

# CITY OF BILLINGS

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

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## AGENDA

COUNCIL CHAMBERS

May 14, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing  
PLEDGE OF ALLEGIANCE – Mayor Tussing  
INVOCATION – Peggie Gaghen  
ROLL CALL  
MINUTES – April 23, 2007  
COURTESIES  
PROCLAMATIONS

- May 13-19: National Women’s Health Week
- May 13-19: National Police Week
- May 15: National Peace Officers’ Memorial Day
- May 24: First Congregational United Church of Christ Day

ADMINISTRATOR REPORTS – Tina Volek

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

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

### **CONSENT AGENDA:**

**1. A. Mayor’s appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Phyllis Crawford	Housing Authority	5/14/07	12/31/07
2.	Jo Ann Lees	Housing Authority	5/14/07	12/31/08

1. Unexpired term of Erica Limberhand

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

**B. Bid Awards:**

(1) **Airport Improvement Program (AIP) 32 Control Tower Demolition.** (Opened 4/24/07) Recommend General Contractors, Inc., \$769,287.00.  
([Corresponding Staff Memo B1](#))

(2) **Fire Alarm Upgrades for the Airport Terminal Building.**  
(Opened 4/24/07) Recommend Yellowstone Electric, \$48,759.00.  
([Corresponding Staff Memo B2](#))

**C. Amendment #1, W.O. 07-12, Phase II, Alkali Creek Road to Hilltop Water Main Replacement.** Professional Services Contract, Morrison-Maierle, Inc., \$34,596.00.  
([Corresponding Staff Memo C](#))

**D. Contract** with WCS Telecom for long distance services.  
([Corresponding Staff Memo D](#))

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

(1) Parcel 13: Portion of Tract B, Certificate of Survey No. 280, Dan C. and Ashley A. Fuchs, \$9,400.00.  
([Corresponding Staff Memo E1](#))

(2) Parcel 35: Portion of Lot 17, Barkley Sub., Samuel D. and Patricia L. Thomas, \$4,700.00.  
([Corresponding Staff Memo E2](#))

(3) Parcel 57: Portion of Tract 1-B of Certificate of Survey No. 1113, Tract 1, Amended, Shelly Ma AKA Shelly Ma-Chan, \$3,850.00.  
([Corresponding Staff Memo E3](#))

(4) Parcel 67: Portion of Lot 1, Block 4, Arrowhead Sub., Thomas C. Ricci, \$2,450.00.  
([Corresponding Staff Memo E4](#))

(5) Parcel 68: Portion of Lot 2, Block 4, Arrowhead Sub., Gary A. and Marsha A. Ostermiller, \$2,300.00.  
([Corresponding Staff Memo E5](#))

**F. Right-of-Way Easement** with Department of Natural Resources and Conservation (DNRC) for Briarwood Sanitary Sewer Main Extension.  
([Corresponding Staff Memo F](#))

**G. Acknowledge receipt of petition to annex #07-08:** approximately 4.92 acres of Tract 3, C/S 2298, generally located on the southeast corner of the intersection of Grand Avenue and 56<sup>th</sup> Street West, Benjamin Gonzales, petitioner; Hope Evangelical Church, owner, and setting a public hearing date for 5/29/07.  
([Corresponding Staff Memo G](#))

**H. Acknowledge receipt of petition to annex #07-09:** approximately 14.08 acres located on the southeast corner of the intersection of King Avenue East and

Calhoun Lane east of Miller Crossing Subdivision, Miller Trois LLC, owner and petitioner, and setting a public hearing date for 5/29/07.

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

**I. Acknowledge receipt of petition to vacate** a portion of Moose Hollow Lane, Lloyd Detienne, petitioner; and setting a public hearing date for 6/11/07.

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

**J. Acceptance of Quitclaim Deed** for a portion of Tract 2, Certificate of Survey 2055, from James Pickens, \$0.00.

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

**K. Acceptance and Approval of Donation** from MDU to the South Gate Cop Shop. \$250.00 value.

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

**L. Second/Final Reading ordinance** amending Article 18-1000 and Section 18-1001 re: aggressive solicitation.

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

**M. Second/Final Reading ordinance** for Zone Change #802, Gareld Krieg and Cal Kunkel, owners, Land Equity Partners, developer.

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

**N. Second/Final Reading ordinance** for Zone Change #803, City of Billings, owner, Parks, Recreation, and Public Lands, agent.

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

**O. Resolution** temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, during the 2007 Wing Ding event to be held July 4-8, 2007.

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

**P. Final Plat** of Grand Peaks Sub.

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

**Q. Final Plat** of Ironwood Estates Sub., 4<sup>th</sup> Filing, Lot 33, Block 1

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

**R. Bills and Payroll.**

(1) April 6, 2007

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

(2) April 16, 2007

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

(3) April 20, 2007

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

(4) March 1, 2007 – March 31, 2007 (Municipal Court)

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

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

## **REGULAR AGENDA:**

- 2. PUBLIC HEARING AND RESOLUTION** approving and adopting budget amendments for Fiscal Year 2006/2007 for the 2002 and 2003 UHP Grants in the Police Department; for a Planning Department grant from the State Historical Preservation; and for a General Fund - Parks Loan to the Ballpark Construction Fund until bonds are sold. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

- 3. PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward III to include recently annexed property in Annex #07-07: an approximate 150-acre parcel described as: Lots 1-5, Block 1, Western Sky Subdivision, Cal Kunkel and Gareld Krieg, owners. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

- 4. PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annex #07-06 for the future Cottonwood Park site: containing 42.26 acres described as: the northwest corner of Colton Boulevard and 54<sup>th</sup> Street West, City of Billings, owners. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

- 5. AGREEMENT BETWEEN YELLOWSTONE COUNTY AND THE CITY OF BILLINGS** to sell and exchange parcels described as Lots 19-24, Block 60, Original Town of Billings, City of Billings, owner; and Lots 6-12, Block 60, Original Town of Billings, Yellowstone County, owner, for the purpose of construction of a MET Transit Transfer Center and possible Federal Courthouse site. (**Action:** approval or disapproval of Staff recommendation.)

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

- 6. REQUEST FOR TIFD FUNDING** by the Downtown Billings Partnership to construct county parking on Lots 19-24, Block 60, Original Town of Billings, with \$237,016 from 1976 Tax Increment District Funds. (**Action:** approval or disapproval of Staff recommendation.)

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

- 7. ALLOCATION** of CDBG and HOME program funds for FY2007-2008 and approval of the FY2007-2008 Annual Action Plan. (**Action:** approval or disapproval of Staff recommendation.)

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



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

**Council Initiatives**

**ADJOURN**

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

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

**CALENDAR  
(Council AND Boards & Commissions)**

**MAY:**

5/01/2007	Community Development Board	3:00 p.m.	4 <sup>th</sup> Floor Library
	Zoning Commission	4:30 p.m.	Council Chambers
	Aviation & Transit Commission	5:30 p.m.	Airport Terminal
	Council Agenda Setting Meeting	5:30 p.m.	CH Conference Room
5/02/2007	Board of Adjustment	6:00 p.m.	Council Chambers
5/03/2007	EMS Commission	7:30 a.m.	Main Fire Station
	Human Relations Commission	12:15 p.m.	CH Conference Room
5/07/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
5/08/2007	Planning Board	6:00 p.m.	4 <sup>th</sup> Floor Library
5/09/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 <sup>rd</sup> St.
5/10/2007	Library Board	11:30 a.m.	Library
	Committee on Homelessness	1:30 p.m.	3 <sup>rd</sup> Floor Library
5/14/2007	Energy & Conservation Commission	3:00 p.m.	Billings Operations Ctr.

	Parking Advisory Board REGULAR Council Meeting	4:00 p.m. 6:30 p.m.	4848 Midland Rd. CH Conference Room Council Chambers
5/15/2007	Yellowstone Historic Preservation Board Council Agenda Setting Meeting	8:00 a.m. 5:30 p.m.	4 <sup>th</sup> Floor Library CH Conference Room
5/15/2007	Planning Board	6:00 p.m.	4 <sup>th</sup> Floor Library
5/21/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
5/23/2007	Development Process Advisory Review Board (DPARB) Traffic Control Board	1:00 p.m. NOON	CH Conference Room 4 <sup>th</sup> Floor Library
5/24/2007	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 <sup>th</sup> Street
5/28/2007	MEMORIAL DAY – CITY OFFICES CLOSED		
5/29/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
5/30/2007	Housing Authority Council Agenda Setting Meeting	NOON 5:30 p.m.	2415 1 <sup>st</sup> Avenue North CH Conference Room
5/30/2007	Planning Board	6:00 p.m.	4 <sup>th</sup> Floor Library

**JUNE:**

6/01/2007	Human Relations Commission	12:15 p.m.	CH Conference Room
6/04/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
6/05/2007	Community Development Board Zoning Commission Aviation & Transit Commission	3:00 p.m. 4:30 p.m. 5:30 p.m.	4 <sup>th</sup> Floor Library Council Chambers Airport Terminal
6/06/2007	Board of Adjustment	6:00 p.m.	Council Chambers
6/07/2007	EMS Commission Human Relations Commission	7:30 a.m. 12:15 p.m.	Main Fire Station CH Conference Room
6/11/2007	Energy & Conservation Commission  Parking Advisory Board REGULAR Council Meeting	3:00 p.m.  4:00 p.m. 6:30 p.m.	Billings Operations Ctr. 4848 Midland Rd. CH Conference Room Council Chambers
6/12/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 <sup>th</sup> Floor Library
6/13/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 <sup>rd</sup> St.
6/14/2007	Library Board Committee on Homelessness	11:30 a.m. 1:30 p.m.	Library 3 <sup>rd</sup> Floor Library

6/18/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
6/19/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 <sup>th</sup> Floor Library
6/21/2007	Public Utilities Board	6:30 p.m.	Public Works-Belknap 2251 Belknap Ave
6/25/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
6/26/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 <sup>th</sup> Floor Library
6/27/2007	Development Process Advisory Review Board (DPARB) Traffic Control Board Housing Authority	1:00 p.m. NOON NOON	CH Conference Room 4 <sup>th</sup> Floor Library 2415 1 <sup>st</sup> Avenue North
6/28/2007	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 <sup>th</sup> Street

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, MAY 14, 2007**

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

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**PROBLEM/ISSUE STATEMENT:** Confirmation of the appointments for Board and Commission positions that are vacant due to resignations.

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

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Phyllis Crawford	Housing Authority	5/14/07	12/31/07
2.	Jo Ann Lees	Housing Authority	5/14/07	12/31/08

1. Unexpired term of Erica Limberhand

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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TITLE: Approval of the Award of Airport Improvement Program (AIP) 32 Control Tower Demolition

DEPARTMENT: Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Included in the City's Capital Improvement Program is the Control Tower Demolition project, which is a Federal Aviation Administration (FAA) approved Airport Improvement Program (AIP) project. When the FAA began operating out of the new Air Traffic Control Tower, the old tower was decommissioned and all of the remaining equipment was removed. The old tower was built in 1958 and is not Americans with Disability Act (ADA) accessible, and can only be accessed by a narrow stairway. Also, most of the flooring, ceiling, and pipe insulation contain asbestos, and the FAA considers the tower an obstruction to air operations. This project will include the removal of the existing asbestos material and the demolition of three of the four remaining floors. The remaining floor will provide an access point to the Terminal roof and a cold storage area. This project was advertised in the *Billings Times*, and on the City's Web site. Despite sending out nine sets of plans and having ten contractors at our prebid meeting, only one bid was received for this project. On April 24, 2007, we received the following bid for this project:

<b><u>CONTRACTOR</u></b>	<b><u>BID</u></b>
General Contractors, Inc.	\$769,278
<b>ESTIMATE</b>	<b>\$550,000</b>

Following the bid opening, staff met with the contractor to determine the cost differences between the architect's estimate and the contractor's bid price. We discovered that sixty-two (62) percent of the difference was related to a single bid component. This project component was for utilizing a specialized scaffolding system for this project. Due to the location and size of the old tower, the contractor elected to use a site specific engineered scaffolding system. The benefit of this system is that it can be fully encased after it is erected to help prevent debris from falling on the Terminal roof and aircraft ramp areas. Additionally, this scaffolding system can accommodate elevators that the contractor will use to lower the block, concrete, and structural steel to the main roof level where it will be transported to dumpsters located on the aircraft ramp.

This type of scaffolding is not available locally, and must be shipped to the site and then requires several weeks to construct and physically adhere to the old tower's structural steel. For these reasons, this scaffolding system is significantly more expensive than the systems normally used on new construction projects in the area.

In addition to the scaffolding costs, we identified that twenty-three (23) percent of the cost difference was in the labor dollars for the masonry, concrete, and steel removal. These additional labor costs are the result of General Contractors' plan to completely remove the block and concrete from the tower's structural frame before removing the steel that supports the scaffolding system. Once the concrete and block are removed, the demolition crew will then start at the top again to remove the steel structure and lower the scaffolding. This approach eliminates one crew removing the steel above a crew that is removing the block and concrete. This approach has all demolition taking place at the same level for the block and concrete, and then again for the steel, significantly reducing the opportunity for demolition debris falling onto the work crew.

After reviewing this contractor's demolition plan and his estimated costs for each major work component, we feel they offered the City a fair bid and we were very impressed with his well thought out demolition and safety plan. Additionally, we do not feel that rejecting this single bid and re-bidding will result in significant cost savings or additional interest in this project, due to the amount of construction work underway in the local area at this time. Finally, since this project will be funded by a Federal grant, the FAA has reviewed the project as bid, and has also endorsed the contractor's demolition plan and costs to remove the old tower.

**FINANCIAL IMPACT:** The total cost of the project is \$769,287, and will be funded through a 95% FAA AIP grant, with a 5% local match. The FAA's Portion will be \$730,822, and the City's match is \$38,465, which will be funded from the Airport's Capital Budget.

**RECOMMENDATION**

Staff recommends that the City Council approve the award of AIP 32 Control Tower demolition to the low bidder General Contractors, Inc., for the amount of \$769,287.

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

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

TITLE: Approval of the Award of the Fire Alarm Upgrades for the Airport Terminal Building  
DEPARTMENT: Aviation and Transit  
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

**PROBLEM/ISSUE STATEMENT:** Included in the City's Capital Improvement Program is the Fire Alarm System Upgrade for the Airport Terminal Building. In order to be in compliance with the current fire code, the Terminal Building's fire alarm system needs to be upgraded. This project will install additional smoke and heat sensing devices in the ceilings of the baggage claim, the main connecting hallway, the security checkpoint, and the ticketing lobby. When completed, the Airport Terminal Building will be in full compliance with the current fire code.

This project has been advertised in the *Billings Times*, and is on the City's Web site. On April 24, 2007, we received the following bids for this project:

<u>CONTRACTOR</u>	<u>BID</u>
Yellowstone Electric	\$48,759
Ace Electric	\$54,765
<b>ESTIMATE</b>	<b>\$50,000</b>

**FINANCIAL IMPACT:** The total cost of the project is \$48,759. The source of funding for this project is the Department's Capital Budget.

**RECOMMENDATION**

Staff recommends that the City Council approve the award of Fire Alarm Upgrades to the low bidder Yellowstone Electric, for the amount of \$48,759.

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

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

**TITLE:** W.O. 07-12 Alkali Creek Road to Hilltop Road Water Main Replacement Ph. II, Contract Amendment #1  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** In 2001, the City of Billings contracted with Morrison-Maierle, Inc. to design the replacement of the water main that runs between Alkali Creek Road and Hilltop Road. In 2003, the water line between Alkali Creek Road and Hilltop was replaced, but due to the uncertainty of the Aronson Avenue Extension alignment and grades, a 900-foot section was not replaced. With the construction of the Aronson Avenue Extension, the portions of water main that were excluded from the 2003 project will need to be replaced. Under this contract amendment, Morrison-Maierle, Inc. will provide updated project plans and specifications to incorporate any changes from the Aronson Avenue Extension, provide pre-bidding and post-bidding services, construction surveying, construction assistance, and post construction services. The City is recommending a contract amendment with Morrison-Maierle, Inc to cover the Professional Services fees for W.O. 07-12.

**FINANCIAL IMPACT:** This contract amendment is for \$34,596.00. The funding sources for this project will from the water replacement funds.

**RECOMMENDATION**

Staff recommends that Council approve the professional services contract amendment for WO 07-12 Alkali Creek Road to Hilltop Road Water Main Replacement Ph. II, Contract Amendment #1 with Morrison-Maierle, Inc. in the amount of \$34,596.00.

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

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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**TITLE:** Approve contract to extend our existing telephone long distance contract with WCS Telecom for a period of 12 months.

**DEPARTMENT:** Administration - ITD

**PRESENTED BY:** David Watterson, ITD Manager

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**PROBLEM/ISSUE STATEMENT:** The Information Technology Division wishes to extend our telephone long distance services with WCS Telecom for a period of 12 months. Our current long distance telephone contract expires at the end of May 2007. In 2004, the City of Billings and Yellowstone County signed a joint 3-year contract with WCS Telecom for long distance services. By combining our long distance call volumes, both Yellowstone County and the City of Billings receive better rates. In advance of the current contract expiring, both Yellowstone County and Information Technology discussed the plan to extend the existing contract for a 12 month period and then work together towards developing an RFP for a new long distance contract to go into effect at the end of this proposed extension timeframe.

**FINANCIAL IMPACT:** By combining our long distance call volumes with Yellowstone County, the City of Billings is able to obtain more affordable long distance rates. Based on our call volumes over the past year, the proposed 12-month contract from WCS Telecom represents a savings of approximately \$450 to the City of Billings over the life of the contract.

**RECOMMENDATION**

Staff recommends that Council approve the 12-month contract for long distance services from WCS Telecom.

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #13, a Portion of Tract B of Certificate of Survey No. 280 with Dan C. Fuchs and Ashley A. Fuchs

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #13 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$9,400.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$9,400.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #13, a Portion of Tract B of Certificate of Survey No. 280 with Dan C. Fuchs and Ashley A. Fuchs in the amount of \$9,400.00, and authorize the Mayor to execute these documents.

### ATTACHMENT

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

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

## INTRODUCTION

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

## PROCEDURAL HISTORY

### Completed Items

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

### Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

## BACKGROUND

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in early 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

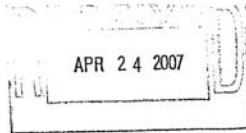
### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #13, a Portion of Tract B of Certificate of Survey No. 280 with Dan C. Fuchs and Ashley A. Fuchs in the amount of \$9,400.00, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

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

*file*



**CITY OF BILLINGS**  
(hereinafter referred to as City)  
**RIGHT-OF-WAY AGREEMENT**

Lake Elmo Road Hilltop Road to Wicks Lane      Work Order: 04-33      Yellowstone  
DESIGNATION      Project No. 05153      COUNTY

Parcel No.	Parcel Description	Section	Township	Range
13	Tract B, Certificate of Survey Number 280	22	1N	26E

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

Dan C. and Ashley A. Fuchs  
1301 Pennsylvania Street, Suite 900  
Denver, CO. 80203  
720-351-0648

- In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a deed and other documents required by the City for all real property agreed to be conveyed by this agreement.
- COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)
 

4,060 square feet by deed	\$ 6,032.00
Improvements (trees/shrubs)	\$ 3,146.00
- OTHER COMPENSATION:
 

580 square feet Temporary Construction Permit	\$ 189.00
---	-----------
- TOTAL COMPENSATION (includes all damages to the remainder): \$9,400.00.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:  
A warrant in the amount of \$9,400.00, to be made payable to Dan C. and Ashley A. Fuchs and mailed to 1301 Pennsylvania Street, Suite 900, Denver, CO. 80203.
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
- This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

We understand that we are required by law to provide our correct and that failing to comply may subject us to civil and criminal per correct taxpayer identification number(s).

X Dan C. Fuchs  
Signature: Dan C. Fuchs

X Ashley A. Fuchs  
Signature: Ashley A. Fuchs

Signature: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

N/A  
Boyd Darlow, Olson Land Services (Date)

Michelle J. Bailly 4/24/07  
City of Billings, Public Works Department (Date)

ATTEST: \_\_\_\_\_  
City Clerk (Date)

LER-013.200 Fuchs



Return to: City Clerk  
City of Billings  
PO Box 1178  
Billings, MT 59103

Project No. W.O. 04-33 Parcel No. 13 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 23rd day of April, 2007.

FOR VALUABLE CONSIDERATION, lawful money of the United States to them in hand paid by the CITY OF BILLINGS, THE receipt whereof is acknowledged, WITNESSTH THAT:

DAN C. FUCHS AND ASHLEY A. FUCHS  
1301 PENNSYLVANIA STREET  
DENVER, CO. 80203

does hereby GRANT, BARGAIN, SELL CONVEY, WARRANT AND CONFIRM unto the CITY OF BILLINGS for the benefit and use of the Public the following described real property, to wit:

Parcel No. 13 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract B, Certificate of Survey Number 280, on file under Document No. 459729, Yellowstone County, Montana, as shown by the shaded areas on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing a total area of 4,060 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 580 sq. ft..

PURPOSE OF ACQUISITION is to create a right-of way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

EXCEPTING AND RESERVING, however, all gas and oil, beneath the surface of the above described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or in anyway damaged.

FURTHER EXCEPTING AND RESERVING, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

TO HAVE AND TO HOLD the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the CITY OF BILLINGS, and to its successors and assigns forever. IN WITNESSTH WHEREOF, the undersigned have executed these premises the day and year first above written.

Project No. : W.O. 04-33

Parcel No. 13

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

x Jan C. Fuchs x Ashley A. Fuchs

State of Montana )  
County of Gallatin )

This instrument was acknowledged before me on April 23, 2007

by Dan C. Fuchs & Ashley A. Fuchs  
(names)



Tracy L. Weathers  
Notary Signature Line  
Tracy L. Weathers  
Notary Printed Name

Notary Public for State of Montana  
Residing at: Belgrade  
My Commission Expires: Feb. 24, 2008

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

The Mayor and City Council of the City of Billings acknowledges receipt of this deed and hereby accepts the property interest conveyed through this instrument.

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

ATTEST: \_\_\_\_\_  
City Clerk

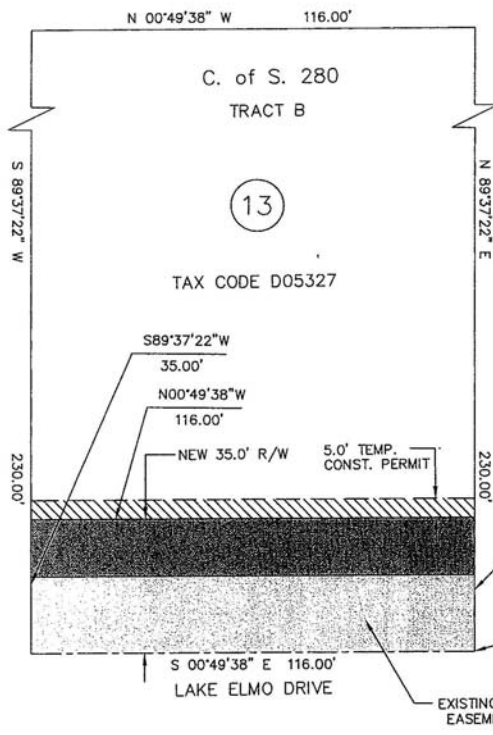
STATE OF MONTANA )  
:ss  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and my seal the day and year herein above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Residing in \_\_\_\_\_  
My commission expires \_\_\_\_\_

\_\_\_\_\_  
Print Name

**EXHIBIT A**  
**RIGHT-OF-WAY ACQUISITION**  
**AND TEMPORARY CONSTRUCTION PERMIT**  
**SITUATED IN TRACT B,**  
**CERTIFICATE OF SURVEY NO. 280,**  
**YELLOWSTONE COUNTY, MONTANA**

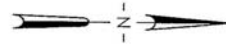


LAKE ELMO DRIVE  
 RIGHT-OF-WAY ACQUISITION DESCRIPTION  
 PARCEL No. 13

A tract of land situated in Tract B,  
 CERTIFICATE OF SURVEY NO. 280,  
 Yellowstone County, Montana said tract being  
 more particularly described as follows, to wit:

Beginning at a point which is the Northeast  
 corner of Tract B Certificate of Survey 280;  
 Thence S 0°49'38" E a distance of 116.00  
 feet; Thence S 89°37'22" W a distance of  
 35.00 feet; Thence N 0°49'38" W a distance  
 of 116.00 feet; Thence N 89°37'22" E a  
 distance of 35 feet to the point of beginning  
 containing 4,060 square feet.

AREA OF EXISTING EASEMENT: 2,320 S.F.  
 AREA TO BE ACQUIRED: 4,060 S.F.  
 AREA OF TEMPORARY CONSTRUCTION  
 PERMIT: 580 S.F.



**LEGEND**  
 RIGHT-OF-WAY ACQUISITION  
 CONSTRUCTION PERMIT

RESERVED FOR CLERK AND RECORDER

**ENGINEERING, INC.**  
 Consulting Engineers and Land Surveyors  
 1500 North Townsend Way  
 Billings, Montana 59102  
 Phone (406) 454-5255  
 www.aeginc.com

CITY OF BILLINGS, MONTANA  
 RIGHT-OF-WAY EXHIBIT  
 CITY W.O. 04-33 PARCEL 13  
 THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA  
 RIGHT-OF-WAY PLAN.  
 2/27/07 PARCEL 13.DWG

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #35, a Portion of Lot 17 of Barkley Subdivision with Samuel D. Thomas and Patricia L. Thomas

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #35 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$4,700.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$4,700.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #35, a portion of Lot 17 of Barkley Subdivision with Samuel D. Thomas and Patricia L. Thomas in the amount of \$4,700.00, and authorize the Mayor to execute these documents.

