.Affordable housing for all income levels dispersed throughout the City and County.

.Unobstructed views of the rimrocks surrounding the City of Billings.

"The proposed zoning would permit up to 28 multi-family units per acre, which is inconsistent with the surrounding single-family and agricultural uses.

. The proposed zoning is inconsistent with the surrounding character of the neighborhood, which are single-family lower density developments.

.The proposed zone meets the three tests for creation of an illegal spot zone.

1. The requested use is significantly different than the prevailing use in the area.
2. The area requested for the use is small in area.
3. The requested zoning benefits a single owner and not the community and may be at the expense of surrounding owners.

2. *Is the new zoning designed to lessen congestion in the streets?*

The new zoning could generate an increase in traffic.....However, it should be noted that this property is bordered on the east by Molt Road which is designated as a principal arterial street....

The additional traffic that could be produced by the proposed increase in density is approximately 380 additional vehicle trips per day on Rimrock Road.

4. *Will the new zoning promote health and general welfare?*

The new zoning contains restrictions on used allowed and provides for minimum setback requirements for structures.

The proposed zoning would permit a significant density increase from the current allowed maximum of 4 units per acre in the R-96 zoning district. This could cause traffic conflicts within the area. However, the Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

7. *Will the new zoning avoid undue concentration of population?*

The new zoning of Residential-8,000, Residential-7,000 and Residential Multi Family allows single-family detached dwellings, duplexes and townhomes based on minimum lot areas.

The proposed zoning will allow the introduction of multifamily residential uses in an area surrounded by low density single-family and agricultural uses. This would unduly concentrate population on a small area.

8. *Does the new zoning give reasonable consideration to the character of the district?*

The subject property is surrounded by Residential-9,600 zoning. However, the new zoning will provide a greater mix of housing choices in the Golden Acres Subdivision and the surrounding area. A similar mix of housing is provided in Circle 50 subdivision to the east and south.

The proposed zoning will permit multifamily uses, which are not alike in character to the surrounding single-family and agricultural uses.

11. *Was the new zoning adopted with a view to conserving the values of buildings?*

The new zoning should not negatively affect the value of the surrounding buildings/homes. The new development is proposed to offer a variety of housing types.

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. Higher density multifamily dwellings may negatively affect single-family market prices.

Attachment D

ORDINANCE NO. 08-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
West ½ of Lot 5 Sunny Cove Fruit Farms containing
approximately 5.35 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 West ½ of Lot 5 Sunny Cove Fruit Farms, containing approximately 5.35 acres 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 **Residential Multi-Family-Restricted** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Multi-Family-Restricted** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading June 23, 2008.

PASSED, ADOPTED AND APPROVED on second reading July 14, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
City Clerk

ZC #844 – 5900 Rimrock Road

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 23, 2008

TITLE: Interim Zoning Ordinance, Sexually Oriented Businesses
 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The Planning Department has discovered an inconsistency and oversight within Section 27-611 – Sexually Oriented Businesses – that may allow some types of adult businesses to locate anywhere within the commercial zoning districts of the city. This is not consistent with the purpose and intent of the Sexually Oriented Business regulations. Section 27-611 does not currently regulate commercial establishments that offer or provide live adult nude or semi-nude performances. The City does prohibit this activity only where alcoholic beverages are served (Section 3-304 BMCC).

ALTERNATIVES ANALYZED: State law at MCA 76-2-306 allows the adoption of an interim zoning regulation as a matter of urgency without the review of the City Zoning Commission or the publication of several legal ads in advance of the City Council public hearing. Interim zoning regulations may only be in effect for six (6) months from the date of enactment. The City Council may:

1. Approve the interim zoning regulation
2. Deny the interim zoning regulation
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The City Attorney and Planning Division staff will need to allocate resources to develop a final amendment to Section 27-611.

RECOMMENDATION

The Planning Division staff recommends that the City Council approve the Interim Zoning Ordinance amending Section 27-611 – Sexually Oriented Businesses and allow the interim zoning regulation to be effective for a period not to exceed six (6) months.

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

ATTACHMENTS:

A: Ordinance

**ATTACHMENT A
ORDINANCE NO. 08-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-611(c), AND SECTION 27-611(d); SETTING DEFINITIONS FOR SEXUALLY ORIENTED BUSINESS, ADOPT THE REVISIONS AS AN INTERIM ZONING REGULATION AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA*, provides for the enactment as a matter of urgency an interim zoning regulation. The City Council, City Attorney and staff have reviewed the proposed interim zoning regulation and determined there is a matter of urgency to be addressed by the interim zoning regulation. The City Council, in due deliberation, has considered the interim zoning regulation.

2. DESCRIPTION. The interim zoning regulation shall apply to all land within the City Of Billings.

3. INTERIM ZONING REGULATION. That Section 27-611(c) and 27-611(d) of the BMCC be amended to read as follows:

SEC. 27-611. SEXUALLY ORIENTED BUSINESSES.

(c) **Definitions.**

(1) **Adult Arcade** means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(2) **Adult Book Store or Adult Video Store** means a commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

- a. **Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, or other visual representations which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; or**
- b. **Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."**

(3) **Adult Cabaret** means a commercial establishment which regularly features:

(a) **Persons who appear nude or in a state of nudity or semi-nudity; or**

(b) **Live performances which are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities;**

~~(3)~~ **(4) Adult Motel** means a hotel, motel, or similar commercial establishment which:

- a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
- b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

~~(4)~~ **(5) Adult Motion Picture Theater** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

~~(5)~~ **(6) Church or Other Place of Worship** means a building which is used primarily for religious worship and related religious activities, including but not limited to churches, convents, monasteries, shrines, and temples.

~~(6)~~ **(7) City** means the City of Billings, Montana.

~~(7)~~ **(8) County** means Yellowstone County, Montana.

~~(8)~~ **(9) Establishment** means and includes any of the following:

- a. The opening or commencement of any sexually oriented business as a new business;
- b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- c. The additions of any sexually oriented business to any other existing sexually oriented business; or
- d. The relocation of any sexually oriented business.

(10) Nudity or a state of nudity means (a) the appearance of a human bare buttock, anus, male genitals, female genitals, or areola or nipple of the female breast, or (b) a state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

~~(9)~~ **(11) Sexually Oriented Business** means an "adult" arcade, "adult" book store, "adult" cabaret, "adult" video store, "adult" motel, or "adult" motion picture theater.

(10) (12) Specified Anatomical Area means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals. Specified Sexual

~~(11)~~ **(13) Activities** means and includes any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in connection with any of the activities set forth in above (a) through (c).

~~(12)~~ **(14) Transfer of Ownership or Control of sexually oriented business** means and includes any of the following:

- a. The sale, lease, or sublease of the business;
- b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or

- c. **The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.**
- (d) **Classification. Sexually oriented businesses are classified as follows:**
- (1) **Adult Arcades;**
 - (2) **Adult Book Stores or Adult Video Stores;**
 - (3) **Adult Cabarets**
 - (3) **Adult Motels; and**
 - (4) **Adult Motion Picture Theaters.**

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

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.

6. EFFECTIVE DATE. This ordinance shall be effective immediately upon first reading and up to six (6) months after final passage and as provided by law.

PASSED by the City Council on first reading June 23, 2008.

PASSED, ADOPTED AND APPROVED on second reading July 14, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Cari Martin, City Clerk

Interim Zoning Regulation, Sexually Oriented Business, BMCC 27-611

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