### ATTACHMENT

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

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

## INTRODUCTION

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

## PROCEDURAL HISTORY

### Completed Items

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

### Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

## BACKGROUND

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in early 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #35, a portion of Lot 17 of Barkley Subdivision with Samuel D. Thomas and Patricia L. Thomas in the amount of \$4,700.00, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

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

**CITY OF BILLINGS**  
(hereinafter referred to as City)  
**RIGHT-OF-WAY AGREEMENT**

Lake Elmo Road Hilltop Road to Wicks Lane      Work Order: 04-33      Yellowstone  
DESIGNATION      Project No. 05153      COUNTY

Parcel No.	Parcel Description	Section	Township	Range
35	Lot 17 of Barkley Subdivision	22	1N	26E

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

SAMUEL D. THOMAS AND PATRICIA L. THOMAS  
1204 LAKE ELMO DRIVE  
BILLINGS, MT 59105  
238-9762

1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a deed and other documents required by the City for all real property agreed to be conveyed by this agreement.
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)
 

748 square feet by deed	\$3,179.00
Improvements (Tree, shrub, sod)	\$ 943.00
3. OTHER COMPENSATION:
 

1,298 square feet Temporary Construction Permit	\$ 552.00
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4. TOTAL COMPENSATION (includes all damages to the remainder): ~~\$4,700.00~~.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:  
 A warrant in the amount of \$4,700.00, to be made payable to SAMUEL D. THOMAS AND PATRICIA L. THOMAS and mailed to 1204 LAKE ELMO DRIVE, BILLINGS, MT 59105
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Bargain and Sale Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. City of Billings agree to compensate the Grantors for connector road(s) if the City requires the accesses to be relocated. PT SD/MB



(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

*Samuel D. Thomas* 12  
Signature: SAMUEL D. THOMAS

*Patricia L. Thomas* 16  
Signature: PATRICIA L. THOMAS

Signature: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

*Ronald E. Olson* 12-13-06  
Ronald E. Olson, Olson Land Services (Date)

\_\_\_\_\_  
City of Billings (Date)

ATTEST:

*Nicholas D. Bailey* 4/6/07  
City of Billings, Public Works Department (Date)

\_\_\_\_\_  
City Clerk (Date)

LER-035.200 Thomas

Return to: City Clerk  
City of Billings  
PO Box 1178  
Billings, MT 59103

Project No. W.O. 04-33 Parcel No. 35 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 13th day of December, 2006.

FOR VALUABLE CONSIDERATION, lawful money of the United States to them in hand paid by the CITY OF BILLINGS, THE receipt whereof is acknowledged, WITNESSTH THAT:

SAMUEL D. THOMAS AND PATRICIA L. THOMAS  
1204 LAKE ELMO DRIVE  
BILLINGS, MT 59105

does hereby GRANT, BARGAIN, SELL CONVEY, WARRANT AND CONFIRM unto the CITY OF BILLINGS for the benefit and use of the Public the following described real property, to wit:

Parcel No. 35 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 17 of Barkley Subdivision, in the City of Billings, on file under Document No. 819766, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 748 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 1,289 sq. ft..

PURPOSE OF ACQUISITION is to create a right-of way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

EXCEPTING AND RESERVING, however, all gas and oil, beneath the surface of the above described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or in anyway damaged.

FURTHER EXCEPTING AND RESERVING, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

TO HAVE AND TO HOLD the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the CITY OF BILLINGS, and to its successors and assigns forever. IN WITNESSTH WHEREOF, the undersigned have executed these premises the day and year first above written.

Project No. : W.O. 04-33

Parcel No. 35

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Samuel D. Thomas      Patricia L. Thomas

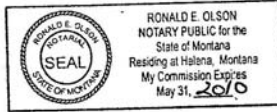
SAMUEL D. THOMAS      PATRICIA L THOMAS

State of MONTANA )

County of Yellowstone )

This instrument was acknowledged before me on December 13, 2006  
(date)

by SAMUEL D THOMAS and Patricia L. Thomas  
(names)



Ronald E. Olson  
Notary Signature Line

Notary Printed Name

Notary Public for State of \_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

The Mayor and City Council of the City of Billings acknowledges receipt of this deed and hereby accepts the property interest conveyed through this instrument.

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

ATTEST: \_\_\_\_\_  
City Clerk

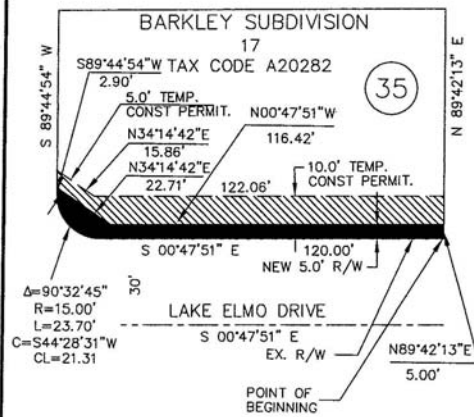
STATE OF MONTANA )  
  )ss  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and my seal the day and year herein above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana      Print Name  
Residing in \_\_\_\_\_  
My commission expires \_\_\_\_\_

# EXHIBIT A

## RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 17, BARKLEY SUBDIVISION, YELLOWSTONE COUNTY, MONTANA

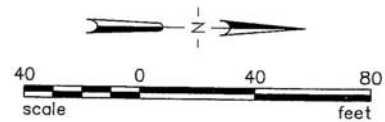


LAKE ELMO DRIVE  
RIGHT-OF-WAY ACQUISITION DESCRIPTION  
PARCEL No. 35

A tract of land situated in Lot 17,  
BARKLEY SUBDIVISION,  
Yellowstone County, Montana said tract being  
more particularly described as follows, to wit:

Beginning at a point on the west right-of-way line of Lake Elmo Drive, said point of beginning being the northeast corner of Lot 17, BARKLEY SUBDIVISION; thence from said point of beginning  $S 00^{\circ}47'51'' E$  a distance of 120.00 feet; thence along a tangent curve to the right having a Radius of 15.00 feet, a Delta of  $90^{\circ}32'45''$  and a Length of 23.70 feet (said curve being subtended by a chord bearing  $S 44^{\circ}28'31'' W$  a distance of 21.31 feet); thence  $S 89^{\circ}44'54'' W$  a distance of 2.90 feet; thence  $N 34^{\circ}14'42'' E$  a distance of 116.42 feet; thence  $N 00^{\circ}47'51'' W$  a distance of 116.42 feet; thence  $N 89^{\circ}42'13'' E$  a distance of 5.00 feet to the point of beginning, containing 748 square feet.

AREA TO BE ACQUIRED: 748 S.F.  
AREA OF TEMPORARY CONSTRUCTION PERMIT: 1289 S.F.



### LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 35

THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY PLAN.

REVISED: 4/9/07 MB

PARCEL 35/ENC 1/22/07



**ENGINEERING, INC.**  
Consulting Engineers and Land Surveyors

1100 North Townsend Way  
Billings, Montana 59102  
Phone (406) 656-3255  
www.enginc.com

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

---

**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #57, a Portion of Tract 1-B of Certificate of Survey No. 1113, Tract 1, Amended, with Shelly Ma A/K/A Shelly Ma-Chan

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #57 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$3,850.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$3,850.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

**RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #57, a portion of Tract 1-B of Certificate of Survey No. 1113, Tract 1, Amended, with Shelly Ma A/K/A Shelly Ma-Chan in the amount of \$3,850.00, and authorize the Mayor to execute these documents.

**ATTACHMENT**

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

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

## INTRODUCTION

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

## PROCEDURAL HISTORY

### Completed Items

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

### Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

## BACKGROUND

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in early 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

## **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #57, a portion of Tract 1-B of Certificate of Survey No. 1113, Tract 1, Amended, with Shelly Ma A/K/A Shelly Ma-Chan in the amount of \$3,850.00, and authorize the Mayor to execute these documents.

## **ATTACHMENT**

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



**CITY OF BILLINGS**  
(hereinafter referred to as City)  
**RIGHT-OF-WAY AGREEMENT**

Lake Elmo Road Hilltop Road to Wicks Lane Work Order: 04-33 Yellowstone  
DESIGNATION Project No. 05153 COUNTY

Parcel No.	Parcel Description	Section	Township	Range
57	Tract 1-B of Certificate of Survey No. 1113 Tract 1 Amended	22	1N	26E

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

SHELLY MA A/K/A SHELLY MA-CHAN  
3285 CANYON DRIVE, UNIT 62  
BILLINGS, MT. 59102

- In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a deed and other documents required by the City for all real property agreed to be conveyed by this agreement.
- COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)
 

460 square feet by deed	\$1,955.00
Improvements (Lawn, asphalt, curbing, on-site sign)	\$1,480.00
- OTHER COMPENSATION:
 

920 square feet Temporary Construction Permit	\$391.00
---	----------
- TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$3,850.00.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:  
A warrant in the amount of \$3,850.00, to be made payable to SHELLY MA and mailed to 3285 CANYON DRIVE, UNIT 62, BILLINGS, MT. 59102
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
- This agreement, upon execution by an agent of the City and presentation to the Grantor so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantor
- At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:  
Reconfigure and repair sprinkler system, if any, affected by project.  
Grantors understand and agree that upon completion of the construction of this item located upon the Grantors' land, they shall be considered the sole property of the Grantors, and the maintenance and repair of said property shall be the responsibility of the Grantors.

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATE

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

[Signature] 2/27/07  
Signature: SHELLY MA A/K/A SHELLY MA-CHAN (Date)

\_\_\_\_\_  
Signature: (Date)

\_\_\_\_\_  
Signature: (Date)

RECOMMENDED FOR APPROVAL: APPROVED FOR A

[Signature] 3-7-07  
Ronald E. Olson, Olson Land Services (Date) Mayor, City of Billings

[Signature] 4/5/07  
City of Billings, Public Works Department (Date) ATTEST: City Clerk (Date)

LER-057.200 Ma

Return to: City Clerk  
City of Billings  
PO Box 1178  
Billings, MT 59103

Project No. W.O. 04-33 Parcel No. 57 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 27th day of February, 2007.

**FOR VALUABLE CONSIDERATION**, lawful money of the United States to them in hand paid by the **CITY OF BILLINGS**, THE receipt whereof is acknowledged, **WITNESSTH THAT:**

SHELLY MA A/K/A SHELLY MA-CHAN  
3285 CANYON DRIVE, UNIT 62  
BILLINGS, MT. 59102

does hereby **GRANT, BARGAIN, SELL CONVEY, WARRANT AND CONFIRM** unto the **CITY OF BILLINGS** for the benefit and use of the **Public** the following described real property, to wit:

**Parcel No. 57 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 1-B of Certificate of Survey No. 1113 Tract 1 Amended, on file under Document No. 1067862, situated in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 22, Township 1 North, Range 26 East, P.M.,M., Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 460 sq. ft..**

**Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 920 sq. ft..**

**PURPOSE OF ACQUISITION** is to create a right-of way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

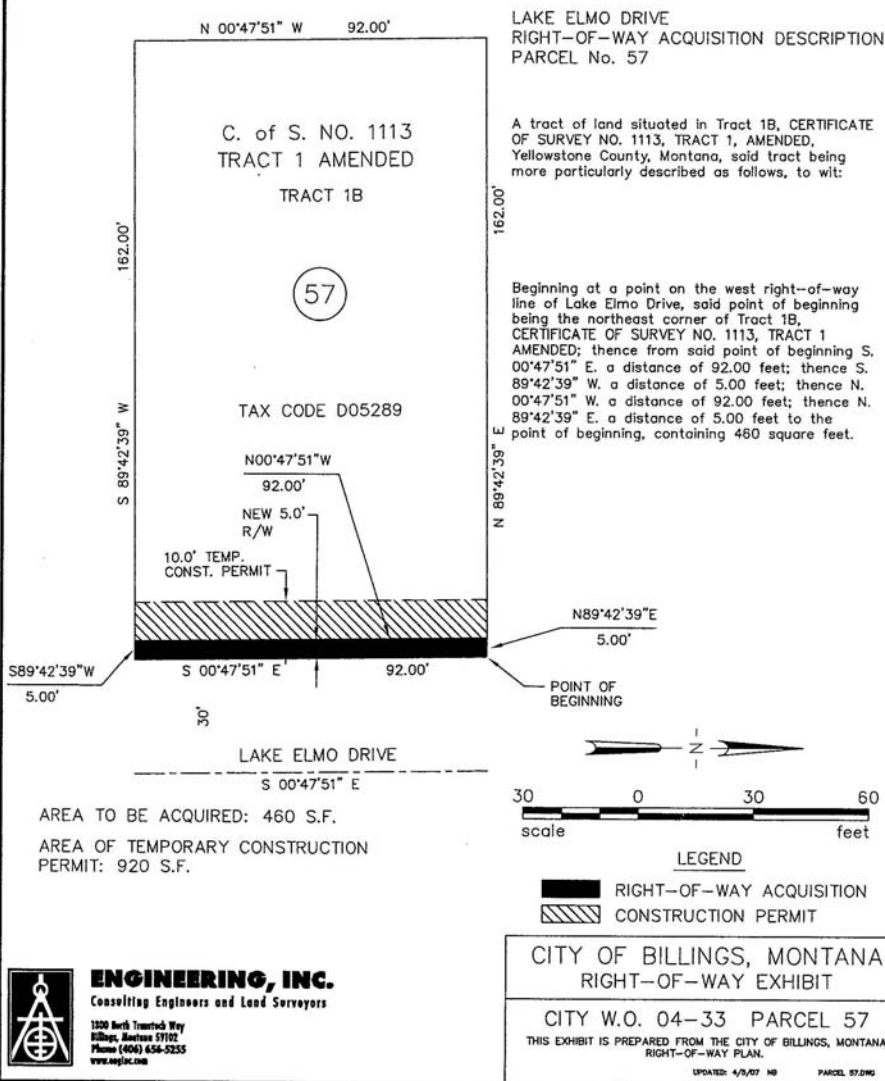
**EXCEPTING AND RESERVING**, however, all gas and oil, beneath the surface of the above described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or in anyway damaged.

**FURTHER EXCEPTING AND RESERVING**, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

**TO HAVE AND TO HOLD** the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the **CITY OF BILLINGS**, and to its successors and assigns forever. **IN WITNESSTH WHEREOF**, the undersigned have executed these premises the day and year first above written.



**EXHIBIT A**  
**RIGHT-OF-WAY ACQUISITION**  
**AND TEMPORARY CONSTRUCTION PERMIT**  
**SITUATED IN TRACT 1B,**  
**CERTIFICATE OF SURVEY NO. 1113,**  
**TRACT 1, AMENDED,**  
**YELLOWSTONE COUNTY, MONTANA**



**ENGINEERING, INC.**  
 Consulting Engineers and Land Surveyors  
 1000 North Townsend Way  
 Billings, Montana 59102  
 Phone (406) 656-5255  
 www.enjinc.com

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #67, a Portion of Lot 1, Block 4 of Arrowhead Subdivision with Thomas C. Ricci

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #67 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,450.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$2,450.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

**RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #67, a Portion of Lot 1, Block 4 of Arrowhead Subdivision with Thomas C. Ricci in the amount of \$2,450.00, and authorize the Mayor to execute these documents.

**ATTACHMENT**

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

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

## INTRODUCTION

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

## PROCEDURAL HISTORY

### Completed Items

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

### Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

## BACKGROUND

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in early 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #67, a Portion of Lot 1, Block 4 of Arrowhead Subdivision with Thomas C. Ricci in the amount of \$2,450.00, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

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



**CITY OF BILLINGS**

(hereinafter referred to as City)

**RIGHT-OF-WAY AGREEMENT**

Lake Elmo Road Hilltop Road to Wicks Lane  
DESIGNATION

Work Order: 04-33  
Project No. 05153

Yellowstone  
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
67	Lot 1, Block 4 of Arrowhead Subdivision	22	1N	26E

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

THOMAS C. RICCI  
1425 LAKE ELMO DRIVE  
BILLINGS, MT. 59105  
672-9802(c): 252-5619

- In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a deed and other documents required by the City for all real property agreed to be conveyed by this agreement.
- COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)
 

532 square feet by deed	\$1,596.00
Improvements (Tree, concrete driveway, sod)	\$ 622.00
- OTHER COMPENSATION:  

576 MB <i>see memo to file</i>	
<del>750</del> square feet Temporary Construction Permit	\$ 225.00
- TOTAL COMPENSATION (includes all damages to the remainder): \$2,450.00.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:  
 A warrant in the amount of \$2,450.00, to be made payable to THOMAS C. RICCI and mailed to 1425 LAKE ELMO DRIVE, BILLINGS, MT. 59105
- IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
- The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
- This agreement, upon execution by an agent of the City and presentation to the Grantor so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantor

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE D/

We understand that we are required by law to provide our correct taxpayer id and that failing to comply may subject us to civil and criminal penalties. We c correct taxpayer identification number(s).

Thomas C. Ricci 1-16-07  
Signature: THOMAS C. RICCI (Date)

Signature: (Date)

Signature: (Date)

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 1-16-07  
Ronald E. Olson, Olson Land Services (Date)

APPROVE

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

ATTEST:

Yvonne S. Bailey 1/4/07  
City of Billings, Public Works Department (Date)

\_\_\_\_\_  
City Clerk (Date)

LER-067.200 Ricci

Return to: City Clerk  
City of Billings  
PO Box 1178  
Billings, MT 59103

Project No. W.O. 04-33 Parcel No. 67 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 16<sup>th</sup> day of January, 2007.

**FOR VALUABLE CONSIDERATION**, lawful money of the United States to them in hand paid by the **CITY OF BILLINGS**, THE receipt whereof is acknowledged, **WITNESSTH THAT:**

THOMAS C. RICCI  
1425 LAKE ELMO DRIVE  
BILLINGS, MT. 59105

does hereby **GRANT, BARGAIN, SELL CONVEY, WARRANT AND CONFIRM** unto the **CITY OF BILLINGS** for the benefit and use of the **Public** the following described real property, to wit:

**Parcel No. 67 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project.** Said parcel is also described as a tract of land within Lot 1, Block 4 of Arrowhead Subdivision, in the City of Billings, on file under Document No. 452936, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 532 sq. ft.

**Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 576 sq. ft.**

**PURPOSE OF ACQUISITION** is to create a right-of way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

**EXCEPTING AND RESERVING**, however, all gas and oil, beneath the surface of the above described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or in anyway damaged.

**FURTHER EXCEPTING AND RESERVING**, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

**TO HAVE AND TO HOLD** the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the **CITY OF BILLINGS**, and to its successors and assigns forever. **IN WITNESSTH WHEREOF**, the undersigned have executed these premises the day and year first above written.

Project No. : W.O. 04-33

Parcel No. 67

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

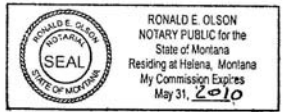
Thomas C. Ricci \_\_\_\_\_

State of Montana )

County of Yellowstone )

This instrument was acknowledged before me on January 16, 2007  
(date)

by Thomas C. Ricci  
(names)



[Signature]  
Notary Signature Line

\_\_\_\_\_  
Notary Printed Name  
Notary Public for State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

The Mayor and City Council of the City of Billings acknowledges receipt of this deed and hereby accepts the property interest conveyed through this instrument.

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

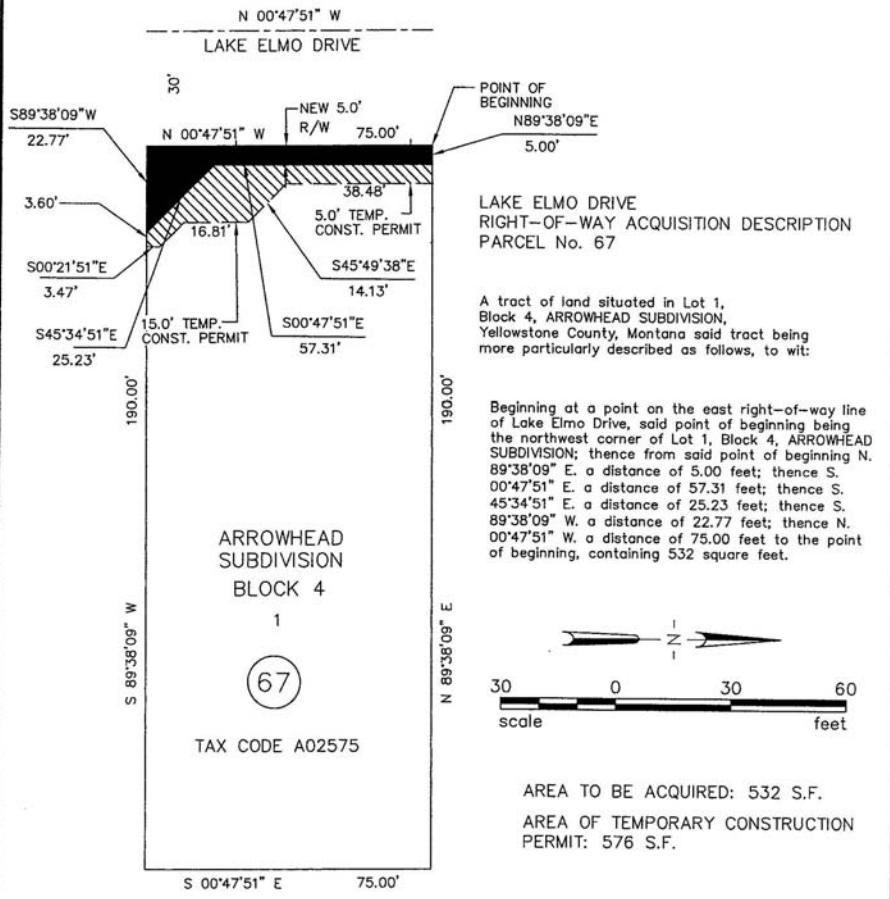
ATTEST: \_\_\_\_\_  
City Clerk

STATE OF MONTANA )  
:ss  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and my seal the day and year herein above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Residing in \_\_\_\_\_  
My commission expires \_\_\_\_\_  
\_\_\_\_\_  
Print Name

EXHIBIT A  
 RIGHT-OF-WAY ACQUISITION  
 AND TEMPORARY CONSTRUCTION PERMIT  
 SITUATED IN LOT 1,  
 BLOCK 4,  
 ARROWHEAD SUBDIVISION,  
 YELLOWSTONE COUNTY, MONTANA



**ENGINEERING, INC.**  
 Consulting Engineers and Land Surveyors  
 1300 North Trustmark Way  
 Billings, Montana 59102  
 Phone (406) 656-5255  
 www.mjlc.com

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #68, a Portion of Lot 2, Block 4 of Arrowhead Subdivision with Gary A. Ostermiller and Marsha A. Ostermiller

**DEPARTMENT:** Public Works

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

---

**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #68 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,300.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$2,300.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #68, a portion of Lot 2, Block 4 of Arrowhead Subdivision with Gary A. Ostermiller and Marsha A. Ostermiller in the amount of \$2,300.00, and authorize the Mayor to execute these documents.

### ATTACHMENT

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

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

## INTRODUCTION

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

## PROCEDURAL HISTORY

### Completed Items

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

### Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

## BACKGROUND

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

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in early 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

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

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

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

### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #68, a portion of Lot 2, Block 4 of Arrowhead Subdivision with Gary A. Ostermiller and Marsha A. Ostermiller in the amount of \$2,300.00, and authorize the Mayor to execute these documents.

### **ATTACHMENT**

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



**CITY OF BILLINGS**  
(hereinafter referred to as City)  
**RIGHT-OF-WAY AGREEMENT**

<u>Lake Elmo Road Hilltop Road to Wicks Lane</u>	Work Order: 04-33	<u>Yellowstone</u>
DESIGNATION	Project No. 05153	<u>COUNTY</u>
Parcel No.	Parcel Description	Section Township Range
68	Lot 2, Block 4 of Arrowhead Subdivision,	22 1N 26E

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

GARY A. OSTERMILLER AND MARSHA A. OSTERMILLER  
1431 LAKE ELMO DRIVE  
BILLINGS, MT. 59105  
259-2835

1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a deed and other documents required by the City for all real property agreed to be conveyed by this agreement.
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

375 square feet by deed	\$1,125.00
Improvements (Trees, bricks, fence, sod)	\$1,035.00
3. OTHER COMPENSATION:

375 square feet Temporary Construction Permit	\$ 113.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$2,300.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$2,300.00, to be made payable to GARY A. OSTERMILLER AND MARSHA A. OSTERMILLER and mailed to 1431 LAKE ELMO DRIVE, BILLINGS, MT. 59105
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE D/

We understand that we are required by law to provide our correct taxpayer id and that failing to comply may subject us to civil and criminal penalties. We c correct taxpayer identification number(s).

*Gary A. Ostermiller*  
Signature: GARY A. OSTERMILLER (Date)

*Marsha A. Ostermiller* *11/16/07*  
Signature: MARSHA A. OSTERMILLER (Date)

Signature: \_\_\_\_\_ (Date)

RECOMMENDED FOR APPROVAL:

APPROVED:

*Ronald E. Olson* *1-16-07*  
Ronald E. Olson, Olson Land Services (Date)

\_\_\_\_\_  
Mayor, City of Billings (Date)

*Nicholas B. Dalrymple* *4/6/07*  
City of Billings, Public Works Department (Date)

ATTEST:  
\_\_\_\_\_  
City Clerk (Date)

LER-068.200 Ostermiller

Return to: City Clerk  
City of Billings  
PO Box 1178  
Billings, MT 59103

Project No. W.O. 04-33 Parcel No. 68 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 16th day of JANUARY, 2007.

**FOR VALUABLE CONSIDERATION**, lawful money of the United States to them in hand paid by the **CITY OF BILLINGS**, THE receipt whereof is acknowledged, **WITNESSTH THAT:**

GARY A. OSTERMILLER AND MARSHA A. OSTERMILLER  
1431 LAKE ELMO DRIVE  
BILLINGS, MT. 59105

does hereby **GRANT, BARGAIN, SELL CONVEY, WARRANT AND CONFIRM** unto the **CITY OF BILLINGS** for the benefit and use of **the Public** the following described real property, to wit:

**Parcel No. 68 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 2, Block 4 of Arrowhead Subdivision, in the City of Billings, on file under Document No. 452936, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 375 sq. ft..**

**Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 375 sq. ft..**

**PURPOSE OF ACQUISITION** is to create a right-of way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

**EXCEPTING AND RESERVING**, however, all gas and oil, beneath the surface of the above described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or in anyway damaged.

**FURTHER EXCEPTING AND RESERVING**, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

**TO HAVE AND TO HOLD** the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the **CITY OF BILLINGS**, and to its successors and assigns forever. **IN WITNESSTH WHEREOF**, the undersigned have executed these premises the day and year first above written.

Project No. : W.O. 04-33

Parcel No. 68

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

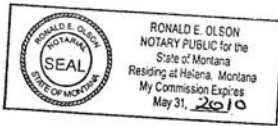
[Signature]  
Marsha A. Ostermiller

State of MONTANA )  
County of Yellowstone )

This instrument was acknowledged before me on January 16, 2007  
(date)

by SARY A. Ostermiller AND Marsha A. Ostermiller  
(names)

[Signature]  
Notary Signature Line



Notary Printed Name \_\_\_\_\_  
Notary Public for State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

The Mayor and City Council of the City of Billings acknowledges receipt of this deed and hereby accepts the property interest conveyed through this instrument.

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

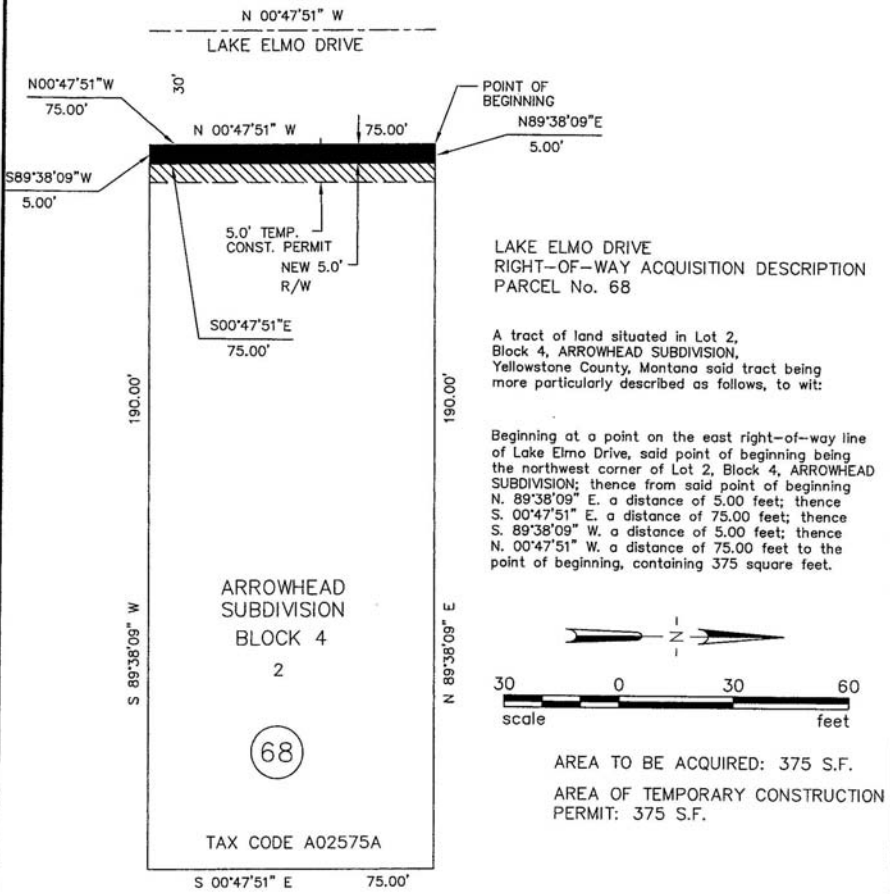
ATTEST: \_\_\_\_\_  
City Clerk

STATE OF MONTANA )  
:ss  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and my seal the day and year herein above written.

Notary Public in and for the State of Montana \_\_\_\_\_  
Residing in \_\_\_\_\_  
My commission expires \_\_\_\_\_  
Print Name \_\_\_\_\_

EXHIBIT A  
 RIGHT-OF-WAY ACQUISITION  
 AND TEMPORARY CONSTRUCTION PERMIT  
 SITUATED IN LOT 2,  
 BLOCK 4,  
 ARROWHEAD SUBDIVISION,  
 YELLOWSTONE COUNTY, MONTANA



AREA TO BE ACQUIRED: 375 S.F.  
 AREA OF TEMPORARY CONSTRUCTION PERMIT: 375 S.F.

LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA  
 RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 68  
 THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA  
 RIGHT-OF-WAY PLAN.

UPDATED 4/8/07 NB PARCEL 68/69

**ENGINEERING, INC.**  
 Consulting Engineers and Land Surveyors

1300 North Townsend Way  
 Billings, Montana 59102  
 Phone (406) 454-5255  
 www.aepinc.com

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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**TITLE:** W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, DNRC Right-of-Way Easement Over the Yellowstone River

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The preferred alternative identified in the Preliminary Engineering Report (PER) for the above-named project recommended that the new sanitary sewer main generally follow a route along Blue Creek Road so that the southerly portion of the new sewer main will drain via gravity from Briarwood to the area of Santiago Boulevard. From the Santiago area, a sewer lift station is needed to convey sewerage via force mains across the Yellowstone River then to the existing gravity sewer infrastructure in the South Frontage Road of Interstate 90. The Yellowstone River is a water of the State of Montana under the jurisdiction of the Department of Natural Resources and Conservation (DNRC), so a right-of-way easement to cross the river is required from DNRC. A similar easement was obtained when the water main was extended to the Briarwood area ca. 2003.

**FINANCIAL IMPACT:** There is a \$100 fee for the DNRC easement, and funding for the fee is available from project funds.

**RECOMMENDATION**

Staff recommends that Council approve the DNRC Right-of-Way Easement and authorize the Mayor to execute it.

**ATTACHMENT**

DNRC Right-of-way Easement for Utilities Across State Lands (2 pages)

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

Right of Way Application No. 14109  
Affecting a 4-foot strip across the  
Yellowstone River in SW4NW4, Sec. 21,  
Twp. 1S, Rge. 26E  
Yellowstone County, Montana

EASEMENT NO. D-

## **RIGHT OF WAY DEED**

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Know ye that the State of Montana (hereinafter referred to as "Grantor"), in consideration of the sum of One Hundred and No/100 Dollars (\$100.00), now paid, grants to City of Billings (hereinafter referred to as "Grantee") a right of way for two 12" sanitary sewer mains upon and across State lands, as follows:

A 4-foot strip across the Yellowstone River in SW4NW4, Section 21, Township 1 South, Range 26 East, Principal Meridian Montana, Yellowstone County, Montana, more particularly described as follows:

A tract or strip of land 4 feet wide, 2 feet on each side of a centerline described as follows:

Commencing at the Quarter corner common to Sections 20 and 21; thence N31°42'38"W, a distance of 1406.54 feet to the North face of the South abutment of the Yellowstone River bridge; thence N08°02'03"W, a distance of 66.81 feet to the approximate Southerly low water line of said Yellowstone River being the Point of Beginning; thence N08°02'03"W along the West side of said Yellowstone River bridge a distance of 726.36 feet to the approximate Northerly low water line of said Yellowstone River, being the Point of Termination; thence continuing N08°02'03"W, a distance of 68.28 feet to the South face of the North bridge abutment, said point being N22°45'23"W, a distance of 2222.56 feet from said Quarter corner.

The above-described right of way contains 0.07 acres, more or less.

The grant of this easement is subject to the following conditions:

The Grantee shall comply with the Montana Antiquities Act, Title 22, Chapter 3, MCA. In particular, Sections 22-3, Parts 4 and 8 MCA.

It is also agreed that the Grantee shall comply with such rules or regulations as may be hereafter imposed by the State Board of Land Commissioners to insure that the environment will be adequately protected and the public health and safety not be endangered.

The Grantee shall be responsible for controlling any noxious weeds introduced by Grantee's activity on state-owned land. The Grantee's methods of control must be reviewed by the Grantor's Area Field Office that has jurisdiction for that locale.

The Grantee shall comply with the Montana County Noxious Weed Management Act, Section 7-22-2101 MCA et. seq., as follows:

The Grantee shall notify the local weed board that is responsible for that geographical area that the project is located in. If the Grantee disturbs vegetation for any reason, Grantee shall be required to revegetate the disturbed area. The Grantee shall submit to the local weed board a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding; fertilization, recommended plant species, use of weed-free seed, and the weed management procedures to be used. This plan is subject to approval by the local weed board, and therefore must be signed by the chairman of the board. Upon termination of this

easement, Grantee shall reclaim the entire area in accordance with this paragraph.

Provided, further, that the right of way deed granted herein shall be assignable by Grantee only with the written approval of the Director, Department of Natural Resources and Conservation.

Provided, further, that this right of way deed is granted under the express condition that the Grantee's exercise of the rights herein granted shall not interfere with the Grantor's use of the adjacent land.

Provided, further, that permission must be obtained in writing, from the Director, Department of Natural Resources and Conservation, prior to the construction of any improvements on the right of way herein granted which is 4 feet wide, 2 feet on each side of the centerline.

The Grantee shall have secured all permits and approvals as may be required by law before beginning any activity within, above or below the riverbed. These permits include, but are not limited to, any permit issued by the Army Corps of Engineers, the State of Montana Department of Environmental Quality, the County Flood Plain Manager, the local County Soil Conservation District and/or the Montana Department of Fish, Wildlife and Parks.

All terms, conditions, project specifications and time-frames contained in all of the required permits, authorizations and construction specification plans become a part of the terms and conditions of this easement.

Provided, that Grantor may terminate this right of way for a material breach of any of the conditions or provisions of this deed. Before termination, the Board shall give Grantee written notice of intent to terminate and a reasonable period to cure the breach.

It is further provided that whenever said lands herein granted as a right of way shall cease to be used for such purpose, the right of way shall terminate upon notice to that effect being given to the said grantee named herein.

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Director, Department of Natural Resources and Conservation, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2007.

.....  
Governor of the State of Montana

ATTEST:

.....  
Secretary of State

Countersigned by:

.....  
Director, Department of Natural Resources and Conservation

Accepted and Approved:

.....  
Applicant

.....  
Printed Name

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



AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

**TITLE:** Annexation Petition #07-08: Acknowledge receipt of Petition and Set a Public Hearing Date  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** David Green, Planner I

**PROBLEM/ISSUE STATEMENT:** Owner, Hope Evangelical Church and petitioner, Benjamin Gonzales, are requesting annexation of an approximate 4.92 acre property legally described as Tract 3, Certificate of Survey 2298, Section 4, Township 1S, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is on the south east corner of the intersection of Grand Avenue and 56<sup>th</sup> Street West, west of Vintage Estates Subdivision. The petitioner is requesting annexation in order to obtain city water and sewer services for an existing church building. The subject property is zoned Agricultural Open (AO). At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for May 29, 2007. The Council will vote on the petition at that public hearing.

**ALTERNATIVES ANALYZED:** Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is bordered on the west and southwest by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next six (6) years.

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

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for May 29, 2007, to consider annexing this property.

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

**ATTACHMENTS**

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

**ATTACHMENT A**  
Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Hope Evangelical Church
Purpose of annexation:	To obtain City Services
Property included:	Tract 3, Certificate of Survey 2298, Section 4, Township 1S, Range 25E
Location:	The south east intersection of Grand Avenue and 56 <sup>th</sup> Street West.
Total area:	4.92 acres
Current zoning:	Agriculture Open
Current land use:	Church
Future zoning:	Agriculture Open
Future land use:	Church

**ATTACHMENT B**  
**Annexation Petition**

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

**NOTICE TO PETITIONER**

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

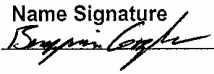
**INSTRUCTIONS**

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

The map must show:

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

**RESIDENT FREEHOLDER ELECTORS**

Date	Print Name	Name Signature	Address
4-1-07	Benjamin Gonzalez		5554 Grand Ave.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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(Should be completed prior to obtaining signatures of resident freeholder electors)  
**DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS**

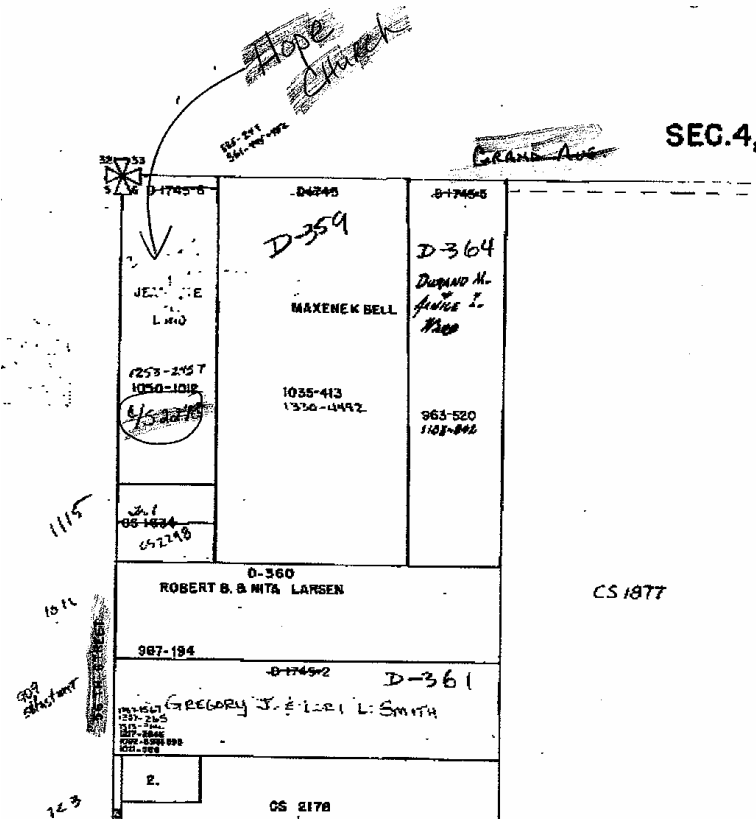
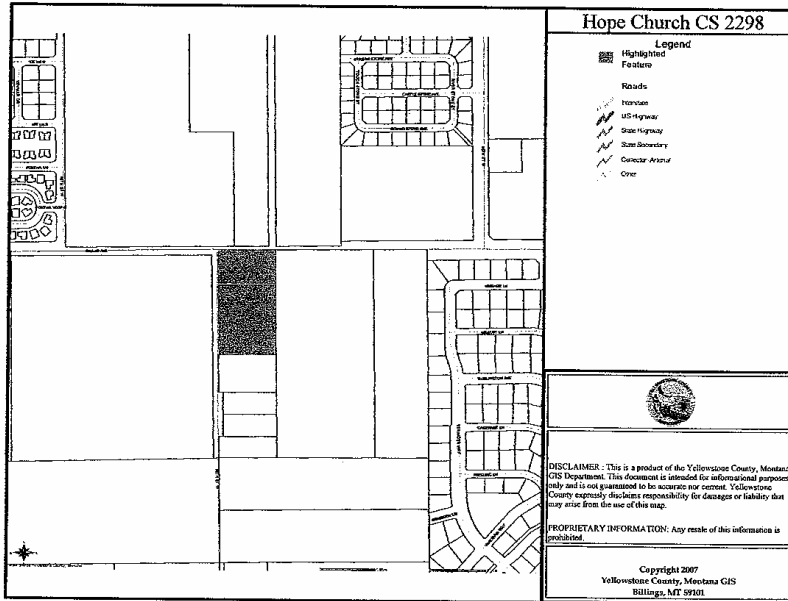
Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
TIS, RZSE, Sect 4, <sup>TRACT 3</sup> 452298, Exempt	D00345A	SUI. ROENNE 56 <sup>TH</sup> ST. GARDN	Church	Hope Evangelical Church	5554 GARDN AVE	(406) 652-7126

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: \_\_\_\_\_ Received By: \_\_\_\_\_ Petition Number: \_\_\_\_\_  
 Fee Paid: \_\_\_\_\_

# ATTACHMENT C

## Annexation Map



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

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

TITLE: Annexation Petition #07-09: Acknowledge receipt of Petition and Set a Public Hearing Date  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: David Green, Planner I

**PROBLEM/ISSUE STATEMENT:** Owner and petitioner, Miller Trois LLC, is requesting annexation of an approximate 14.08 acre property legally described as W ½ NE ¼ NW ¼, Less Highway and Less a Portion of Miller Crossing Subdivision, Section 16, Township 1S, Range 26E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is on the south east corner of the intersection of King Avenue East and Calhoun Lane east of Miller Crossing Subdivision. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a commercial development including a zone changes on the property. The subject property is currently vacant agricultural land and is zoned Residential 15000 (R-150). A concurrent zone change has been submitted from Residential 15000 to Entryway General Commercial (EGC). At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for May 29, 2007. The Council will vote on the petition at that public hearing.

**ALTERNATIVES ANALYZED:** Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is bordered on the west and southwest by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next six (6) years.

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

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for May 29, 2007, to consider annexing this property.

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

**ATTACHMENTS**

- D. Property Data
- E. Annexation Petition
- F. Annexation Map



**ATTACHMENT A**  
Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Miller Trois LLC
Purpose of annexation:	To obtain City Services
Property included:	W ½ NE ¼ NW ¼, Less Highway and Less a Portion of Miller Crossing Subdivision, Section 16, Township 1S, Range 26E
Location:	The south east intersection of King Avenue East and Calhoun Lane.
Total area:	14.08 acres
Current zoning:	Residential 15000
Current land use:	Agricultural
Future zoning:	Entryway General Commercial
Future land use:	Commercial Development

**ATTACHMENT B**

**Annexation Petition**

07-255

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



**NOTICE TO PETITIONER**

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

**INSTRUCTIONS**

- All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
- Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.  
The map must show:
  - The present and proposed boundaries of the municipality;
  - The present streets, major trunk water mains and sewer mains;
  - The zoning of the property requesting annexation and the property immediately adjacent to it.
- The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parnly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
- By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
- A description of the territory to be annexed to the City is legally described on a document attached hereto.

**RESIDENT FREEHOLDER ELECTORS**

Date	Print Name	Name Signature	Address
04/02/07	MILLER TROIS LLC		4507 Palisades Park Dr. Billings, MT 59106
04/02/07	By: Norman F. Miller Manager		
04/02/07	By: Helen K. Miller Member		P.O.A

(continued on separate page)

(Should be completed prior to obtaining signatures of resident freeholder electors)  
**DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS**

Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
W1/2NE1/4NW1/4, LESS HIGHWAY and LESS A PORTION OF MILLER CROSSING SUBDIVISION, SECTION 16, T.1S, R.28E	D01873	King Avenue East	Irrigated farm	Miller Trois, LLC	4507 Palisades Park Dr. Billings, MT 59106	

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

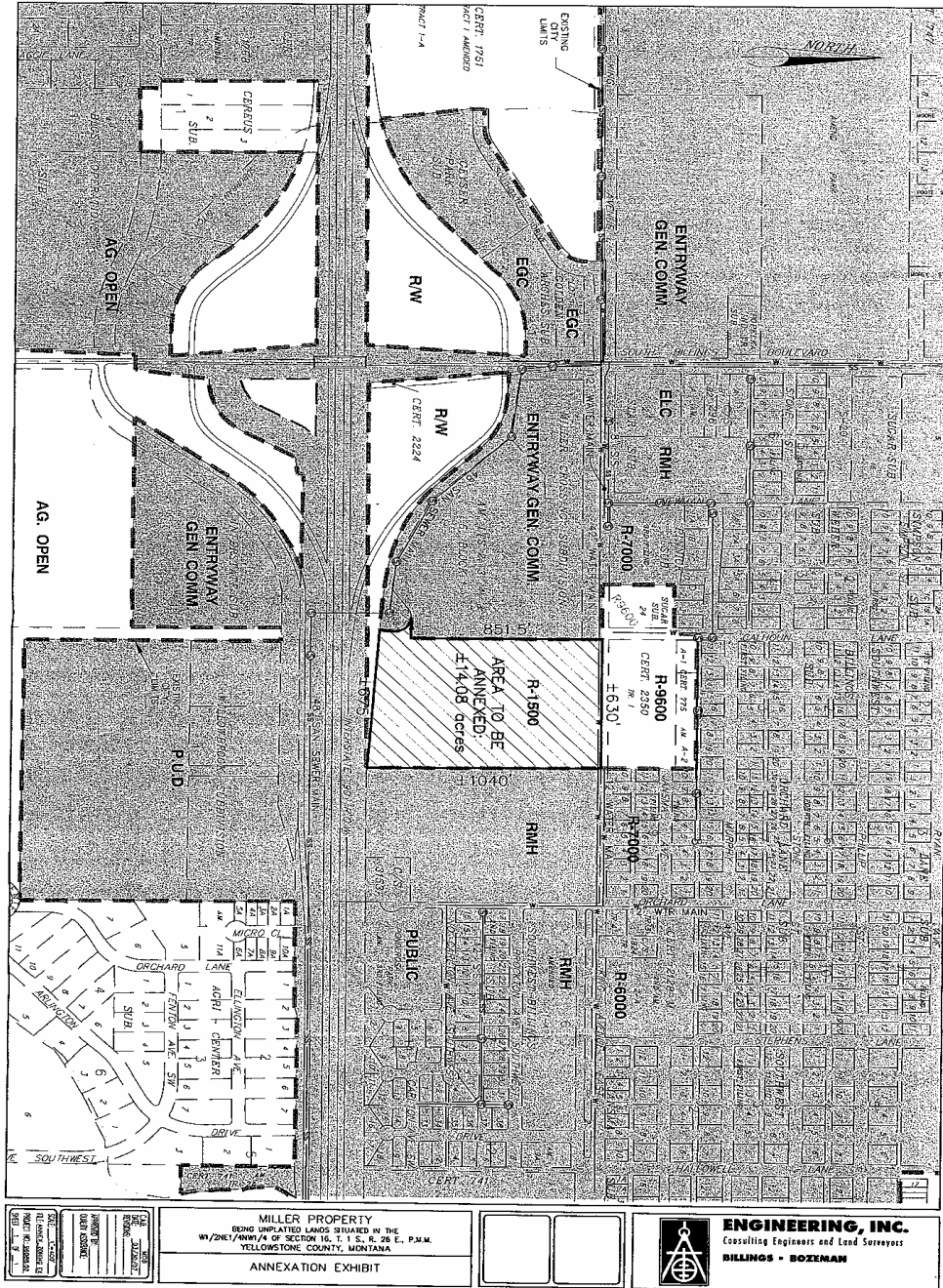
Date Submitted: \_\_\_\_\_ Received By: \_\_\_\_\_ Petition Number: \_\_\_\_\_  
 Fee Paid: \_\_\_\_\_

P:96008\_02\_Annex\_Pet

(03/30/07) DR/dml  
 Revised 6/99

# ATTACHMENT C

## Annexation Map



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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
CITY OF BILLINGS, MONTANA  
Monday, May 14, 2007

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TITLE: Acknowledge Receipt of Petition to Vacate a Portion of Moose Hollow Lane and Set a Public Hearing Date

DEPARTMENT: Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Lloyd Detienne, property owner in Aspen Gateway Subdivision 2<sup>nd</sup> Filing, has petitioned to vacate a portion of Moose Hollow Lane. Mr. Detienne owns all of the property abutting the proposed right-of-way and is proposing to resubdivide Aspen Gateway Subdivision 2<sup>nd</sup> Filing as attached. Moose Hollow Lane has not been constructed, and Mr. Detienne is the original subdivider that dedicated the right of way for Moose Hollow Lane.

**ALTERNATIVES ANALYZED:**

1. Acknowledge receipt of petition to vacate the above-mentioned right-of-way and set a public hearing for June 11, 2007.
2. Do not acknowledge receipt of petition to vacate the above-mentioned right-of-way.

**FINANCIAL IMPACT:** Mr. Detienne is the original developer of Aspen Gateway 2<sup>nd</sup> Filing, which dedicated the right of way for Moose Hollow Lane. Moose Hollow Lane is undeveloped. It has been determined in the past that the original developer can vacate right of way at no cost.

**RECOMMENDATION**

Staff recommends that Council acknowledge the receipt of petition to vacate a portion of Moose Hollow Lane and set a public hearing date for June 11, 2007.

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

**ATTACHMENT**

- A. Map Depicting Area to be Vacated





J

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

**TITLE:** Acceptance of Quit Claim Deed for a Portion of Tract 2 of Certificate of Survey 2055 as Public Right-of-Way From James Pickens, as Authorized Agent for Morningside Homes

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** The City Council approved the annexation (#97-06) of Tract 2 of Certificate of Survey 2055 under Resolution #97-17317 on December 22, 1997. The Annexation Agreement between Best Development, the successor of which is now Morningside Homes, and the City of Billings for the said Tract 2 required the petitioner to “deed a 30-foot wide strip adjacent to Alkali Creek Road frontage of Certificate of Survey 2055 for right-of-way” to the City as part of the annexation. This quit claim deed fulfills the requirement to convey the 30-foot strip to the City. The City Council must acknowledge receipt of this deed and accept the property interest conveyed by it in order to record the deed with the Yellowstone County Clerk & Recorder.

**FINANCIAL IMPACT:** There is no cost for this right-of-way acquisition.

**RECOMMENDATION**

Staff recommends that Council approve the Quit Claim Deed for a Portion of Tract 2 of Certificate of Survey No. 2055 from James Pickens, as Authorized Agent for Morningside Homes, at no cost, and authorize the Mayor to execute this document.

**ATTACHMENT**

A. Quit Claim Deed (3 pages)

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

After filing return to:  
Office of the City Clerk  
City of Billings  
P.O. Box 1178  
Billings, Montana 59103

### QUITCLAIM DEED

THIS INDENTURE, made this \_\_\_\_ day of \_\_\_\_\_, 2007.

**FOR VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged,  
**WITNESSETH THAT:**

**JAMES PICKENS**, as authorized agent of  
**MORNINGSIDE HOMES**  
341 Morningside Lane North  
Billings, Montana 59101

hereinafter referred to as 'Grantor'

does hereby **REMISE, RELEASE AND QUITCLAIM** unto the **CITY OF BILLINGS**,  
Grantee, of P.O. Box 1178, Billings, Montana 59103, for the benefit and use of the public, the  
following described real property, to-wit:

A tract of land situated in Tract 2, Certificate of Survey No. 2055, located in the E ½ of  
Section 28, T1N, R26E, PMM, City of Billings, Yellowstone County, Montana, on file and of  
record in the office of the Clerk and Recorder of said County, under Document No. 1191103,  
more particularly described as follows:

Beginning at a point on the northerly right-of-way line of Alkali Creek Road, said point being  
the southeast corner of Tract 2, Certificate of Survey No. 2055; thence, from said point of  
beginning, S72°51'12"W a distance of 218.47 feet; thence S85°00'12"W a distance of 253.46  
feet; thence, S68°27'12"W a distance of 390.79 feet; thence N86°22'48"W a distance of 567.20  
feet; thence, N76°59'48"W a distance of 50.93 feet; then N70°44'53"W a distance of 106.99  
feet; thence, N40°04'41"E a distance of 32.09 feet; thence, S70°44'53"E a distance of 93.95  
feet; thence, S76°59'48"E a distance of 46.83 feet; thence, S86°22'48"E a distance of 558.04  
feet; thence, N68°27'12"E a distance of 388.46 feet; thence, N85°00'12"E a distance of 254.63  
feet; thence, N72°51'12"E a distance of 224.74 feet; thence S00°21'45"W a distance of 31.46  
feet to the point of beginning, containing an area of 47,317 square feet.

AS SHOWN by Exhibit "A", consisting of one sheet attached hereto and made a part hereof.

**THE PURPOSE** of this conveyance is to create a right-of-way parcel for construction and  
use of a public road, utility and related appurtenant structures, pursuant to §76-3-201(1)(h),  
MCA and ARM 24.183.1104 as a division of land that creates rights-of-way or utility sites.

**EXCEPTING AND RESERVING**, however, all gas and oil beneath the surface of the  
above-described and conveyed premises, together with the right to extract the same, provided  
that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or  
in any way damaged.

**FURTHER EXCEPTING AND RESERVING** unto the Grantors, their successors and  
assigns, all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if  
any, including but not limited to, water stock or shares, bonds, certificates, contracts and any  
and all other indicia of water, water right and ditch ownership, or any interest therein,  
appurtenant to the land described herein.



TO HAVE AND TO HOLD the above-described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the CITY OF BILLINGS, and its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first above written.

James Pickens  
JAMES PICKENS,  
Declarant for MORNINGSIDE HOMES

STATE OF MONTANA }  
  :SS.  
County of Yellowstone }

On this 30 day of March, 2007, before me, the undersigned, a Notary Public for the State of Montana personally appeared James Pickens, Declarant for Morningside Homes, known to me to be the person(s) who executed the within instrument, and acknowledged to me that he /she / they executed the same.

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

Laura C. Reyes (Signature)  
Laura C. Reyes (Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: 2-2-2008

(NOTARIAL SEAL)

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

The Mayor and City Council of the City of Billings acknowledge receipt of this deed and hereby accept the property interest conveyed through this instrument.

\_\_\_\_\_  
RON TUSSING, Mayor  
CITY OF BILLINGS

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF MONTANA }  
  :SS.  
County of Yellowstone }

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public for the State of Montana, personally appeared **RON TUSSING** and \_\_\_\_\_, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, 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.

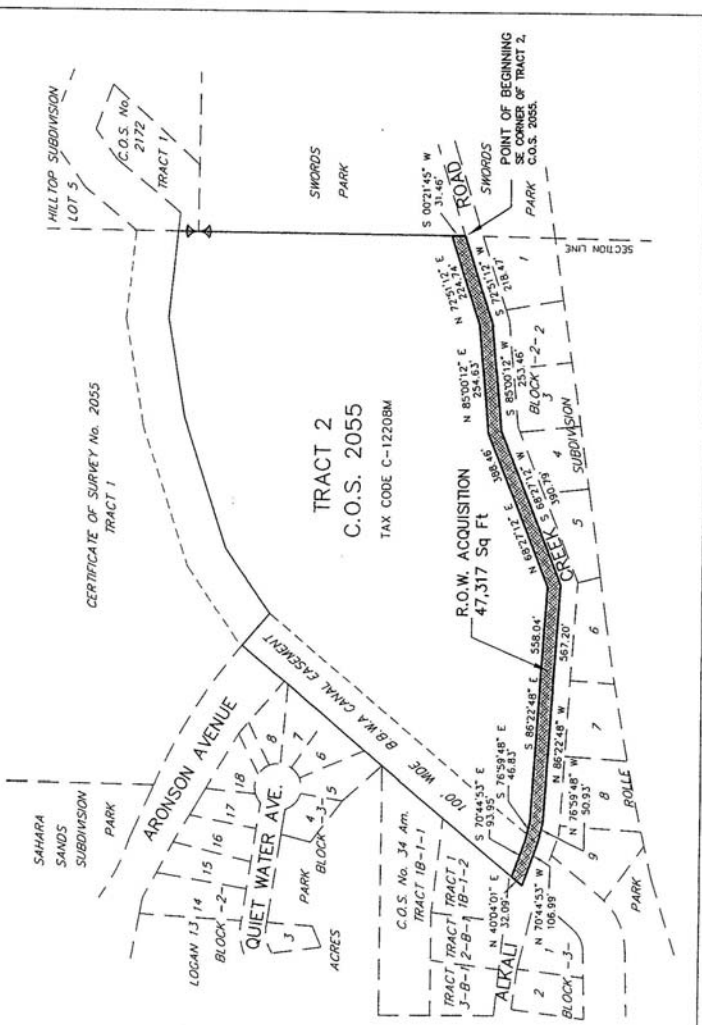
\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: \_\_\_\_\_

(NOTARIAL SEAL)

**EXHIBIT A**  
**RIGHT-OF-WAY ACQUISITION**  
**SITUATED IN TRACT 2, CERTIFICATE OF SURVEY No 2055**  
**YELLOWSTONE COUNTY, MONTANA**

A tract of land situated in TRACT 2, CERTIFICATE OF SURVEY No 2055, Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Beginning at a point on the northerly right-of-way line of Aronson Avenue, said point being the southeasterly corner of the block of Aronson Avenue, thence, from said point of beginning, S 77°31'12" W a distance of 218.47 feet; thence S 88°22'48" W a distance of 258.46 feet; thence S 88°22'48" W a distance of 567.20 feet; thence N 78°59'48" W a distance of 50.93 feet; thence N 70°44'53" W a distance of 106.99 feet; thence S 70°44'53" E a distance of 31.95 feet; thence S 78°59'48" E a distance of 46.83 feet; thence S 88°22'48" E a distance of 588.04 feet; thence S 88°22'48" E a distance of 388.46 feet; thence N 85°00'12" E a distance of 224.74 feet; thence S 00°21'45" W a distance of 31.46 feet to the point of beginning, containing an area of 47,317 square feet.



**ENGINEERING, INC.**  
 Consulting Engineers and Land Surveyors  
 BILLINGS • BOZEMAN

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

TITLE: Accepting MDU South Gate Cop Shop Donation  
DEPARTMENT: City Administrator’s Office  
PRESENTED BY: Tina Volek, City Administrator

**PROBLEM/ISSUE STATEMENT:** Montana-Dakota Utilities (MDU) has generously donated \$250 to the South Gate Cop Shop.

**ALTERNATIVES ANALYZED:** The City Council may:

- Accept the donation;
- Decline the donation; or
- Take no action at this time.

**FINANCIAL IMPACT:** The donation would assist the South Gate Cop Shop in operating without City revenue.

**RECOMMENDATION**

Staff recommends that Council accept MDU’s generous donation.

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

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**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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**TITLE:** Second/Final Reading of the Aggressive Solicitation Ordinance  
**DEPARTMENT:** Police Department  
**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** A review of the existing Aggressive Solicitation Ordinance has resulted in the submittal of these recommended changes to the Aggressive Solicitation Ordinance of the City of Billings, Montana. The original Ordinance was approved on February 9, 2004. The Aggressive Solicitation Ordinance needs to be revised because it is weak and difficult to enforce. Tonight, Council is being asked to approve the proposed Aggressive Solicitation Ordinance as amended on second/final reading. The public hearing was held and the first reading was approved on April 23, 2007.

**ALTERNATIVES ANALYZED:**

- Approval of the Ordinance as presented.
- No action.

**FINANCIAL IMPACT:** There are no obvious budget implications; the financial impact would be minimal with a slight revenue increase to Municipal Court of fines collected.

**RECOMMENDATION**

Staff recommends that Council approve the changes to the Aggressive Solicitation Ordinance as amended on second/final reading.

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

## **INTRODUCTION**

Panhandling is a challenging issue faced by cities of all sizes and Billings is no exception. While some panhandlers go about their business in a passive manner, others are much more aggressive, making loud, sometimes repeated demands, or persistently following the pedestrian down the street after a request has been denied. Additionally, some choose to solicit in places that are particularly intimidating such as near ATM machines, public parking structures, outdoor cafes, on public transportation, etc. Unfortunately, panhandling is often used as a tool of deception and is fraudulent. Residents, property owners, and merchants in our City expressed fear that the panhandling problem was increasing and deterring business, scaring employees, and discouraging tourism.

## **BACKGROUND**

In the fall of 2005, the Downtown Billings Office and the Billings Police Department facilitated meetings, with broad representation, to discuss the issue and examine the law. A subcommittee was formed. The action decided upon by the committee was to amend the current ordinance. Lisa Harmon, Director of the Business Improvement District, researched other cities and strategies used to deter panhandling while protecting individual freedom of speech, and, together with stakeholder input, drafted an amendment to the current ordinance.

## **ALTERNATIVES ANALYSIS**

- Approval of the Ordinance as presented.
- No action

## **STAKEHOLDERS**

Stakeholders involved with these meeting included merchants/retailers, property owners/residents, members of the Billings Police Department, Community Resource agencies, downtown faith leaders and the media. There was an overwhelming consensus to amend the current ordinance.

## **RECOMMENDATION**

Staff recommends that Council approve the changes to the Aggressive Solicitation Ordinance as amended on second/final reading.

## **ATTACHMENTS**

Attachment A – Aggressive Solicitation Ordinance (5 pages)

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

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING ARTICLE 18-1000 AND SECTION 18-1001; LIMITING PLACES FOR COMMERCIAL SOLICITATION; PROHIBITING AGGRESSIVE SOLICITATION, NIGHTTIME COMMERCIAL SOLICITATION, AND FALSE OR MISLEADING SOLICITATION; AND AMENDING THE PENALTY.

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

*Section 1.* That Article 18-1000 of the Billings, Montana City Code be amended so that such section shall read as follows:

**ARTICLE 18-1000. AGGRESSIVE SOLICITATION**

WHEREAS, the City of Billings wants to protect the well-being of its citizens, tourists and visitors and provide substantive services to those in need; and

WHEREAS, the City of Billings is a vital citizen, tourist, and visitor attraction area; and

WHEREAS, the City of Billings wants to protect and enhance the City's attractions to citizens, tourists and visitors; and

WHEREAS, the City of Billings wants to continue to attract businesses to, and retain the current businesses in Billings; and

WHEREAS, aggressive solicitation causes a sense of fear and intimidation, particularly at night or in confined areas; and

WHEREAS, aggressive solicitation, through solicitation despite refusals, obscene behavior and language, unwanted physical contact or obstruction of traffic, vehicular or pedestrian, creates fear in visitors and residents of Billings; and

WHEREAS, aggressive and commercial solicitation in Billings impacts tourism and retail business and causes a decrease in generated revenues to the City and its business community; and

WHEREAS, aggressive and commercial solicitation has a negative impact on the retention of businesses in Billings; and

WHEREAS, aggressive and commercial solicitation contributes to the negative perceptions of the City of Billings, which discourages tourism and retail and contributes to the lack of enjoyment of public places; and

WHEREAS, aggressive and commercial solicitation throughout Billings is a common presence, especially in the Central Business District, and disturbance to residents and businesses; and

WHEREAS, aggressive and commercial solicitation drives customers away from businesses in Billings, affecting business transactions and threatening potential economic growth; and

WHEREAS, in other cities that rely heavily on tourism for generating revenues, aggressive and commercial solicitation have been restricted; and

WHEREAS, the City is cognizant of the need to make available alternate channels for communication for commercial solicitation and will permit such activity as set forth below; and

WHEREAS, the City of Billings is sensitive to the plight of individuals who must commercially solicit and has been actively engaged in providing support services to address homelessness in Billings; and

WHEREAS, the City of Billings is committed to protecting the rights and freedoms of all, including the First Amendment rights, and

WHEREAS, with due regard to protecting the rights and freedoms of all, the City of Billings is also committed to providing a safe and livable community, and seeks to address the problems associated with commercial and aggressive solicitation.

Sec. 18-1001. Commercial Solicitation, Aggressive Solicitation, and Penalty.

~~(a) *Criminal offense.* A person commits the offense of aggressive solicitation if he knowingly disturbs the peace by aggressively soliciting.~~

(1) **Definitions:**

- a. “Commercial Solicitation” or “to commercially solicit” is any request made in person on a street, sidewalk, or public place, asking for an immediate donation of money or other things of value, including the purchase of an item or service for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is a donation. Commercial Solicitation shall not include passively standing or sitting with a sign or other indication that one is seeking donations without addressing the request to any specific person.

~~*Aggressively soliciting* means to beg with the intent to intimidate another person into giving money or goods. It shall not include the act of passively standing or~~

~~sitting with a sign or other indication that a donation is being sought, without any vocal request other than in response to an inquiry to another person.~~

~~Soliciting means to ask for money or goods as a charity, whether by words, bodily gestures, signs, or other means. (b~~

~~Intimidate means to engage in soliciting by following or pursuing a person, to continue to solicit a person who has made a negative response, either verbally or by physical sign, or to engage in other conduct that would cause a reasonable person to feel compelled or to be fearful.~~

- (2) **Commercial Solicitation in Certain Areas.** It shall be unlawful for any person to commercially solicit when the person solicited is in any of the following places within the City of Billings:
- a. On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property;
  - b. Within 20 feet of the entrance to or exit from any public toilet facility, which includes any temporary use site (port-a-toilet);
  - c. Within 20 feet of an automatic teller machine (ATM), provided that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
  - d. Within 20 feet of any parking lot pay box;
  - e. Within 20 feet of any pay telephone, provided that when a pay telephone is located within a telephone booth or other facility, such distance shall be measured from the entrance or exit of the telephone booth or facility;
  - f. In any public transportation vehicle, or in any bus, or within 20 feet of any bus stop or taxi;
  - g. From any operator of a motor vehicle that is in traffic on a public street; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the owner for passengers of such vehicle;
  - h. In a parking lot or garage owned or operated by the City of Billings, including entryways or exits and pay stations connected therewith;
  - i. Within 20 feet of any vendor's location when the vendor has a valid permit under Articles 19-400 or 7-1200 location.
- (3) **Nighttime Commercial Solicitation.** It shall be unlawful for any person to commercially solicit after sunset and before sunrise.
- (4) **Aggressive Solicitation.** It shall be unlawful for any person to commercially solicit in any of the following manners:
- a. By blocking the path of the person solicited; or
  - b. By following or walking alongside the person solicited; or
  - c. By using profane or abusive language, either during the solicitation or following refusal; or
  - d. By accosting or forcing oneself upon the company of another;



- e. By continuing to solicit a person who has made a negative response, either verbally or by physical sign;
- f. By any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat.
- g. By engaging in any conduct that would cause a reasonable person to feel compelled or to be fearful.

- (5) **False or misleading Solicitation.** It shall be unlawful for any person to knowingly make any false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:
- a. Stating that the solicitor is from out of town and stranded when such is not true;
  - b. Stating or suggesting falsely that the solicitor is either a present or former member of the armed service indicated;
  - c. Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;
  - d. Stating that the solicitor is homeless, when he or she is not.

(6) **Exemption.** The city council may by resolution temporarily suspend the requirements and restrictions imposed by this section in order to accommodate charitable fund raising events. The granting of such an exemption is discretionary with the City Council, may include conditions, and is limited to a duration of 24 hours.

(7) *Penalty.* A person convicted of ~~aggressive solicitation~~ a violation of this section shall be punished by a fine of not more than \$500 or by imprisonment not to exceed 6 months, or by both such fine and imprisonment. ~~not to exceed one hundred dollars (\$100.00) or be imprisoned in the county jail for a term not to exceed three (3) days, or both.~~

*Section 2. EFFECTIVE DATE.* This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

*Section 3. REPEALER.* All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

*Section 4. SEVERABILITY.* If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 23<sup>rd</sup> day of April, 2007.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF BILLINGS

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

ATTEST:

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

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

TITLE: Zone Change #802, 2<sup>nd</sup> Reading of Ordinance  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** The applicant is requesting to rezone Lots 1-5, Block 1, Western Sky Subdivision from Agricultural Open Space to Community Commercial, Residential Multi-Family Restricted, Residential 5000, and Residential 7000. The subject property is located at the southeast corner of the intersection of King Avenue West and 48th Street West. The owners are Gerald Krieg and Cal Kunkel; the developer is Land Equity Partners; and the agent is Engineering, Inc. The property was annexed on April 23, 2007. A major preliminary plat containing approximately 410 lots on the 164-acre property was submitted on April 2, 2007. The City Council held a public hearing and approved the first reading of this zone change on April 23, 2007.

**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 could have an effect on the City's tax base once developed.

**RECOMMENDATION**

The Zoning Commission forwards a recommendation of approval to the City Council for the second reading of Zone Change #802.

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

**ATTACHMENT**

A: Ordinance

ATTACHMENT A

Zone Change #802

**ORDINANCE NO. 06-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Lots 1-5, Block 1, Western Sky Subdivision, Containing approximately 164.13 acres

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

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

2. DESCRIPTION. A tract of land known as Lots 1-5, Block 1, Western Sky Subdivision Containing approximately 164.13 acres and is presently zoned Agricultural Open Space 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 **Agricultural Open Space to Community Commercial, Residential Multi-Family Restricted, Residential 5000, and Residential 7000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Community Commercial, Residential Multi-Family Restricted, Residential 5000, and Residential 7000** 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 April 23, 2007.

PASSED, ADOPTED AND APPROVED on second reading May 14, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY:  
City Clerk

ZC #802

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

TITLE: Zone Change #803, 2<sup>nd</sup> Reading of Ordinance  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Juliet Spalding, AICP, Planner II

**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Agricultural-Open Space and Residential-15,000 to Public on a 38-acre property at the northwest corner of 54<sup>th</sup> St. West and Colton Blvd. The City of Billings is the owner; Parks, Recreation and Public Lands Department is the agent. The Zoning Commission conducted a public hearing on April 3, 2007, and voted 4-0 to recommend approval to the City Council. The City Council held a public hearing on April 23, 2007, and approved the first reading of this zone change.

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

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

**FINANCIAL IMPACT:** The proposed zone change will not affect the City's tax base when the property is developed for public uses.

**RECOMMENDATION**

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #803 and adopt the determinations of the 12 criteria.

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

**ATTACHMENT:**

A: Ordinance

**ATTACHMENT A**

Zone Change #803

**ORDINANCE NO. 07-\_\_\_\_\_**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Tract 1, C/S 1815; Tract 1, C/S 1323; Parkland of Yellowstone Meadows- Phase One and Two; Lots 33, 34, 63, and 64 of Sunny Cove Fruit Farms containing approximately 38 acres.

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

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

2. **DESCRIPTION.** A tract of land known as Tract 1, C/S 1815; Tract 1, C/S 1323; Parkland of Yellowstone Meadows- Phase One and Two; Lots 33, 34, 63, and 64 of Sunny Cove Fruit Farms, containing approximately 38 acres of land and is presently zoned Residential-15000 and Agricultural-Open Space 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 **Tract 1, C/S 1815; Tract 1, C/S 1323; Parkland of Yellowstone Meadows- Phase One and Phase Two; and Lots 33, 34, 63, and 64 of Sunny Cove Fruit Farms** is hereby changed from **Residential-15000 and Agricultural-Open Space** to **Public** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Public** 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 April 23, 2007.

PASSED, ADOPTED AND APPROVED on second reading May 14, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
City Clerk

ZC#803 – Cottonwood Park

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

TITLE: Resolution Suspending BMCC 24-411, Parking for Camping Purposes, for the 2007, Gold Wing Road Riders Association “Wing Ding” Event  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Candi Beaudry, AICP, Director

**PROBLEM/ISSUE STATEMENT:** The Gold Wing Road Riders Association has requested a temporary suspension of Section 24-411, BMCC, Parking for Camping Purposes during its 2007 “Wing Ding” to be held July 4 through July 7, 2007. Council may temporarily suspend the requirements and restrictions imposed by Section 24-411 for 48 hours prior to the event and 48 hours after the event terminates upon approval by resolution. These requirements limit recreational vehicle parking in private lots to no more than ten consecutive hours. The event is expected to draw twelve to fifteen thousand participants, which may exceed the capacity of local recreational vehicle facilities and other local lodging options.

**ALTERNATIVES ANALYZED:** Council may choose to not suspend the requirements for recreational vehicle parking during the “Wing Ding” event. Not suspending the requirements may lead to a significant increase in code violations and code enforcement activities. Suspending these requirements, however, conflicts with current practices of local businesses that have enforced the recently adopted changes to this section of City Code. These businesses should be advised in advance of any temporary suspension of the code.

**FINANCIAL IMPACT:** No financial impact to the City is anticipated as a result of suspending Section 24-411, BMCC. There may be positive benefits to the business community by allowing recreational vehicle to camp overnight in private parking lots.

**RECOMMENDATION**

Staff recommends that Council approve the resolution temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes beginning 48 hours before and extending 48 hours after the 2007 “Wing Ding” event to be held July 4 through July 7, 2007.

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

**ATTACHMENT**  
A. Resolution

RESOLUTION 07-\_\_\_\_\_

A RESOLUTION OF THE BILLINGS CITY COUNCIL  
TEMPORARILY SUSPENDING BMCC 24-411 TO ALLOW  
CAMPING IN PRIVATE PARKING LOTS FOR THE 2007  
GOLD WING ROAD RIDERS ASSOCIATION WING DING  
EVENT.

WHEREAS, BMCC 24-411. Parking for Camping Purposes. prohibits parking for camping purposes in the City of Billings in anything but authorized tourist parks, but the City Council may temporarily suspend this ordinance beginning 48 hours before and extending 48 hours after special events held within the City if a resolution is obtained from the City Council; and

WHEREAS, the Gold Wing Riders Association will hold its annual Wing Ding event from July 4 through July 7, 2007 at various locations throughout the City of Billings; and

WHEREAS, the attendance of twelve to fifteen thousand guests is expected for this event and the City's public lodging capability is predicted to be at or near maximum capacity, and the Gold Wing Riders Association has asked that they be allowed to park their vehicles in private parking lots throughout the City from July 2 through July 9, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA that BMCC 24-411 is hereby temporarily suspended for the period of 48 hours on either side of July 4 through July 7, 2007 throughout the City of Billings.

PASSED AND APPROVED by the City Council this 14<sup>th</sup> day of May, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

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

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

P

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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TITLE: Final Plat of Grand Peaks Subdivision  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** The final plat for Grand Peaks Subdivision is being presented to Council for approval. On February 12, 2007, the City Council conditionally approved the 11-lot major subdivision on approximately 48.66 acres. The subject property is generally located east of the intersection of Grand Avenue and 54<sup>th</sup> Street West adjacent to Bishop Fox Subdivision. The subject property was annexed on December 11, 2006, and was rezoned Residential 9600, Residential 7000, Residential 5000, and Residential Multi-Family Restricted on January 8, 2007. The owners and subdividers are Grand Peaks, LLC and the representing agent is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

**RECOMMENDATION**

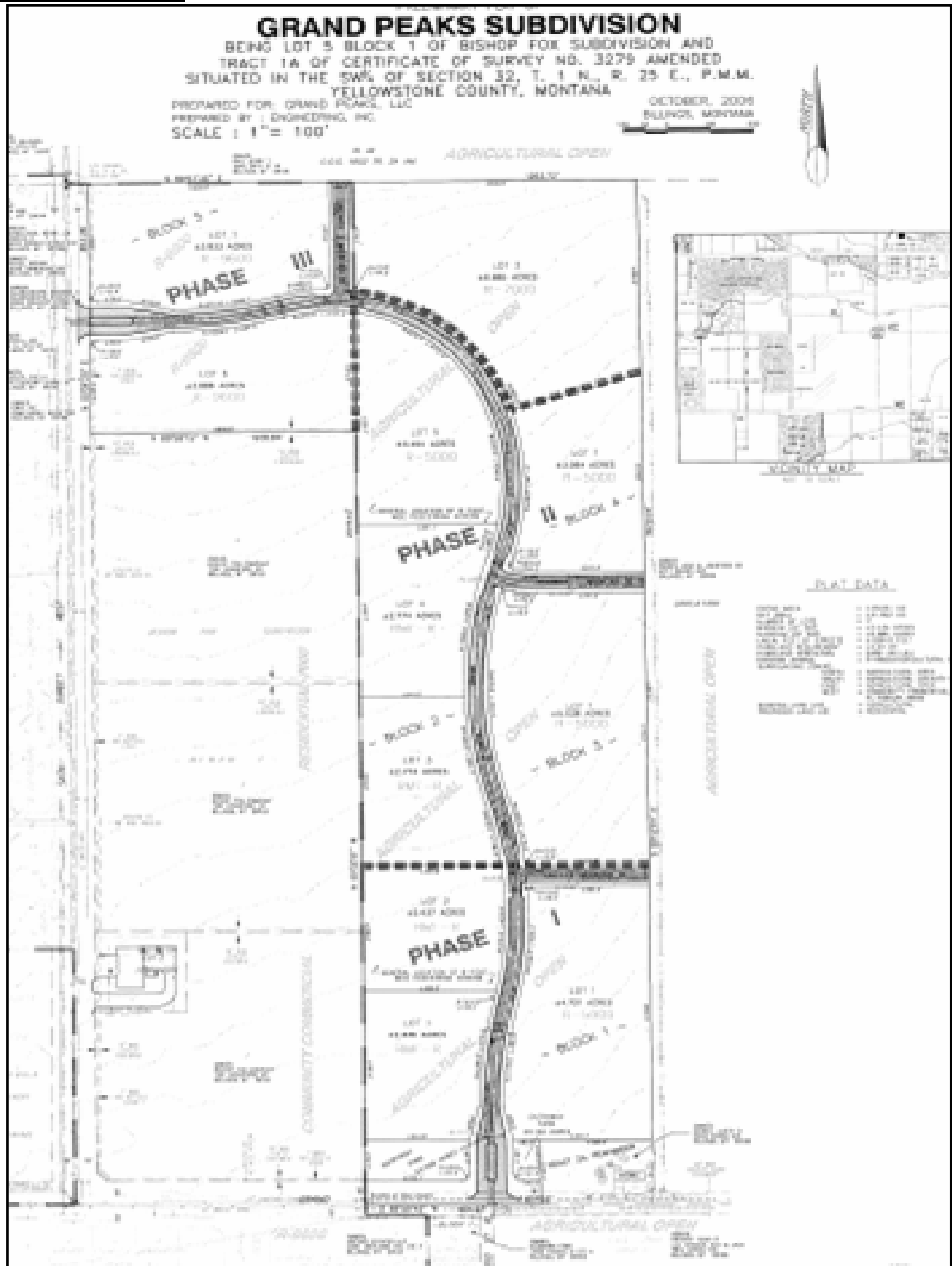
Staff recommends that the City Council approve the final plat of Grand Peaks Subdivision.

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

**ATTACHMENT**

A: Plat

**ATTACHMENT A**



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

Q

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

TITLE: Final Plat of Lot 33, Block I, Ironwood Estates Subdivision 4<sup>th</sup> Filing  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** The final plat of Lot 33, Block 1, Ironwood Estates Subdivision, 4<sup>th</sup> Filing is being presented to the City Council for approval. The preliminary plat was approved by the Council on August 22, 2005. The subject property is zoned Residential 9,600, Residential 7,000 and Public and is located east of Molt Road and north of Ironwood Estates Subdivision 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Filings. The subdivision will eventually create 84 lots for residential use and multiple public parks. This plat is the second in a series of phased final plats for the 4<sup>th</sup> filing and includes nine lots for residential development. The owner is Regal Land Development and the representative is Engineering, Inc. All of the conditions for final plat approval have been met by the subdivider. 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 Clerk and Recorder.

**FINANCIAL IMPACT:** The creation of nine residential lots will increase the City's tax revenue on this parcel.

**RECOMMENDATION**

Staff recommends that the City Council approve the final plat of Lot 33, Block 1, Ironwood Estates Subdivision, 4<sup>th</sup> Filing.

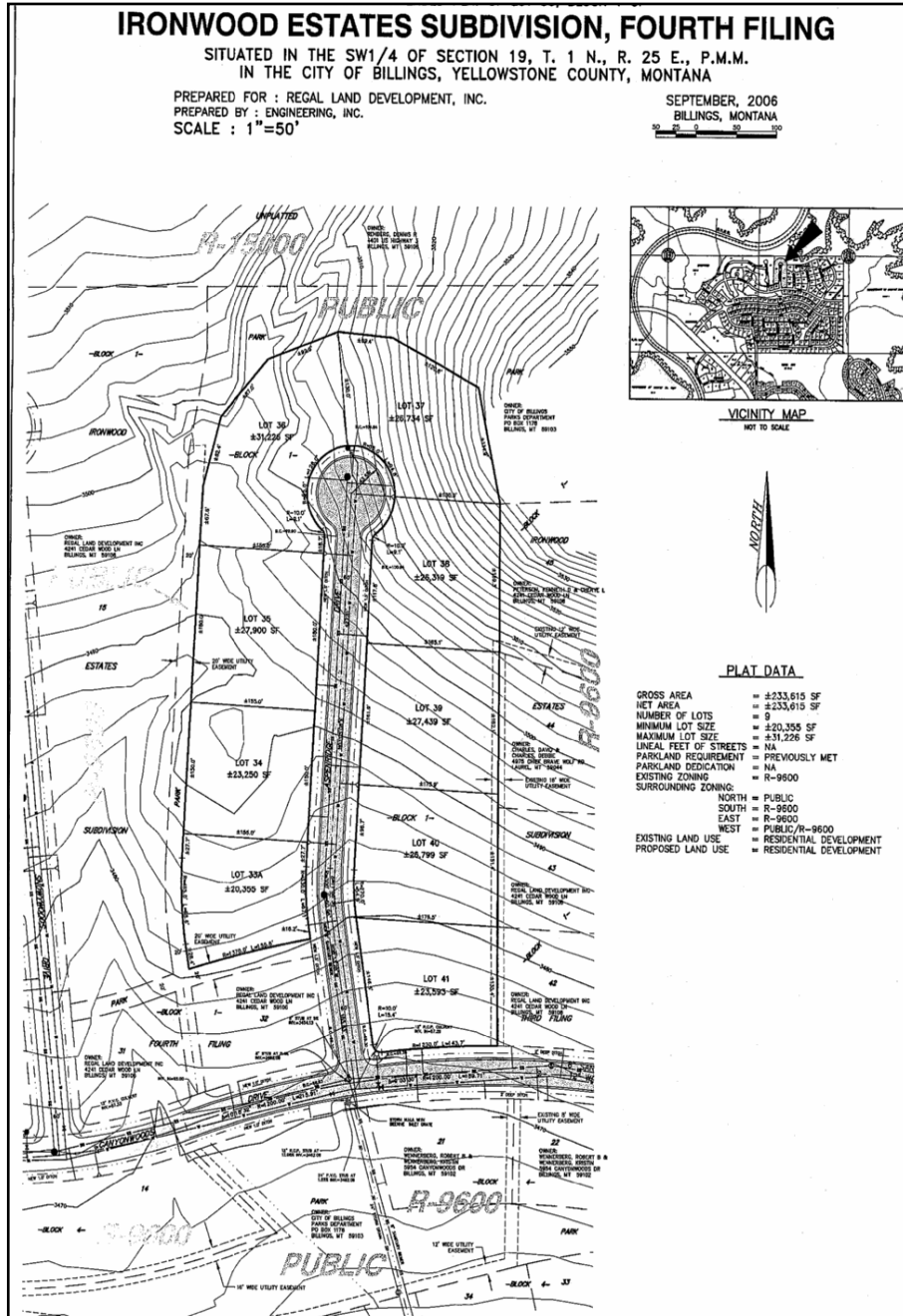
ATTACHMENT

A: Plat

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

**ATTACHMENT A**

Final Plat of Lot 33, Block 1, Ironwood Estates Subdivision, 4<sup>th</sup> Filing



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# R1

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,119,815.25 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 6, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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



# R2

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$467,129.10 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 16, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

# R3

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$519,166.18 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 20, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

# R4



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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**SUBJECT:** Payment of Claims  
**DEPARTMENT:** Municipal Court  
**PRESENTED BY:** Nikki R. Schaubel, Municipal Court Administrator

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$209,655.12 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 1, 2007 to March 31, 2007 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, MAY 14, 2007**

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**SUBJECT:** Public Hearing and Approval of Resolution Approving and Adopting a Budget Amendment for Fiscal Year 2006/2007

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The budget adjustments are requested for Fiscal Year 2006/2007. The adjustments are for the 2002 and 2003 Universal Hiring Program (UHP) Grants in the Police department. Both grants receive a match from the Public Safety Fund. Additional budget authority is needed in the grant funds for police salaries as well as transfers for the match in the Public Safety Fund.

Also the Planning Department has a grant from The State Historical Preservation and it has a local match. The grant requires a match which needs budget authority to be added as a transfer out from the Planning Fund. Budget authority is requested for a loan from the General Fund-Parks division to the Ballpark Construction Fund to pay for construction until bond proceeds become available.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendment for Fiscal Year 2006/2007 per attached.

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

**ATTACHMENT**

A-Resolution to Make Fiscal Year 2006/2007 Adjustment Appropriation (with Exhibit A)

RESOLUTION 07-

A RESOLUTION TO MAKE FISCAL YEAR 2007 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 construction needs, 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)

PASSED AND APPROVED by the City Council, this 14<sup>th</sup> day of May, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

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

**EXHIBIT A**

**BUDGET ADJUSTMENTS**

	<u>Revenue</u>	<u>Expenditure</u>
256-2199-421 1120		\$8,490 Police Salaries
256-2199-331 1949	\$3,940	Federal Grant
256-2199-383 7553	\$4,550	Transfer from Public Safety
150-2199-421 8225		\$4,550 Transfer to Other Funds

The 2002 UHP Grant needs additional budget for Police Salaries, revenues for which come from the grant and a transfer from the public safety fund.

The Public Safety Fund needs additional budget authority for the transfer to provide the match for the 2002 UHP Grant.

252-2149-383 7553	\$4,143	Transfer from Public Safety
256-2149-421 1120		\$4,143 Police Salaries
150-2149-421 8225		\$4,143 Transfer to Other Funds

The 2003 UHP Grant needs additional budget for Police Salaries. The Public Safety Fund needs additional budget authority for the match for the 2003 UHP Grant.

240-4301-419 8225		\$6,500 Transfer to Historical Society Grant
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The State Historical Preservation Grant of \$12,000 has a local match of \$6,500 from the C.C. Planning fund. This transfer amount needs to be added to the fiscal year 2007 budget.

010-5110-453 5930		\$815,000 Loan issued to ballpark construction fund
494-5163-381 6950	\$815,000	Loan from the general fund parks division to ballpark construction fund

To authorize budget authority to allow the general fund to loan funds to the ballpark construction fund until bond sale proceeds are available. Loan terms will require the

construction fund to repay principal plus interest using the City's average interest rate plus one-half of 1 percent.

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

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

**TITLE:** Public Hearing First Reading of an Ordinance Expanding Ward III:  
Annexation #07-07

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** On April 23, 2007, the City Council approved the annexation of an approximate 150-acre parcel legally described as Lots 1-5, Block 1, Western Sky Subdivision. The request for annexation was submitted by Cal Kunkel and Gerald Kreig, the owners of 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 III will be conducted at this meeting. The second reading of the ordinance will be conducted on May 29, 2007.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

- A. Ward Ordinance and Exhibit A



**ATTACHMENT A**

**ORDINANCE NO. 07- \_\_\_\_\_**

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

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

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

Western Sky Subdivision, Recorded April 19, 2006, under Document No. 3374355, Records of Yellowstone County; Including that portion of adjoining Yellowstone County Road easement for 48<sup>th</sup> Street West, also described as a portion County Road Petition Number 20, Petition filing date April 6, 1911, date road Granted May 18, 1911, and all adjacent right-of-way of King Avenue West.

Containing 164.134 gross acres, and 150.862 net acres.

(# 07-07 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 14th day of May, 2007.

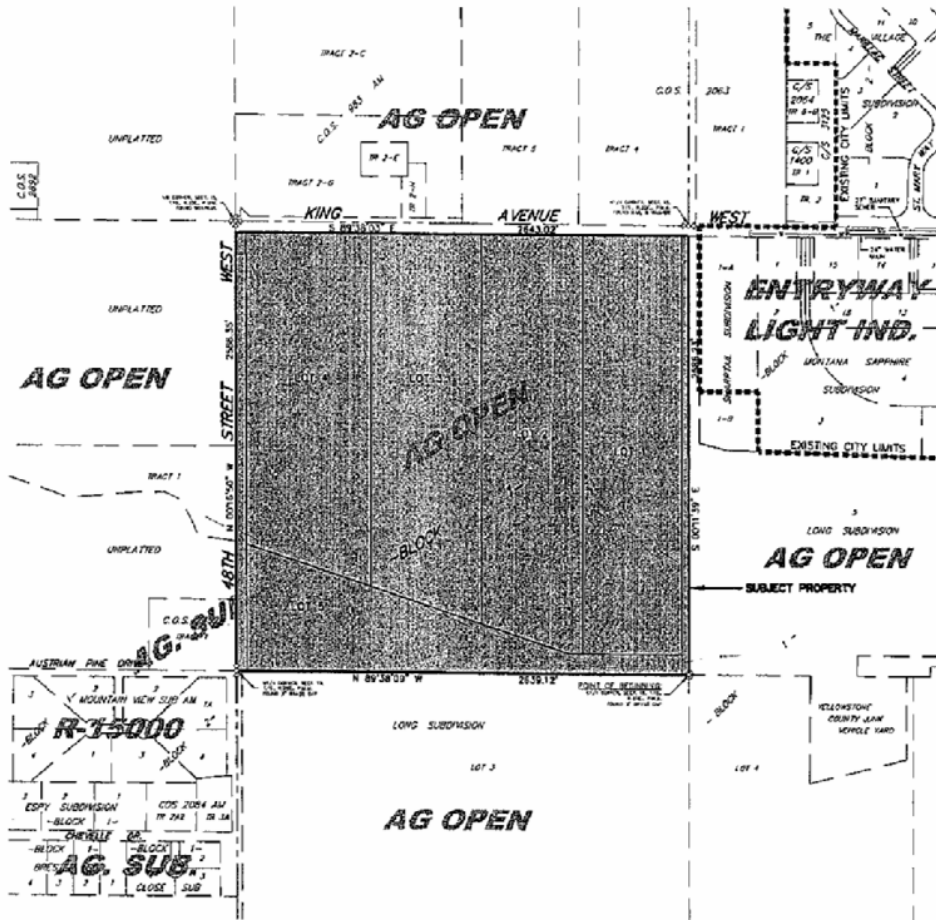
PASSED by the City Council on the second reading this 29<sup>th</sup> day of May, 2007.

THE CITY OF BILLINGS:

\_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

---

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward IV for Annexation 07-06 Property

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** On April 23, 2007, the City Council approved the annexation of the future Cottonwood Park site at the northwest corner of Colton Blvd. and 54<sup>th</sup> St. W. (Annexation #07-06) containing 42.26 acres. The City of Billings owns the property and the Parks, Recreation, and Public Lands Department requested the annexation. After 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 IV will be held on May 14, 2007. The second reading of the ordinance is scheduled for Council action on May 29, 2007.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

B. Ward Ordinance and Exhibit A

**ORDINANCE NO. 07-\_\_\_\_\_**

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 IV PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

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

Tracts of land situated in the E1/2 of Section 31, and the NW1/4 Section 32, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tracts 1 & 2, of Certificate of Survey 1323, Recorded June 27, 1973, under Document No. 9397800, Records of Yellowstone County;  
Tract 1, of Certificate of Survey 1815, Recorded September 7, 1978, under Document No. 1103210, Records of Yellowstone County;  
Tract 2D, of Corrected Amended Tract 2 of Certificate of Survey 1952, Recorded September 22, 1988, under Document No. 1498658, Records of Yellowstone County;  
Park land, Yellowstone Meadows-Phase One, Recorded December 15, 1970, under Document No. 873104, Records of Yellowstone County;  
Park land, Yellowstone Meadows-Phase Three, Recorded December 6, 1976, under Document No. 1035948, Records of Yellowstone County;  
Lots 33, 34, 63 and 64 of Sunny Cove Fruit Farms, Recorded April 27, 1910, under Document No. 21540, Records of Yellowstone County.  
Including that portion of adjoining Yellowstone County Road easement for 54<sup>th</sup> Street West, also described as a portion County Road Petition Number 49, filed April 20, 1892, Notice of Opening Road filed June 14, 1892, and all adjacent right-of-way of 54<sup>th</sup> Street West, 56<sup>th</sup> Street West and Colton Boulevard.

Containing 42.262 gross acres, and 38.334 net acres.  
(# 07-06) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 14th day of May, 2007.

PASSED by the City Council on the second reading this 29<sup>th</sup> day of May, 2007.

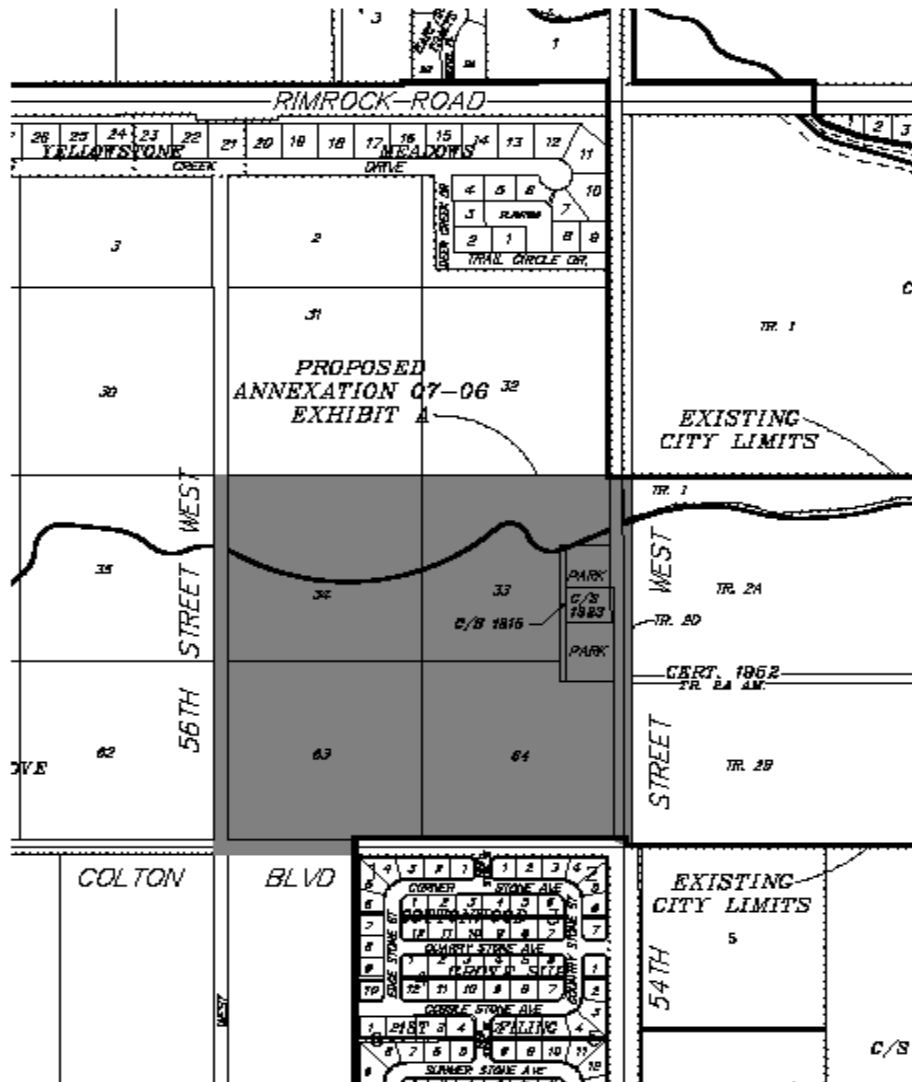
THE CITY OF BILLINGS:

\_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

# EXHIBIT A



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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TITLE: Land Exchange Agreement with Yellowstone County for MET Transfer Center

DEPARTMENT: City Administrator's Office

PRESENTED BY: Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** An agreement is proposed to exchange City-owned lots 19-24, Block 60, Original Town of Billings for County-owned Lots 6-12, Block 60, Original Town of Billings to provide an improved site for the MET Transfer Center and a GSA-preferred site for a privately built Federal Courthouse.

**ALTERNATIVES ANALYZED:** The City Council and the Yellowstone County Board of Commissioners may choose to approve or disapprove the land exchange agreement.

**FINANCIAL IMPACT:** A commercial appraisal placed the value of the parcels to be exchanged at exactly the same dollar value of \$16.75 per square foot. Because the parcel containing County-owned Lots 6-12 is 3,500 square feet larger than the City parcel, a \$58,625 payment to the County is proposed to be paid from Transit funds, with a possibility for reimbursement through Federal Transit Administration funds committed to the project.

**RECOMMENDATION**

Staff recommends that Council approve the land exchange and authorize payment of \$58,625 from Transit funds to the County for the larger parcel.

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

**Attachments:**

A: Agreement to Sell and Exchange Real Property



## **INTRODUCTION**

To provide an improved site for the MET Transfer Center and a GSA-preferred site for a privately built Federal Courthouse, an agreement is proposed to exchange City-owned lots 19-24, Block 60, Original Town of Billings for County-owned Lots 6-12, Block 60, Original Town of Billings.

The new Transfer Center site would face N. 25<sup>th</sup> Street between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues North. The site includes an existing County parking lot. In exchange, Yellowstone County would receive the City-owned lots currently occupied by the building for the Wells Fargo drive-up bank at the corner of N. 26<sup>th</sup> Street and 2<sup>nd</sup> Avenue North. It would be used at least temporarily for County parking under an agreement proposed separately between the County and the Downtown Billings Partnership.

## **ALTERNATIVES ANALYSIS**

The exchange would provide the Transfer Center with a larger and therefore more desirable site than it currently owns. It also would relocate the front of the Transfer Center to N. 25<sup>th</sup> Street, instead of facing apartments on 2<sup>nd</sup> Avenue North, as originally proposed.

The exchange also would give the County ownership of the entire half-block facing N. 26<sup>th</sup> Street between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues North. This site has been designated by the Federal Government Services Administration in a memorandum of understanding with Big Sky Economic Development Authority as a preferred site for a privately built Federal Courthouse to be leased by GSA. This could help keep important Federal jobs downtown.

## **STAKEHOLDERS**

If an agreement to construct replacement parking for the County also is approved by the Council, the Yellowstone County Commissioners have indicated they would approve the project. If both the City and the County approve the project, it will be submitted for approval to the Federal Transportation Administration (FTA), which is providing funding for the Transfer Center. FTA is expected to agree to the improved site.

Wells Fargo has been consulted about the project, and has no opposition to the land exchange, as long as another banking institution does not occupy the site.

## **RECOMMENDATION**

Staff recommends that Council approve the land exchange and authorize payment of \$58,625 from Transit funds to the County for the larger parcel.

### **Attachment:**

A: Agreement to Sell and Exchange Real Property

## **AGREEMENT TO SELL AND EXCHANGE REAL PROPERTY**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Billings, Montana, a Montana Municipal Corporation, hereinafter referred to as “City” and Yellowstone County, Montana, hereinafter referred to as the “County”.

### **PURPOSE**

It is the purpose of this Agreement to accomplish an exchange of properties owned by the City and the County which are located adjacent to each other in downtown Billings, Montana. It is agreed between the City and the County that real property owned by the County (hereinafter referred to as the “County Exchange Parcel”) exceeds the value of the real property owned by the City (hereinafter referred to as the “City Exchange Parcel”), by \$58,000. It is the intent of this document to exchange the respective parcels and to compensate the County \$58,625.

### **AUTHORITY**

The City has the authority to enter into this Agreement pursuant to MCA sections 7-8-101(2) and 7-5-4301(1), Billings City Code Sections 22-901 and 902 and Billings City Council Resolution 93-16740.

The County has the authority to enter into this Agreement pursuant to MCA sections 7-8-101(1) and (3).

### **RECITALS**

1. The City is the owner of certain real property located in Billings, Yellowstone County, Montana, the City Exchange Parcel, described as follows:

Lots 19-24, Block 60, Original Town of Billings

2. The County is the owner of certain real property located in Billings, Yellowstone County, Montana, the County Exchange Parcel, described as follows:

Lots 6-12, Block 60, Original Town of Billings

3. The City is considering and evaluating the potential construction and location of a new MET Bus Transfer Center to be located on the east half of Block 60, therefore requiring an exchange of the City and County Parcels noted in Recital 1 to accomplish the location and construction of the transfer facility.

## **1. Description of Real Property to be Exchanged.**

- a) **City Exchange Parcel.** The City Exchange Parcel includes the Wells Fargo Drive-up Bank building and related improvements. The City Exchange Parcel also includes a portion of the buildings, fixtures and improvements thereon and shall be exchanged, transferred and conveyed as provided within this Agreement.
- b) **County Exchange Parcel.** The County Exchange Parcel presently includes a buffered and landscaped parking lot with seventy-seven (77) spaces for County-related parking purposes. The County Exchange Parcel also includes all buildings, fixtures and improvements thereon and shall be exchanged, transferred and conveyed to the City subject to the requirements within this Agreement.

## **2. Purchase Price and Terms.**

The parties have determined through appraisal that the value of the County Exchange Parcel exceeds the value of the City Exchange Parcel by \$58,625 because of greater square footage in the County Exchange Parcel. On or before the agreed upon closing date for exchange of the respective City and County parcels, the City and County agree to perform the following obligations and conditions precedent.

### **a) City Obligations**

(1) The City at its expense shall provide the County with title insurance pursuant to standard form American Land Title Association Title Insurance Commitment in an amount equal to the agreed value of the City Exchange Parcel. The title insurance shall show marketable title to the City Exchange Parcel, free and clear of all liens and encumbrances except:

- i) Reservations and exceptions in patents from the United States or the State of Montana;
- ii) Licenses, easements and right-of-way of record for public utilities or other entities appearing of record;
- iii) Building, zoning, use, sanitary and environmental restrictions relating to the City Exchange Parcel including a deed restriction which appears of record that prohibits the City Exchange Parcel to be used as a bank or related financial institution engaged in a

banking business as more fully set forth in the warrant deed for the City Exchange Parcel;

- iv) All taxes and assessments for 2007 and subsequent years;
- v) All prior conveyances, leases, or transfers of any interest in and to the mineral estate underlying the City Exchange Parcel including oil, gas and other hydrocarbons; and
- vi) All standard printed exceptions and exclusions found in title commitments and/or title insurance policies.

(2) City shall pay County \$58,625 via a readily negotiable instrument or electronic fund transfer.

**b) County Obligations**

(1) The County at its expense shall provide the City with title insurance pursuant to standard form American Land Title Association Title Insurance Commitment in an amount equal to the agreed value of the County Exchange Parcel. The title insurance shall show marketable title to the County Exchange Parcel, free and clear of all liens and encumbrances except:

- i) Reservations and exceptions in patents from the United States or the State of Montana;
- ii) Licenses, easements and right-of-way of record for public utilities or other entities appearing of record;
- iii) Building, zoning, use, sanitary and environmental restrictions relating to the County Exchange Parcel including a deed restriction which appears of record that prohibits the County Exchange Parcel to be used as a bank or related financial institution engaged in a banking business as more fully set forth in the warrant deed for the County Exchange Parcel;
- iv) All taxes and assessments for 2007 and subsequent years;
- v) All prior conveyances, leases, or transfers of any interest in and to the mineral estate underlying the County Exchange Parcel including oil, gas and other hydrocarbons; and

- vi) All standard printed exceptions and exclusions found in title commitments and/or title insurance policies.

**3. Examination of and Objections to Respective Condition of Title.**

City and County shall be allowed thirty (30) days to examine the respective title insurance/commitment each as provided to the other for the respective parcels they will receive in the exchange and to make any objections to such. If either party makes an objection to the condition of title for the parcel they will receive in the exchange, the other party shall be allowed fifteen (15) days to cure or eliminate such objections. If any objections to title are not cured within fifteen (15) days, either party may: (1) elect to declare this Agreement void in which case this agreement shall automatically terminate and no party shall have any further obligations to complete the exchange of parcels; or (2) postpone the closing date until all title objections have been cured but postponement shall be for no later than \_\_\_\_\_, 2007; or (3) complete the transaction and exchanges in this Agreement as if there had been no title objections. The City and County shall pay all premiums related to the respective title insurance policies issued for the parcel they seek to exchange.

**4. Condition of Respective Exchange Parcels.**

The City and County represent to each other that they have no knowledge of any notice of violation of City, County, State, or Federal building, zoning, fire, health codes or ordinances; nor any condemnation proceedings, hazardous waste, underground storage tanks or other governmental regulations deemed applicable to the respective exchange parcels. The City and County shall arrange for and otherwise cooperate in securing a Phase I Environmental Report for each of the exchange parcels. Such reports shall be submitted in writing to the City and County at least fifteen (15) days prior to Closing. After the City and County have reviewed the environmental reports concerning the respective exchange parcels, if any further analysis or remediation of either property is recommended, either party may request re-negotiation of the terms and conditions of this Agreement. If either of the reports concerning either exchange parcel indicate significant environmental liability, either the City or the County may cancel this Agreement upon written notice to the other.

**5. Conditions and Contingencies.**

The City and County's respective obligations to complete the exchange of the parcels described herein shall be subject to the following conditions and contingencies, all of which must be met to the City and County's satisfaction, or waived in writing by the City and the County prior to closing:

- a) This Agreement is conditioned upon written waiver of its Right of First Refusal by Wells Fargo Bank, pursuant to Section 10 of the Purchase and Sale Agreement between Wells Fargo and the City, Dated August 10,

2006; and further conditioned upon final review and approval of the Federal Transportation Administration (FTA) and the respective governing bodies of the City and County after all required resolutions, notices, review, public hearings and approvals have been obtained by the City and the County allowing for the consummation of the exchange described in this Agreement. If either the City or the County governing bodies declined to approve this Agreement, the respective obligations herein shall cease and this Agreement shall be automatically terminated.

- b) The City and County shall have previously received and approved the terms and conditions of title and title insurance affecting the respective exchange parcels including but not limited to water rights, mineral rights, recorded or existing easements and rights-of-way, covenants, building or use restrictions, subdivision restrictions, special improvement district obligations or other similar improvement agreements.
- c) The City and County shall have previously inspected the respective exchange parcels and approved the condition of such as part of the respective governing body's final review and approval as described in subsection (a) immediately above.
- d) If any of the conditions referred to in subsections a-c above are not met to the City or County's satisfaction, or if they are not waived in writing by the City or County, either party may in its sole discretion on or before the Closing date, terminate this Agreement by giving written notice to the other party. Upon submitting such notice, this Agreement shall automatically terminate and neither party shall be liable for any damages of any kind under this Agreement.

#### **6. Conveyance of Exchange Parcels.**

The City and County shall convey the respective exchange parcels previously described herein by Warranty Deed, free of all liens and encumbrances except those referenced within this Agreement and upon payment by the City to the County of the agreed upon difference of \$58,625 in value between the City and County Exchange Parcel.

#### **7. Closing and Related Provisions.**

Closing to consummate the exchange of parcels described herein together with payment of an agreed upon amount from City to County, shall occur on \_\_\_\_\_, 2007 at a mutually agreed upon title company office in Billings, Montana. (closing date). The City and County shall execute a Warranty Deed evidencing fee simple title, free of all liens and encumbrances except as stated otherwise in this Agreement. City and County will share equally

in the payment of all closing costs and shall prorate any taxes and assessments due as of the closing date.

The City and County represent and warrant to each other that no real estate broker has been involved in this exchange agreement and therefore neither has incurred any legal obligation to any person or brokerage for the payment of any fees, commissions or other compensation related to the exchange of parcels in this Agreement.

**8. Assignment.**

Neither the City nor the County may assign its respective rights and privileges under this Agreement nor delegate its duties and obligations under this Agreement without the prior written consent of the other.

**9. Default and Termination.**

If the City or the County is unable to consummate and complete the exchange of parcels described in this Agreement, or is unable to convey title under the terms of this Agreement by the closing date, this Agreement shall automatically terminate and neither the City nor County shall have any further rights against the other arising from this Agreement.

**10. Notices.**

Any notice required to be given from or to the City and County shall be in writing and shall either be served personally upon the respective representatives listed immediately below, or served by registered or certified mail, return receipt requested, to the respective officials listed immediately below at their respective official addresses.

**CITY OF BILLINGS**

**YELLOWSTONE COUNTY**

\_\_\_\_\_  
Ron Tussing, Mayor

\_\_\_\_\_  
Yellowstone County Commissioner

Attest:

\_\_\_\_\_  
Yellowstone County Commissioner

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

\_\_\_\_\_  
Yellowstone County Commissioner

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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TITLE: Tax Increment Allocation for County Parking Lot  
DEPARTMENT: City Administrator's Office  
PRESENTED BY: Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** As part of a proposed downtown land exchange agreement between the City of Billings and Yellowstone County, the Board of County Commissioners needs to replace a parking lot on the property which it would exchange for the project. The Downtown Billings Partnership (DBP) requests City Council authorization to spend up to \$237,016 in 1976 Tax Increment Financing (TIFD) funds to build the replacement parking lot for Yellowstone County at N. 26th Street and 2<sup>nd</sup> Avenue North.

**ALTERNATIVES ANALYZED:** The City Council may choose to approve or disapprove the TIFD contribution.

**FINANCIAL IMPACT:** DBP would demolish the existing Wells Fargo Bank drive-up building on the northeast corner of N. 26<sup>th</sup> Street and 2<sup>nd</sup> Avenue North, and construct a 74-space parking lot using \$237,016 of 1976 TIFD funds (Fund 202). If one of the DBP's designated legacy projects, the leased Federal Courthouse, is eventually constructed on N. 26<sup>th</sup> Street, the lot would be demolished and the County would be recompensed by the private developer who acquired the property. If the Federal Courthouse is not built, DBP would permanently replace County parking and green space at a cost of \$567,964, also to come from Fund 202. The current, unencumbered balance in Fund 202 is \$997,000.

**RECOMMENDATION**

Contingent upon City and County approval of a land exchange on Block 60, Original Town of Billings, staff recommends that Council authorize the use of \$237,016 of 1976 TIFD funds for construction of a County replacement parking lot on the northeast corner of N. 26<sup>th</sup> Street and 2<sup>nd</sup> Avenue North.



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

**Attachments:**

- A: Downtown Billings Partnership Memo on Development Agreement.
- B: Development Agreement.
- C: DBP Board minutes of Feb. 23, 2006, approving TIFD funding request
- D. Preliminary replacement lot design.

# Memorandum

To: Tina Volek  
From: Downtown Billings Partnership  
Date: March 8, 2007



RE: Request for Council Action  
TIFD Development Agreement

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**Downtown Billings Partnership Board Action Item  
Requiring Council Approval for Funding**  
*February Board Meeting – February 23, 2007*

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TITLE: County Parking Replacement  
COMMITTEE: Executive  
PRESENTED BY: Staff

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**PROBLEM/ISSUE STATEMENT:** For well over one year we have been working closely with GSA to attempt to locate a publicly owned building site in downtown Billings within 4 blocks of the Battin Federal Building to construct a new GSA LEASED Federal Courthouse. Due to the 50-foot setback requirements, GSA informed us that they would need a full city block (or most of it) for the building footprint. Only one block (between 2<sup>nd</sup> N. and 3<sup>rd</sup> N. and N. 26<sup>th</sup> and N. 25<sup>th</sup>) could be identified and that block currently has the City owning ½ of the block and the County owning the other ½. The challenge is complicated by the fact that both the City and the County are using or will be using the property we identified. The City plans to construct a new MET Transfer Center on their half – currently running east/west on the 2<sup>nd</sup> N. side of the block and the County Sheriff's office and landscaped County parking occupies the other side of the block. We looked into relocating the Sheriff and the County parking but without a complete closure of 3<sup>rd</sup> N. between N. 26<sup>th</sup> and N. 25<sup>th</sup> we could not fit the new courthouse on the ½ block. It is not feasible to close any portion of 3<sup>rd</sup> Ave. North at this time.

Next we started exploring the possibility of having the City and the County swap ¼ block segments of land to allow the MET Transfer Facility to be constructed on the N. 25<sup>th</sup> side of the block running north/south. Then the County would own the north/south side of the block facing N. 26<sup>th</sup> and, with DBP – TIFD support, the county parking could TEMPORARILY be replaced on the site that is currently occupied by the Wells Fargo drive-up building. Then, if negotiations with GSA and their developer are successful, we could locate the new courthouse on the County half block and include N. 26<sup>th</sup> (closed) between 3<sup>rd</sup> N. and 2<sup>nd</sup> N. as part of the footprint.

GSA, via a Memorandum of Understanding with Big Sky EDA has indicated that they agree and have identified that site as their preferred site. Thus, the DBP will encourage the City and the County to enter into a buy/sell agreement that would swap

the ownership of the parcels we are discussing. Further, the DBP, via a Development Agreement with the County will agree to demolish the Wells Fargo drive up building and construct parking on the site. In addition, the DBP will request 3 on-street parking spots on N. 26<sup>th</sup> between 3<sup>rd</sup> N. and 2<sup>nd</sup> N. be signed "County Parking" only. This will give us 77 parking spots and totally replace what the County currently has on the northeast corner of the block. If we are NOT successful with developing an agreement to locate the courthouse on this preferred site by the end of calendar year 2007, the DBP will agree to fund a permanent solution to the county parking lot by additional landscaping and other amenities, using Tax Increment Funds, pending future Council action.

This transfer of property is in the best interest of the City as it appears to be a better location for the MET Transfer station. Further, if we can locate a privately owned federal courthouse on the site, the tax base in downtown Billings will grow considerably and, once this block is added to the N. 27<sup>th</sup> Tax Increment District (via future Council action), we could have a bondable project that would generate enough increment to construct another building and parking structure.

**FINANCIAL IMPACT:** A new privately owned courthouse would most likely exceed \$27 Million in construction costs and would be a key development to fund public projects in the new N. 27<sup>th</sup> TIFD. And fortunately, this block is still in the 1976 Tax Increment District so we can use current TIFD funds to "fill the gap" to jump start this potential major construction project by providing for the parking needs of the County. An allocation of \$237,016 from the 1976 TIFD (Fund 202) would cover the cost of that replacement parking and "make the County whole" regarding the City/County land swap.

**Council Action Request.**

(See attached documentation)

Approval of the Development Agreement between the DBP and the County and the allocation of \$237,016 Tax Increment Funds to the parking project to be managed by the Downtown Billings Partnership.

## DEVELOPMENT AGREEMENT

(March 7, 2007 Draft)

This Agreement is made and entered into this March \_\_, 2007, by and between Yellowstone County, Montana, a county of the State of Montana, hereinafter referred to as the "County" and the Downtown Billings Partnership, Inc., a Montana not-for-profit Corporation, hereinafter referred to as "DBP".

### RECITALS

**WHEREAS**, the City of Billings is the owner of certain real property located in Billings, Yellowstone County, Montana described as follows ("City Exchange Parcel"):

Lots 19-24, Block 60, Original Town of Billings

**WHEREAS**, the County is the owner of certain real property located in Billings, Yellowstone County, Montana described as follows ("County Exchange Parcel"):

Lots 6-12, Block 60, Original Town of Billings

**WHEREAS**, DBP provides services relating to urban renewal activities for the City, including input and assistance in administration of development projects and administering tax increment funds.

**WHEREAS**, the City of Billings is considering construction and placement of a new MET bus transfer site to be located on the east half of Block 60, and exchange of the City Exchange Parcel for the County Exchange Parcel is necessary to consolidate ownership of the MET bus transfer site in the City.

**WHEREAS**, DBP has agreed to provide equivalent replacement parking and landscaping to County as part of the exchange.

**WHEREAS**, DBP and County are considering a Civic Plaza concept to include all or portions of Blocks 60 and the United States General Services Administration ("GSA") is exploring the feasibility of locating a lease-build project for a new federal courthouse facility in the area of the proposed Civic Plaza ("Federal Building Project"), and GSA's final determination will effect future use of the County Exchange Parcel and DBP's obligations to provide replacement parking, landscaping and building demolition.

**NOW, THEREFORE**, subject to the terms and conditions of this Agreement, County and DBP agree as follows:

**1. Obligations.** For purposes of this Agreement, the parties have determined that the value of the County Exchange Parcel exceeds the value of the City Exchange Parcel. At the closing, DBP shall commit to perform the following obligations:

- (a) DBP shall provide temporary replacement parking for County. This temporary replacement parking shall consist of 74 parking spaces, at no expense to the County, on the City Exchange Parcel configured as shown on

the attached Exhibit A; and, 3 parking spaces within 1 block of the City Exchange Parcel. This is to be funded, with City Council approval, by the tax increment district administered by the DBP.

- (c) In the event GSA determines not to proceed with the Federal Building Project in the Civic Plaza area, to include the City Exchange Parcel, then DBP shall be responsible to provide adequate landscaping on the site noted in 1a, above, equivalent or better to the landscaping currently in place on the "County Exchange Parcel", at no expense to the County. This is to be funded, with City Council approval, by the tax increment district administered by the DBP.
- (d) In the event GSA determines to proceed with the Federal Building Project in the Civic Plaza area, it is assumed that the developer selected for the Federal Building Project in the Civic Plaza area will replace the parking and landscaping noted in 1a and 2a above.

5. **Assignment.** No party may assign its rights and privileges under this Agreement or delegate its duties and obligations under this Agreement, without the prior express written consent of the other parties.

11. **Notices.** Any notice to be given hereunder shall be in writing and shall either be served upon a party personally, or served by registered or certified mail, return receipt requested, directed to the party to be served at the address set forth on page 1 of the Agreement.

Downtown Billings Partnership, Inc.

Yellowstone County

\_\_\_\_\_  
President

\_\_\_\_\_  
Yellowstone County Commissioner

\_\_\_\_\_  
Yellowstone County Commissioner

\_\_\_\_\_  
Yellowstone County Commissioner

## Board Agenda Item 2a

### DBP Board Meeting Minutes of Friday, Feb. 23, 2007 – 7:30 am

2<sup>nd</sup> Floor Board Room – GW Building

#### Attendees:

Bill Honaker  
Don Olsen  
Joe McClure  
Brenda Burkhartsmeier  
Todd Buchanan

Lisa Harmon  
Tina Volek  
Jim Reno  
Kay Foster  
Jock West – non voting

Lisa Woods - alternate  
Kim Olsen - alternate  
Greg A. Krueger – Staff

- 1) **CALL TO ORDER: INTRODUCTIONS/COURTESIES:** The meeting was called to order by President Honaker at 7:30 am. There were no introductions or courtesies.
- 2) **Consent Agenda:**
  - a) **MINUTES OF PREVIOUS MEETINGS – 1/19/07.** The minutes were approved my unanimous consent.
  - b) **DBP/STAFF/OFFICER'S REPORTS** – Director Krueger noted his written report in the packet.
  - c) **FINANCIAL REPORT** – Director Krueger noted that he had updated the Project Budget and explained the details of the Operations Budget. Krueger noted that any surplus in the Design budget should be allocated to the landscaping of the Youth Services Center corner on S. 27<sup>th</sup> Street. We are going to place the gateway monument on that corner on Youth Services property. Director McLure asked about the funds allocated to the Wells Fargo streetscape project and Krueger noted it was in the development budget and that we would encumber the funds into FY 2008. Director Olsen asked about how we could budget two years worth of operations for the DBP and President Honaker noted that we would cover that later in the agenda.
- 3) **Presentations - None**
- 4) **Action Items:**
  - a) **Legacy Projects** – Krueger handed out and explained the options presented from CTA regarding replacement parking for the County if we moved forward with the land swap.
    - i) **Option 1** – do not tear down the Wells Fargo Drive up – cost \$44,709.
    - ii) **Option 2** – tear down Wells Fargo Drive up and place 74 spaces on site immediately – cost \$237,016.  
Krueger noted that Option 1 OR Option 2 HAS to happen and Option 3 happens only if we cannot get GSA on the site.
    - iii) **Option 3** – this would come into play if we cannot move forward with the GSA building a new courthouse on the site – we would permanently replace the parking and green space for the county – cost \$567,964.

**After some discussion Director Foster made a motion to allocate up to \$237,016 for Option Two and up to \$567,964 TOTAL IF we have to move to Option Three and recommend that the City use these TIFD funds to move forward with the land swap between the County and the City for the MET Transfer facility and the potential for the GSA development. – 2<sup>nd</sup> Brenda Burkhartsmeier – Discussion – Motion passed unanimously.**
  - b) **Budget Committee** – Director Krueger updated the group that the Budget Committee will be meeting prior to the March Executive Committee meeting, at least once. Director Olsen continued his discussion regarding allocating some funds into Operations for FY2008 that could be carried forward into FY2009. Olsen wanted to know if there was support for this and Director Reno questioned if

such action would be allowed under TIFD law. Krueger noted that the contract could be put into place in FY2008 prior to the sunset and that we can encumber funds beyond the sunset for a project that has been approved for funding. **Director Buchanan made a motion to ask the Budget Committee to develop a plan to be brought back to the Board for approval. – 2<sup>nd</sup> Brenda Burkhartsmeier – there was no discussion – the motion passed unanimously.** Krueger noted that he would bring to the Budget Committee any and all requests for funding received to date, including MSU-B. Director Harmon noted that the BID would be requesting some funding for operations/project support in FY2008. Several noted that they were not sure that funding the BID for another year would be a good idea. Discussion followed. Director Volek expressed serious concern for added operational funding for the BID and that it was not planned for by Council. Director Krueger attempted to explain that we may never have made a commitment that the BID would be ready to "stand alone" after 2008. We simply noted that the TIFD would be sunset and that the DBP may sunset as well and that the BID needed self sustaining for that reason. Krueger attempted to explain the symbiotic relationship between the BID and the other Partner organizations.

- c) **BID replacing Property Owners on Exec. Comm.** – Krueger explained the proposed action and after some discussion, the item was tabled until next month by President Honaker.
- 5) **Old Business & Brief Reports:** Director Woods handed out new Downtown Directories and updated the Board on various DBA events and the 125<sup>th</sup> Anniversary of Billings logo contest (handout). Director Buchanan noted that the DBA would be investigating the possibility of converting the DBA gift certificate program to a card program. Director Harmon updated the group on BID activities including a recent submission for a possible grant. She noted that we would be seeing some changes in the Spare Change for Real Change program. Director Krueger noted that the DDC would need to have a meeting next month and that we would be receiving new banners for 3<sup>rd</sup> Ave. North. Director Volek updated the group on City items including the St. Patrick's Day parade and the Goldwings. March 21<sup>st</sup> will be the groundbreaking for the new ballpark in conjunction with the Western Heritage Center's series on the history of baseball in Billings. Tina noted that she has just seen the first draft of the revised panhandling ordinance. Director Reno noted that he is still concerned about potential legislation regarding TIFDs. He noted that he would like to see the Urban Renewal Law modified to allow Counties the authority to create UR Districts in unincorporated areas that are blighted....especially "county islands" within City TIFDs. Director McClure updated the group on various other legislative actions. Krueger noted that the BIRD will be having a membership meeting on April 4<sup>th</sup> and that they will be electing a new BIRD Board. McClure updated the group on upcoming meetings with housing developers.
- 6) **New Business:** There was no new business.
- 7) **There was no Public Comment and the meeting was adjourned at about 9:00 am.**

Respectfully submitted by Greg A. Krueger, Executive Director.

Concept Cost Estimate  
 Remove Entire Bank Building  
**County Parking Lot - - Temporary Scheme B**

02/21/07



<b>Demolition</b>						
Remove concrete curb and gutter	760	lf	@	\$5	/lf =	\$3,800
Remove earth in landscaped areas	16	hrs	@	\$200	/hr =	\$3,200
Load and haul site material to landfill	12	hrs	@	\$500	/hr =	\$6,000
Remove light poles						\$1,000
Remove drive-up canopy	1	ls	@	\$15,000	ea =	\$15,000
Remove bank building and foundations	1	ls	@	\$75,000	ea =	\$75,000
Disconnect utilities	1	ls	@	\$8,000		\$8,000
Remove concrete sidewalk	1,700	sf	@	\$1.30	/sf =	\$2,210
Landfill fees	380	ton	@	\$11.50	/tn =	\$4,370
<b>Total Estimated Demolition Cost</b>						<b>\$118,580</b>

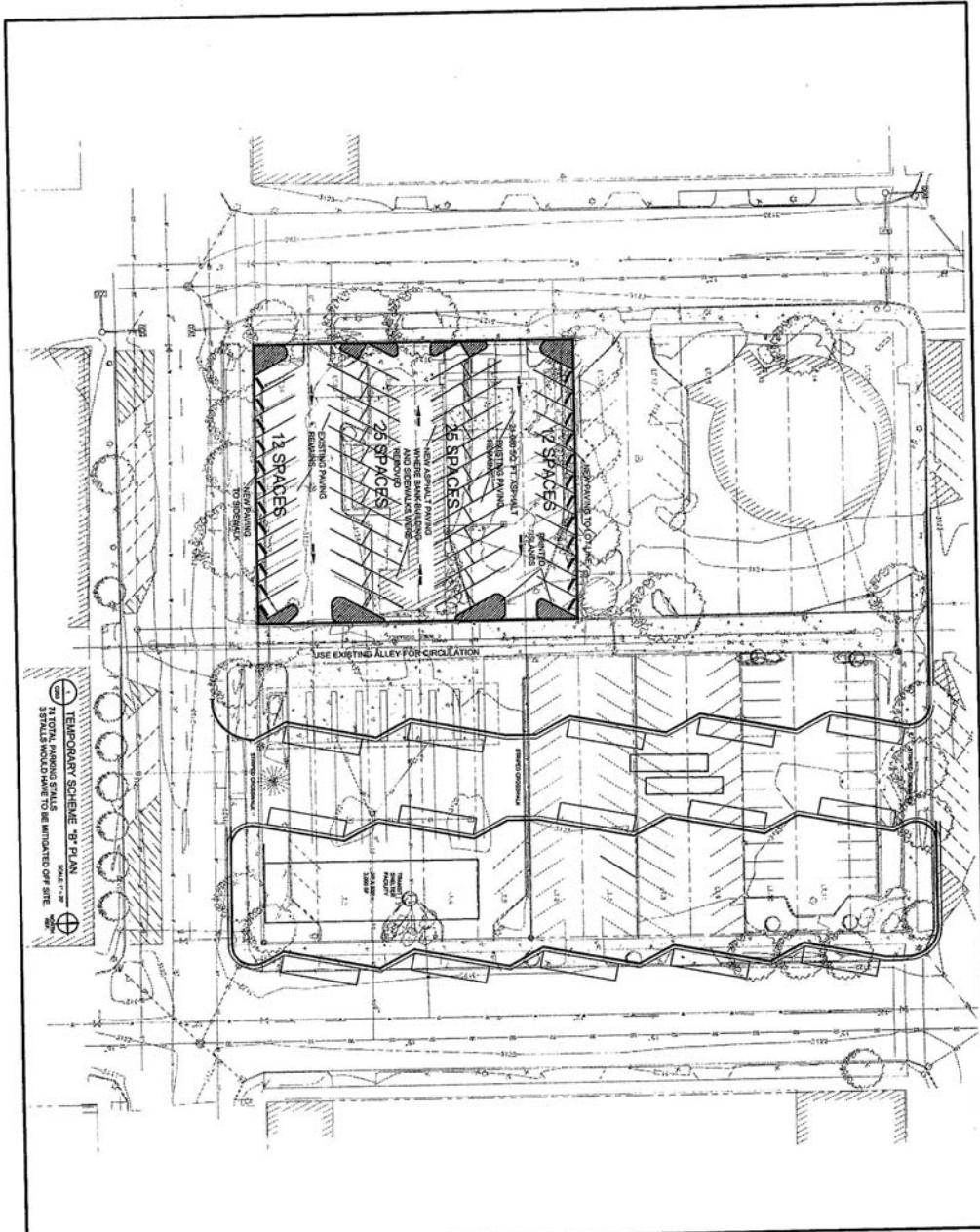
<b>New Construction</b>						
Asphalt paving	9,000	sf	@	\$2.00	/sf =	\$18,000
Gravel base in areas of new pavement	9,000	sf	@	\$0.50	/sf =	\$4,500
Add for handwork areas	3,000	sf	@	\$0.50	/sf =	\$1,500
Striping	77	sp	@	\$10.30	/sp =	\$793
Signage	1	ea	@	\$400	ea =	\$400
Grading in areas of new pavement	9,000	sf	@	\$0.30	/sf =	\$2,700
Fill at foundation excavations	100	cy	@	\$41.00	/cy =	\$4,100
<b>Total Estimated New Construction Cost</b>						<b>\$31,993</b>

Estimated Cost						\$150,573
Construction Contingency				20%		\$30,115
<b>Subtotal Construction Cost</b>						<b>\$180,688</b>
General Conditions				4%		\$7,228
General Contractor Overhead and Profit				10%		\$18,069
Escalation to Summer 2007				2%		\$4,120
<b>Total Estimated Construction Cost</b>						<b>\$210,104</b>

<b>Other Costs</b>			
Civil Engineering		12%	\$25,212
Topographic Survey			\$0
Construction Staking			\$1,200
Geotechnical Engineer			\$0
Building Permit			\$500
Land Cost			\$0
Legal Expenses			\$0
<b>Total of Other Costs</b>			<b>\$26,912</b>


**Total Estimated Project Cost** **\$237,016**





 TEMPORARY SCHEME - "P" PLAN SCALE 1" = 20'  
 1. ALL DIMENSIONS SHOWN  
 2. STAKES WOULD HAVE TO BE MONITORED OFF SITE

NOT FOR CONSTRUCTION - PRELIMINARY DESIGN

SHEET <b>C203</b>	PRELIMINARY DESIGN		PRELIMINARY DESIGN	DOWNTOWN PARKING STUDY BILLINGS, MT	REVISIONS _____ _____ _____
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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, May 14, 2007**

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**TITLE:** Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Programs and the FY2007-2008 Annual Action Plan

**DEPARTMENT:** Planning and Community Services Department

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

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**PROBLEM/ISSUE STATEMENT:** The City Council previously held a public hearing on the allocation of the City of Billings FY2007-2008 CDBG and HOME funding and the third year Consolidated Plan Annual Action Plan for FY2007-2008 on Monday, April 23, 2007. Council action is now scheduled for May 14.

**ALTERNATIVES ANALYZED:** No additional alternatives have been analyzed.

**FINANCIAL IMPACT:** In FY2007-2008 the City has \$726,175 in new CDBG funding and \$500,839 in HOME funding available for allocation. An additional \$196,236 in CDBG funding and \$183,105 in HOME funding is available to allocate this year from projects that have been canceled or completed. This income (shown on Attachment E – Final Revenue) results in a total of \$922,411 available for allocation in CDBG funding and \$683,944 in HOME funding. Federal revenues received for the CDBG and HOME programs are provided through the U.S. Department of Housing and Urban Development. The Community Development Board recommendations are attached and comply with funding limitations.

Allocation recommendations conform to pre-determined spending caps on several categories including: CDBG and HOME Administration (20% and 10% of new funding prospectively); Public Service Caps (up to 15% of new CDBG funding); and Community Housing Development Organizations (15% of HOME allocation). Changes within funding caps are allowed within certain categories. Affordable Housing, Neighborhood Projects and Economic Development funding amounts can be exchanged. A change in the Public Services category should result in an

equal change in the same category. Changes made which do not comply with federal spending caps would place the City's entitlement for federal funds at risk.

**RECOMMENDATION**

Staff recommends that the City Council approve the allocation of CDBG and HOME funds as proposed by the Community Development Board for FY2007-2008 and the FY2007-2008 Annual Action Plan as the third year of the Consolidated Plan for FY2005-2009.

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

**ATTACHMENTS**

- A. FY2007-2008 Annual Action Plan (10)
- B. CD Board Budget Recommendation (2)
- C. CDBG / HOME Programs FY2007-2008 Project Summaries (6)
- D. Task Force Priorities (4)
- E. FY2007-2008 Final Revenue (1)

## **INTRODUCTION**

The Community Development Board has made recommendations to City Council on the allocation of CDBG and HOME funding for FY2007-2008. On April 23, the City Council held a public hearing to receive public input on the recommendations and the allocation of CDBG and HOME resources in the community. Additional background on the Community Development Board's recommendation was provided to the City Council prior to the public hearing during a work session on April 16, 2007.

Also for consideration is the FY2007-2008 Annual Action Plan representing the third year of planning for the FY2005-2009 Consolidated Plan. The purpose of the Consolidated Plan is to identify the housing and community development needs of low-income households in Billings and develop strategies for addressing those needs in a comprehensive, coordinated fashion utilizing available federal and non-federal resources. The Annual Action Plan for FY2007-2008 will serve as the planning tool for the City's CDBG and HOME Programs.

The Consolidated Plan combines planning and application requirements for the CDBG and HOME Programs. Consolidation of the submission requirements for the CDBG and HOME programs allows program planning and citizen participation to take place in a comprehensive context covering both programs. The other two entitlement cities in Montana, Great Falls and Missoula, prepare consolidated plans and the State of Montana prepares one for urban and rural areas of Montana outside of Billings, Great Falls, and Missoula.

The City Council is asked to consider the input that it received and make a final decision on the FY2007-2008 CDBG and HOME budgets and FY2007-2008 Annual Action Plan on Monday, May 14, 2007.

## **PROCEDURAL HISTORY**

The City of Billings has been receiving CDBG funds since the mid-1970s and HOME funds since the early 1990s. These funds are provided by the federal government and are primarily targeted in Billings to address the affordable housing and neighborhood revitalization needs of the community. The FY2007-2008 budget represents the third year Action Plan to implement the City's 5-Year Consolidated Plan. The Consolidated Plan identifies strategies for the use of housing and community development resources in the community.

In allocating CDBG and HOME resources, the City of Billings goes through an extensive process to gather public input on the use of the funds. This year's applications were available at the beginning of December and due at the end of January 2007. Task force input was requested in February and March. The Community Development Board held budget hearings on the use of the CDBG and HOME resources on March 22 and 23 and prepared recommendations on April 3. A copy of the priorities of the task forces, as received during this process, is included in Attachment D.

The City Council public hearing is required by the Federal government and is part of the 30-day public comment period on the program beginning April 3 and extending to May 7. The City Council is scheduled to act on the CDBG and HOME programs on May 14. An application will then be submitted to HUD for its review and the program year will begin July 1, 2007.

## **BACKGROUND**

The public hearing held on April 23 on the FY2007-2008 CDBG / HOME budget and the 2007-2008 Annual Action Plan is part of the public input process for the use of these funds in the community. Each year the City of Billings requests application for the use of these funds for housing and community development activities. These applications are then forwarded to the Community Development Board, which prepares its recommendation for the City Council consideration.

The City is required to provide no more than 20% of its CDBG funding for administration, fair housing and planning type activities (\$168,592) and **must** provide 15% (\$75,126) of its annual HOME allocation for activities carried out by nonprofit housing development organizations or Community Housing Development Organizations (CHDOs). The City is required to provide no more than 10% of HOME funding for administration activities (\$67,489). The City can allocate up to 15% of CDBG resources (\$136,112) to nonprofit organizations or other projects classified as public service activities, ranging from daycare to crime prevention activities.

The City received 18 applications for housing and neighborhood activities and 20 applications for public service funding. Project summaries for activities proposed this year are included as Attachment C. CDBG and HOME resources represent the main federal commitment to communities to address the need to preserve the existing supply of affordable housing and promote the development of new affordable housing. Few other federal, state or local resources are available to address these housing needs.

## **STAKEHOLDERS**

Stakeholders for the CDBG and HOME programs include:

1. Applicants for funding - The City receives applications from a variety of nonprofit organizations which apply for public service funding or for housing funding, such as, Living Independently for Today and Tomorrow and Yellowstone County Council on Aging. A summary of the applicants is included as Attachment C and the complete applicants are available online:  
<http://www.ci.billings.mt.us/Living/cdd/applications.php>
2. Neighborhood Task Forces – The task forces are consulted throughout the year regarding neighborhood needs and solutions to those needs utilizing both CDBG and HOME

resources. Task forces are asked to comment on or prioritize the applications. These priorities have been provided in Attachment D for your review.

3. The Community Development Board, as an advisory body to the City Council, provides detailed oversight to both the CDBG and HOME programs throughout the year and has gone through an extensive process to prepare its recommendations for the City Council consideration at the April 23 meeting. Additional information of the Community Development Board's recommendation was provided to the City Council during the April 16 Work Session.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLAN**

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

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

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

#### **Strategy #1**

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

- Providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes;
- Providing affordable financing to encourage rehabilitation of multi-family units affordable to lower income residents in the community; and,

- Reducing the loss of existing standard housing units affordable to lower income households due to redevelopment activities.

### **Strategy #2**

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

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

### **Strategy #3**

Promote new affordable housing opportunities by:

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

### **Strategy #4**

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

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

### **Strategy #5**

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

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

Proposed goals and objectives for each of these strategies for FY2007-2008 are identified in the Annual Action Plan included as Attachment A. The complete Draft FY 2005-2009 Consolidated Plan including the 2005 MSU-B Housing Needs Assessment is available for review at <http://www.ci.billings.mt.us/Online/PDF/Living/cdd/reports/2005%20Housing%20Needs%20Analysis.pdf>.

## **RECOMMENDATION**

Staff recommends that the City Council approve the allocation of CDBG and HOME funds as proposed by the Community Development Board for FY2007-2008 and the FY2007-2008 Annual Action Plan as the third year of the Consolidated Plan for FY2005-2009.

## **ATTACHMENTS**

- A. FY2007-2008 Annual Action Plan (10)
- B. CD Board Budget Recommendation (2)
- C. CDBG / HOME Programs FY2007-2008 Project Summaries (6)
- D. Task Force Priorities (4)
- E. FY2007-2008 Final Revenue (1)



City of Billings, Montana  
ANNUAL ACTION PLAN FY 2007-2008  
CDBG / HOME Programs

**EXECUTIVE SUMMARY**

This is the City of Billings' third year Action Plan of a 5-year strategic plan that identifies activities it will undertake in 2007-2008 to address priority needs in the community. The draft Annual Action Plan was open for public comment extending from April 3<sup>rd</sup> through May 7<sup>th</sup>, 2007. A public hearing was held on April 23, 2007 during the Billings City Council meeting to accept public comments on the Annual Action Plan and Community Development Board recommendations for funding. The Action Plan for FY 2007-2008 serves as the budget for the City's FY 2007-2008 Community Development Block Grant (CDBG) Program and HOME Investment Partnerships Program (HOME). Projects proposed for this year are found in Appendix A and funded projects can be found in Appendix G.

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

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

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

promote long-term economic and social viability and empowering lower-income persons in federally assisted and public housing to achieve self-sufficiency.

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

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

#### ***Available Funding, Expenditure Limits and Match Requirements***

CDBG administration and planning activities are budgeted at \$168,592 which is 20% of our new CDBG allocation (\$726,175) and program income (\$116,786). The proposed budget also includes \$79,450 in projects which have been cancelled or completed. 100% of available funding will be used to benefit the low to moderate income.

The amount of funding available for Public Service Activities is \$136,112. This amount represents 15% of prior year income (15% of \$181,239 is \$27,186) and the new CDBG allocation (15% of \$726,175 is \$108,926), and no additional reprogrammed funding from Public Services from prior years. Declining federal resources limit our ability to provide funding for Public Service activities (see Appendix A).

HOME administration activities are budgeted at \$67,489 which includes 10% of new HOME revenue (10% of \$500,839 is \$50,084) and program income (10% of \$174,049 is \$17,405).

The City of Billings meets HOME matching requirements through low-interest financing available for First Time Homebuyer Loans issued through the Montana Board of Housing (MBOH) and matching funds provided for other affordable housing projects undertaken with HOME funds, such as private contributions and other local bank financing. MBOH contributed \$5.3 million in set-aside financing during FY2006-2007.

#### ***Past Performance***

The City of Billings received comments from the U.S. Department of Housing and Urban Development regarding Comprehensive Annual Performance Evaluation Report (CAPER) in January 2007. The overall evaluation concluded the City of Billings CDBG and HOME programs are making strides in providing affordable housing and addressing community needs.

### *FFY2005-2009 CONSOLIDATED PLAN SUMMARY*

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

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

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

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

### *FFY 2005-2009 STRATEGIC PLAN*

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

#### ***Strategy #1***

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

- Providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes;

- Providing affordable financing to encourage rehabilitation of multi-family units affordable to lower income residents in the community; and,
- Reducing the loss of existing standard housing units affordable to lower income households due to redevelopment activities.

***Strategy #2***

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

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

***Strategy #3***

Promote new affordable housing opportunities, by:

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

***Strategy #4***

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

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

***Strategy #5***

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

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

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



<b>FFY 2007-2008 ANNUAL PLAN</b>		
<b>Strategy #1 - Promote the preservation of the existing supply of affordable housing in the community.</b>		
<b>Objective</b>	<b>Implementation Plan</b>	<b>2007-2008 Goals</b>
Provide affordable financing to lower income homeowners to perform needed repairs.	Complete substantial rehabilitation <sup>1</sup> work through the Housing Rehabilitation Loan Program.	10 homes
	Complete minor rehabilitation work through the Minor Home Repair Program.	15 homes
	Provide funding for single purpose rehabilitation projects targeted to elderly and special needs lower income homeowners. Providing funding to organizations increases the total leveraged funding available for repair programs.	Assist with repairs for the elderly and disabled by working with non-profit organizations such as: LIFTT (6 ramps), YCCOA (40 repairs), and Rebuilding Together (5 homes).
	Pursue grant and private funding to support activities that increase resources available for housing rehabilitation activities.	Staff support & coordination to Rebuilding Together and other organizations performing rehabilitation.
Provide affordable financing to rehabilitate rental units affordable to lower income residents.	Complete substantial rehabilitation work to rental units for occupancy by lower income, elderly and special needs households through the Rental Rehabilitation Program.	5 rental units
	Pursue private resources to support rental rehabilitation activities.	Utilize Fannie Mae's America's Community Fund for rental rehabilitation activities to complete 1 project.
Reduce the loss of existing standard housing units affordable to lower income households due to redevelopment activities.	Continue to work with organizations involved with redevelopment activities to promote the preservation of the existing supply of affordable housing and to mitigate the effects of demolition or conversion when it does occur.	Continue working with the Housing Needs Analysis Subcommittee of the Affordable Housing Task Force to continue work on housing guidelines <sup>2</sup> .
<b>Strategy #2 - Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.</b>		
<b>Objective</b>	<b>Implementation Plan</b>	<b>2007-2008 Goals</b>
Preserve the housing stock in older lower	See also implementation plan for strategy #1.	-

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

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

income neighborhoods.	Support house painting program for lower income homeowners.	5 homes
	Support Tree Program to remove and replace diseased or dangerous trees for lower income homeowners.	12 trees through public service activity
	Support activities that help preserve historic properties.	Implement annual YHPB work plan.
Provide incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods.	See also implementation plan for strategy #3.	-
	Provide support for the Affordable Housing Task Force to make recommendations for a developer incentive program in conjunction with the Planning Department's Smart Growth initiative.	The Barriers to Affordable Housing Subcommittee of the Affordable Housing Task Force will propose an incentive program for infill and affordable housing development for consideration by the City Council.
	Provide funding for Affordable Housing Volunteer Demolition program to eliminate blighted substandard properties in lower income neighborhoods and replace with new affordable housing.	1 property
Support activities that provide amenities and address the infrastructure needs of older lower income neighborhoods.	Support planned neighborhood improvements included in City's Capital Improvement Plan.	Implement City's FY2007-2008 CIP and projects funded through CDBG such as the Central Park Playground.
	Provide Special Assessment Grants for lower income households to help pay for SID's resulting from the City's public improvement projects.	10 homeowners
	Encourage the redevelopment of the South 27 <sup>th</sup> Street Corridor.	Complete 1 new redevelopment project (800 block South 28 <sup>th</sup> , 500 & 700 blocks of South 27 <sup>th</sup> ).
	Encourage the implementation of the Heritage Trail Bike Plan in lower income areas in conjunction with the Healthy Communities "Built Environment" initiative.	Plan and seek funding for needed improvements in task force neighborhoods.
	Promote historic preservation activities in a coordinated manner through Historic Preservation Organizations.	Implement annual YHPB work plan.
	Support efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities.	Support Neighborhood Planning efforts and provide on-going support for monthly task force meetings.
Staff support for newsletter monthly mailings.		
Facilitate task force initiatives.		

Strategy #3 - Promote new affordable housing opportunities.		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2007-2008 Goals</i>
Encourage the development of new affordable single family, and multi family, special needs housing in the community through private developers and non-profits.	Provide funding through the CDBG / HOME, and Other Affordable Housing Funds to encourage the development of new affordable housing in the community emphasizing new / converted: <ul style="list-style-type: none"> <li>• Elderly and Disabled housing</li> <li>• Special needs housing</li> <li>• Housing in lower income neighborhoods (Strategy #2)</li> <li>• Housing for very low and extremely low-income renters</li> </ul>	20 units
	Provide funding to Community Development Housing Development Organizations (CHDOs) to undertake activities to meet priority affordable housing needs.	20 units
Promote homeownership.	Complete Phase II & III of the Kings Green Affordable Housing Project.	15 units Complete Phase II of Kings Green, utilize the Affordable Housing Task force to make recommendations regarding infrastructure development post Phase II.
	Work to address loss of mobile / manufactured housing affordable to lower income households.	Establish work groups through the Affordable Housing Task Force to study & make recommendations for housing options.
	Work with Affordable Housing Task Force to identify and address barriers to affordable housing and to encourage infill development.	
	Support activities of the Housing Authority of Billings (HAB) and other assisted housing providers to meet the needs of very low-income households.	Support implementation of HAB's 5-Year Plan.
	Provide funding for support services to address the needs of the homeless, elderly, and special needs populations.	Provide staff support for the new Mayor's Committee on Homelessness.
	Assist lower income households achieve home ownership through the City's First Time Homebuyer program in partnership with Montana Board of Housing (MBOH).	50 homebuyers & \$4 million in set aside financing.



	Participate with Montana Homeownership Network to increase First Time Homebuyer opportunities in the City leveraging resources available through Fannie Mae, MBOH etc.	20 homebuyers
	Support homebuyer education in partnership with Montana Homeownership Network.	150 households
	Support Billings Partners for American Indian Homeownership effort to increase homeownership rates for American Indians and other minorities in the community.	Implementation of partnership goals to increase the homeownership rate for American Indians in Billings.
	Support the Hispanic Development Outreach Committee to increase homeownership rates for Hispanic Americans and other minorities in the community.	Provide staff support increase economic opportunities and homeownership for Hispanic Americans in Billings.
<b>Strategy #4 - Work as an active partner with non-profits, neighborhood groups, and others to address housing &amp; community development needs.</b>		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2007-2008 Goals</i>
Encourage housing & community and development organizations to work together to build strong community structures to better address needs and respond to opportunities.	Sponsor the Affordable Housing Task Force which brings together organizations such as the Housing Authority of Billings, Habitat for Humanity, HRDC, Big Sky EDA, homeWORD, realtors and lenders to address affordable housing issues of common concerns.	Complete work on the new strategic plan and implement the plan through subcommittees.
	Sponsor the Adjacent Neighborhood Committee which brings together the City's neighborhood task forces and Downtown Billings Partnership.	Host bi-monthly meetings and provide staff support for task force initiatives.
	Support the activities of the Billings American Indian Homeownership Partnership which brings together approximately 20 organizations to increase the homeownership rate for American Indians.	Implementation of partnership goal to increase the homeownership rate for American Indians in Billings.
	Support Neighborhood Task Forces to identify and address neighborhood needs.	Complete neighborhood plans & support distribution of monthly newsletters.
	Support the Hispanic Development Outreach Committee's efforts.	Staff support to establish new group to increase economic opportunities and homeownership for Hispanic Americans in Billings.

Support activities and organizations promoting fair housing and increase awareness of the rights and responsibilities of protected classes.	Undertake fair housing activities in a coordinated manner with organizations with an interest in promoting fair housing.	Implement existing FY2003-2007 Fair Housing Plan through the FY 2007-2008 Fair Housing Action Plan. Apply for Fair Housing Initiatives Program (FHIP) funding through HUD in 2007 for calendar year 2008.
	Complete new Analysis of Impediments to Fair Housing Choice for the Billings community in 2007 and develop new Fair Housing Plan for FY2008-2012 <sup>3</sup> .	Develop new fair housing plan in 2007 based on results of the Analysis of Impediments to Fair Housing Choice.
<b>Strategy #5 - Improve the economic conditions of lower income households in the community.</b>		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2007-2008 Goals</i>
Support efforts of community organizations to address the human service needs of lower income residents of the community in general and lower income neighborhoods in particular.	Utilize up to 15% of CDBG funding for public service activities to improve the economic conditions of lower income households.	Continue to implement performance measures to determine impact of assisted activities.
Support the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.	Provide technical assistance to lower income households interested in starting or expanding an existing business.	Provide technical assistance to 100 lower income households. Implement performance measures to determine impact of assisted activities.
	Support the Hispanic American Homeownership & Economic Development Committee.	Provide staff support to establish new group to increase economic opportunities and homeownership for Hispanic Americans in Billings.

<sup>3</sup> The City of Billings follows a separate five-year cycle for fair housing planning. The most recent Analysis of Impediments to Fair Housing Choice was completed in 2002, resulting in the 2003-2007 Fair Housing Plan.

**COMMUNITY DEVELOPMENT BOARD RECOMMENDATIONS**

**FY 2007-2008**

CDBG/HOME GRANT HISTORY			2005-2006	2006-2007	2007-2008	Staff Recommendations		CD Board Recommends	
						Requested	CDBG	HOME	CDBG
Admin / Planning	HN 1	CDBG Administration	\$173,800	\$175,000	\$175,000	\$168,592	-	<b>\$168,592</b>	-
	HN 2	HOME Administration	\$66,000	\$57,247	\$56,947	-	\$67,489	-	<b>\$67,489</b>
	HN 3	Professional Services	\$0	\$9,014	\$12,500	\$0	\$0	<b>\$0</b>	<b>\$0</b>
	HN 4	Yellowstone Historic Preservation Board	\$6,500	\$0	\$1,469	\$0	\$0	<b>\$0</b>	<b>\$0</b>
	HN 5	HRDC - Mobile Home Renovation Assessment Project	\$0	\$0	\$15,000	\$0	\$0	<b>\$0</b>	<b>\$0</b>
Affordable Housing Activities	HN 7	Housing Rehabilitation Loan Program	\$250,000	\$243,216	\$300,000	\$287,207	\$0	<b>\$287,207</b>	
	HN 8	Minor Home Repair Program	\$60,000	\$60,000	\$100,000	\$60,000	\$0	<b>\$60,000</b>	
	HN 9	HOME/CDBG Affordable Housing Support	\$346,133	\$299,112	\$400,000	\$100,000	\$200,000	<b>\$100,000</b>	<b>\$200,000</b>
	HN 10	First Time Home Buyer Program	\$375,000	\$435,000	\$426,850	\$0	\$341,329	<b>\$0</b>	<b>\$341,329</b>
	HN 11	Acquisition / Rehab Program	\$0	\$0	\$30,000	\$30,000	\$0	<b>\$30,000</b>	<b>\$0</b>
	HN 12	Set-Aside for CHDOs - must be 15% of HOME funds	\$80,310	\$75,670	\$75,670	\$0	\$75,126	<b>\$0</b>	<b>\$75,126</b>
	HN 13	Living Independently for Today & Tomorrow	\$10,000	\$10,000	\$12,500	\$10,000	\$0	<b>\$12,500</b>	<b>\$0</b>
	HN 14	Yellowstone County Council on Aging - MHR Program	\$5,000	\$5,000	\$5,000	\$5,000	\$0	<b>\$5,000</b>	<b>\$0</b>
	HN 15	Rebuilding Together	\$5,000	\$10,000	\$10,000	\$10,000	\$0	<b>\$10,000</b>	<b>\$0</b>
	Neighborhood Projects	HN 16	Property Management	\$8,000	\$8,000	\$8,000	\$8,000	\$0	<b>\$8,000</b>
HN 17		Special Assessment Grants	\$40,000	\$50,000	\$50,000	\$50,000	\$0	<b>\$47,500</b>	<b>\$0</b>
HN 18		Young Families Early Head Start - Building Fund	\$0	\$0	\$50,000	\$50,000	\$0	<b>\$50,000</b>	<b>\$0</b>
Econ Dev	HN 19	Big Sky Economic Development Authority	\$7,500	\$7,500	\$10,000	\$7,500	\$0	<b>\$7,500</b>	<b>\$0</b>
<b>Totals:</b>					<b>\$1,738,936</b>	<b>\$786,299</b>	<b>\$683,944</b>	<b>\$786,299</b>	<b>\$683,944</b>

*PUBLIC SERVICE ACTIVITIES*

FY 2007-2008

CDBG GRANT HISTORY			2005-2006	2006-2007	Amount Requested	CD Board Recommends
Public Service Activities	PS-1	Big Brothers Big Sisters	\$0	\$0	\$45,000	\$8,250
	PS-2	Big Sky Prevention of Elder Abuse	\$9,025	\$9,000	\$12,000	\$7,425
	PS-3	Big Sky Senior Helping Hands Program	\$19,000	\$19,000	\$20,000	\$15,675
	PS-4	Boys & Girls Club - Homework Completion Program	\$5,000	\$4,000	\$12,000	\$3,300
	PS-20	Community Housing Resource Board	\$15,000	\$0	\$14,220	\$6,600
	PS-5	Family Service, Inc.	\$20,000	\$19,000	\$30,000	\$20,625
	PS-6	Forever Families Resource Center	\$0	\$0	\$20,000	\$8,250
	PS-7	Friendship House - Summer Enrichment	\$12,000	\$10,000	\$15,000	\$8,250
	PS-8	homeWORD - Financial Fitness	\$0	\$0	\$4,771	\$2,063
	PS-9	HRDC - Families Saving for Tomorrow IDAs	\$10,000 <i>Hq Coms.</i>	\$0	\$10,000	\$4,123
	PS-10	HRDC - Growth Thru Art	\$11,771	\$10,000	\$25,000	\$6,600
	PS-11	Southgate Cop Shop	\$0	\$0	\$6,000	\$4,125
	PS-12	St. Vincent de Paul - Vehicle Replacement	\$0	\$0	\$15,000	\$8,250
	PS-13	Task Force Enhancement Fund	\$0	\$0	\$5,000	\$4,125
	PS-14	Tree Trimming, Planting & Removal	\$10,000	\$8,802	\$10,000	\$3,300
	PS-15	Yellowstone County Council on Aging - Resource Center	\$0	\$2,000	\$2,000	\$1,650
	PS-16	Yellowstone Health Partnership - Med Assistance Program	\$9,500	\$9,000	\$9,000	\$7,425
	PS-17	Young Families Early Head Start	\$10,000	\$9,000	\$32,000	\$7,425
	PS-18	YWCA of Billings Children's Services	\$2,100	\$2,100	\$2,100	\$2,050
PS-19	YWCA Gateway House	\$8,000	\$8,000	\$12,000	\$6,600	
<b>Totals:</b>					<b>\$301,091</b>	<b>\$136,111</b>

*HOUSING & NEIGHBORHOOD ACTIVITIES*  
*FY 2007 – 2008 APPLICATIONS*

<b>ADMINISTRATION/PLANNING</b>		<b><u>Amount</u></b>
1.	CDBG Administration	\$175,000
2.	HOME Administration	\$ 56,947
3.	Professional Services	\$ 12,500
4.	Yellowstone Historic Preservation Board	\$ 1,469
5.	HRDC Mobile Home Renovation Assessment Project	\$ 15,000
 <b>FAIR HOUSING ACTIVITIES</b>		
6.	Community Housing Resource Board – CDBG	\$ 14,220
 <b>AFFORDABLE HOUSING ACTIVITIES</b>		
7.	Housing Rehabilitation Loan Program	\$300,000
8.	Minor Home Repair Program	\$100,000
9.	HOME/CDBG Affordable Housing Support Program \$400,000	
10.	HOME First Time Home Buyer Program	\$426,850
11.	Acquisition / Rehab Program	\$ 30,000
12.	Set-Aside for CHDOs – Must be 15% of HOME funds \$ 75,670	
13.	Living Independently For Today & Tomorrow	\$ 12,500
14.	Yellowstone County Council on Aging – Minor Home Repair	\$ 5,000
15.	Rebuilding Together – Home Rehabilitation	\$ 10,000
 <b>NEIGHBORHOOD PROJECTS</b>		
16.	Property Management	\$ 8,000
17.	Special Assessment Grants	\$ 50,000
18.	Young Families Early Head Start – Building Renovation \$ 50,000	
 <b>ECONOMIC DEVELOPMENT</b>		
19.	Big Sky Economic Development Authority	\$ <u>10,000</u>
 <b>Total Requested</b>		 <b><u>\$1,738,936</u></b>

*HOUSING & NEIGHBORHOOD ACTIVITIES  
FY 2007 – 2008 PROJECT SUMMARIES*

<i>ADMINISTRATION / PLANNING / FAIR HOUSING ACTIVITIES</i>		
HN - 1	<p><b><i>CDBG Administration</i></b></p> <p>Funds are requested for general administration expenditures for CDBG Program including office space, salaries and benefits for various staff positions. CDBG also provides the resources for administration for other grant programs related to Community Development received by the City.</p>	\$175,000
HN - 2	<p><b><i>HOME Administration</i></b></p> <p>Funds are requested for general HOME administration expenditures For HOME Program.</p>	\$56,947
HN - 3	<p><b><i>Professional Services</i></b></p> <p>Funds are used to contract for professional services on an as-needed basis. In 2007, funds will be needed to conduct the Analysis of Impediments to Fair Housing Choice as a HUD requirement, to match VISTA salary, and to assist with the Mayor's Committee on Homelessness.</p>	\$12,500
HN - 4	<p><b><i>Yellowstone Historic Preservation Board</i></b></p> <p>Funds will be used to match \$5,500 in grant funding made available to Certified Local Governments for historic preservation activities through the Montana State Historic Preservation Office. This funding is used to carry out historic preservation activities in Billings and Yellowstone County.</p>	\$1,469
HN - 5	<p><b><i>HRDC – Mobile Home Renovation Assessment Project</i></b></p> <p>Funds are requested for salaries and supplies for HRCDC staff to conduct a mobile home survey of 11 trailer parks in Billings to assess needs and interest in decommissioning pre-1976 mobile homes and to prepare a business plan to reduce substandard housing.</p>	\$15,000
<i>AFFORDABLE HOUSING ACTIVITIES</i>		
HN - 7	<p><b><i>Housing Rehabilitation Loan Program</i></b></p> <p>Funds are requested to rehabilitate up to 12 homes throughout the City of Billings. The program is intended to provide affordable financing to low / moderate income applicants to provide substantial improvements that help preserve the City's affordable housing stock and revitalize older neighborhoods. Funds will be used to partially fund the CD Grants Coordinator position.</p>	\$300,000
HN - 8	<p><b><i>Minor Home Repair Program</i></b></p> <p>Funds are requested to assist approximately 20 low-income homeowners with emergency repairs related to basic systems or accessibility for a physically disabled occupant. The program is available for mobile / manufactured mobile homes and for owner / occupied homes that are not appropriate for the Housing Rehabilitation Loan Program.</p>	\$100,000
HN - 9	<p><b><i>HOME / CDBG Affordable Housing Support Program</i></b></p> <p>Funds are requested to encourage the development of affordable housing for lower-income households in the City of Billings. Applicants for this program can be for-profit developers or non-profit agencies.</p>	\$400,000

HN - 10	<b><i>HOME First Time Home Buyer Program</i></b>	\$426,850
	Funds are requested to assist approximately 40 low-income families in the purchase of their first home. The program is designed to provide financial assistance to help qualify for traditional housing financial programs to purchase a home. Funds will be used to provide down payment assistance, closing costs, and minor repairs and for related project administration expense.	
HN - 11	<b><i>Acquisition / Rehab Program</i></b>	\$30,000
	Funding would be used for a pilot project in partnership with Montana Board of Housing (MBOH). MBOH conducts an open bid process on houses which have been foreclosed on. The City proposes to purchase one of these houses during FY07-08 and renovate the property in order to maintain affordable housing pricing on the property.	
HN - 12	<b><i>HOME Set-Aside Community Development Organizations (CHDO)</i></b>	\$75,670
	As a recipient of HOME funds, the City of Billings must provide at least 15% of its funding for CHDO activities. This funding is requested for CHDOs to develop affordable housing in the community.	
HN - 13	<b><i>Living Independently for Today and Tomorrow (LIFTT)</i></b>	\$12,500
	Funds are requested to construct or provide maintenance work on ramps for low-income persons with disabilities to access their homes. Approximately six households will be assisted.	
HN - 14	<b><i>Yellowstone County Council on Aging – Minor Home Repair Program</i></b>	\$5,000
	Funds are requested for this Minor Home Repair program which assists low-income persons over the age of 60 with safety-related repairs.	
HN - 15	<b><i>Rebuilding Together – Home Rehabilitation</i></b>	\$10,000
	Funds are requested for building materials and construction costs to assist up to five low-income households. Volunteers paint, clean, weatherize, and do carpentry, plumbing, roofing, and electrical work.	
<b><i>NEIGHBORHOOD PROJECTS</i></b>		
HN - 16	<b><i>Property Management</i></b>	\$8,000
	Funds are requested to pay existing SIDs and maintain weeds and snow on property previously acquired through the CDBG program. These properties are primarily located along South 27 <sup>th</sup> Street.	
HN - 17	<b><i>Special Assessment Grants</i></b>	\$50,000
	Funds are requested to provide grant funds to lower-income households impacted by Special Improvement District assessments for public improvements such as curb, gutter, and sidewalk projects in lower income areas.	
HN - 18	<b><i>Young Families Early Head Start – Building Renovation</i></b>	\$50,000
	Funds are requested to pay for necessary renovations in a facility which will be used for day care services for teenagers attending high school with children.	
<b><i>ECONOMIC DEVELOPMENT</i></b>		
HN - 19	<b><i>Big Sky Economic Development Authority (BSEDA) – Small Business Development Center</i></b>	\$10,000
	Funds would be used to supplement the operational expense of the program and provide training materials free of charge to clients attending pre-business workshops.	



*PUBLIC SERVICE ACTIVITIES*  
*FY 2007 – 2008 APPLICATIONS*

1. Big Brothers Big Sisters	\$ 45,000
2. Big Sky Prevention of Elder Abuse – Social Work	\$ 12,000
3. Big Sky Senior Helping Hands Program	\$ 20,000
4. Boys & Girls Club of Yellowstone Co. – Homework Completion Program	\$ 12,000
5. Community Housing Resource Board	\$ 14,220
6. Family Service, Inc.	\$ 30,000
7. Forever Families Resource Center	\$ 20,000
8. Friendship House – Summer Enrichment	\$ 15,000
9. homeWORD – Financial Fitness	\$ 4,771
10. HRDC – Families Saving for Tomorrow IDAs	\$ 10,000
11. HRDC – Growth Thru Art	\$ 25,000
12. Southgate Cop Shop	\$ 6,000
13. St. Vincent de Paul – Vehicle Replacement	\$ 15,000
14. Task Force Enhancement Fund	\$ 5,000
15. Tree Trimming, Planting, & Removal Program	\$ 10,000
16. Yellowstone County Council on Aging – Resource Center	\$ 2,000
17. Yellowstone Health Partnership – Medication Assistance Program	\$ 9,000
18. Young Families Early Head Start	\$ 32,000
19. YWCA - Children's Services	\$ 2,100
20. YWCA - Gateway House	\$ <u>12,000</u>

**Total Requested**

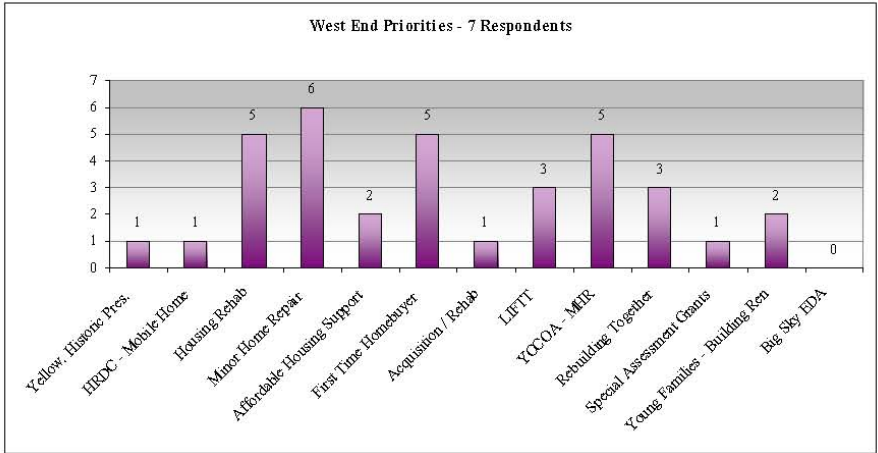
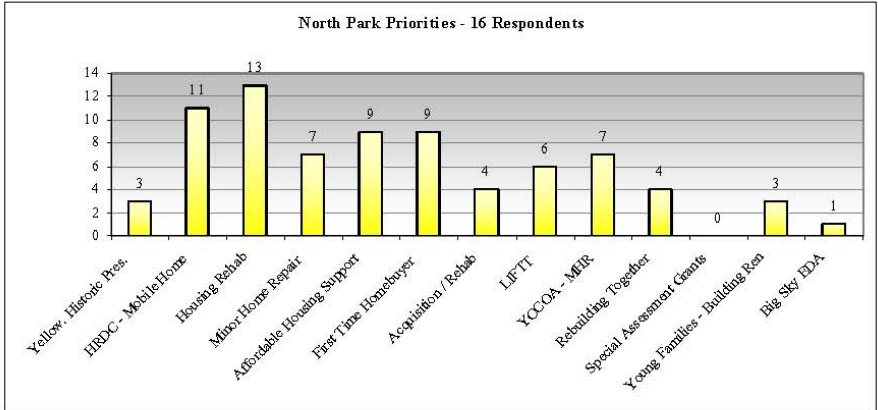
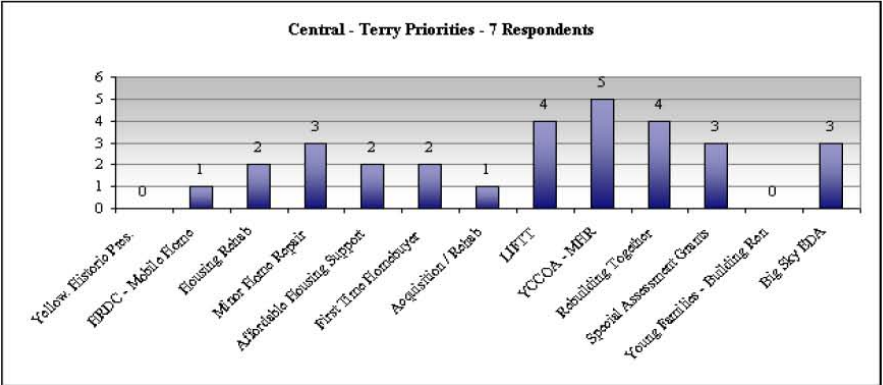
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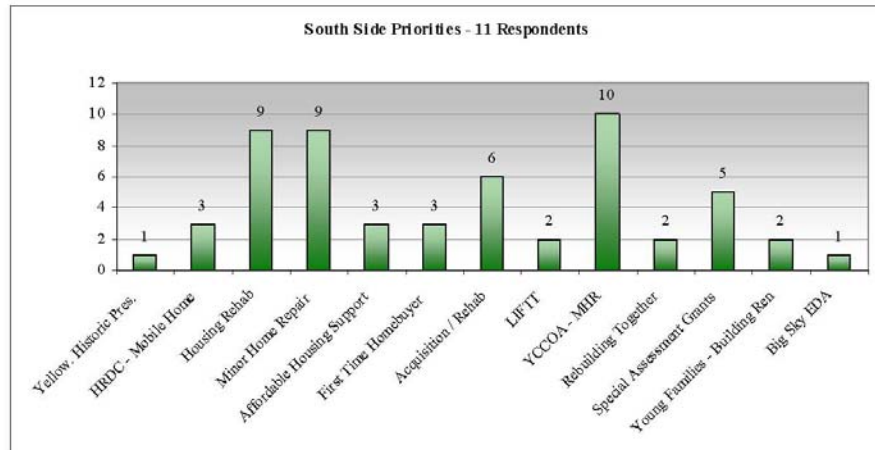
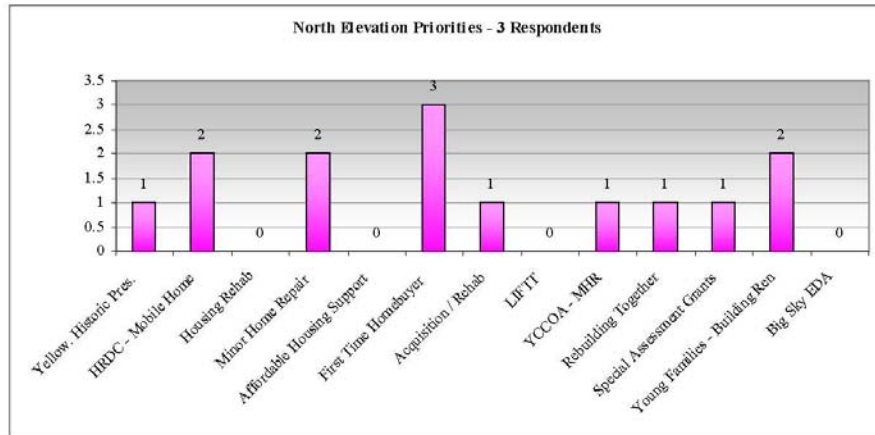
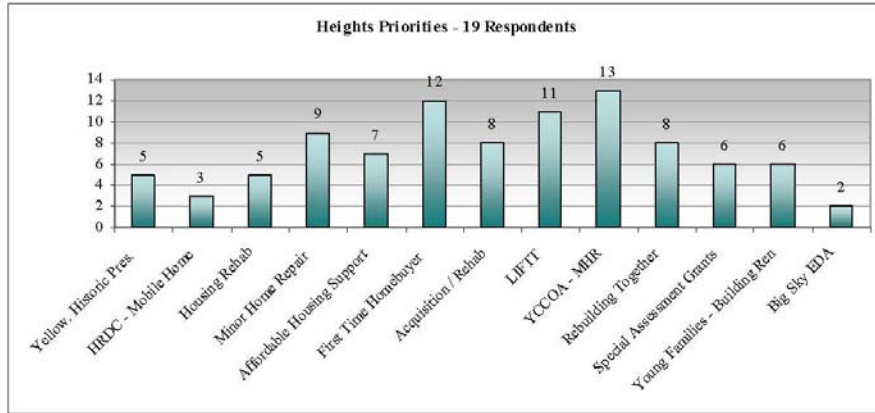


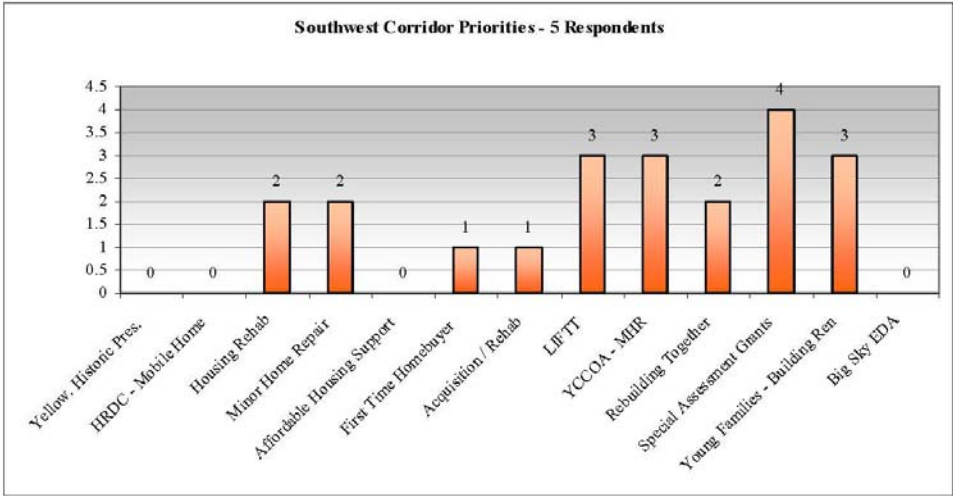
*PUBLIC SERVICE ACTIVITIES  
FY 2007 – 2008 PROJECT SUMMARIES*

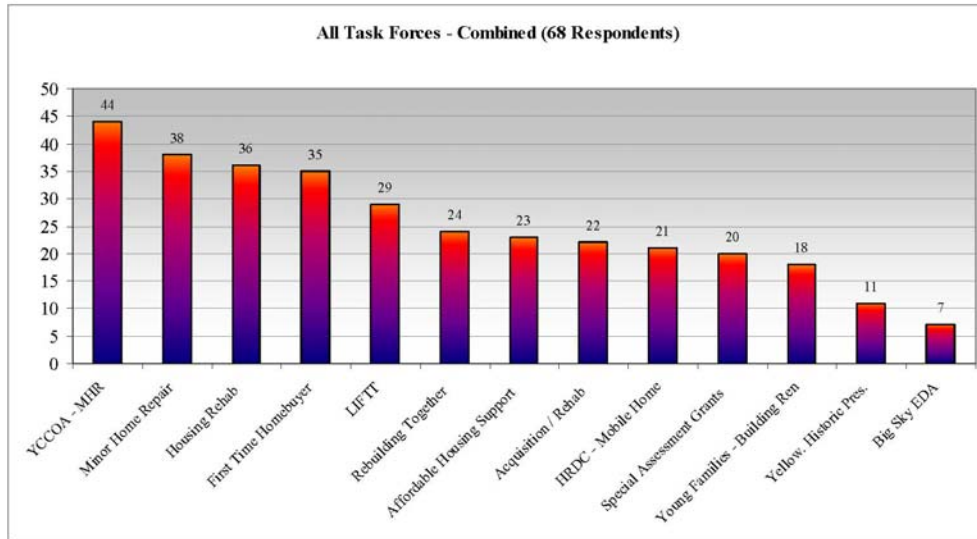
	<b><i>Big Brothers Big Sisters</i></b>	
PS - 1	Funds are requested for salary and administrative costs for a program called, "Mentoring Youth for the Future" to provide mentoring services to children.	\$45,000
	<b><i>Big Sky Prevention of Elder Abuse – Social Work</i></b>	
PS - 2	Funds are requested to help pay the salary of the Elder Support Social Worker who works with elders and disabled adults to prevent abuse and remediate effects of abuse by resorting economic stability to clients and helping them continue to live safely and independently at home.	\$12,000
	<b><i>Big Sky Senior Helping Hands Program</i></b>	
PS - 3	Funds are requested for in-home staff salaries providing in-home services to very low-income, vulnerable elders in the Billings community. Services include homemaking, shopping, transportation, socialization, assistance with personal care and hygiene, medication management, health monitoring and health care.	\$20,000
	<b><i>Boys &amp; Girls Club of Yellowstone County</i></b>	
PS - 4	Funds are requested to pay for wages for a portion of the Education Coordinator to provide assistance with homework completion and tutoring at the club.	\$12,000
	<b><i>Community Housing Resource Board (CHRB)</i></b>	
PS-20	Funds are requested to finance the contract labor position, supplies, and postage to further fair housing opportunity through community education and outreach.	\$14,220
	<b><i>Family Service, Inc.</i></b>	
PS - 5	Funds are requested to prevent homelessness of families living in low-income situations. Services are available to help with rents, mortgages, utilities, and deposits.	\$30,000
	<b><i>Forever Families Resource Center</i></b>	
PS - 6	Funds will be used for office rent and utilities, insurance, furnishings and materials for the Resource Center.	\$20,000
	<b><i>Friendship House - Summer Enrichment Program</i></b>	
PS - 7	Funds are requested for personnel and administrative costs associated with the Summer Enrichment Program (SEP). SEP is a comprehensive program that addresses the multi-needs of youth ages 4 - 12 and provides basic human service needs.	\$15,000
	<b><i>homeWORD – Financial Fitness</i></b>	
PS - 8	Funds are requested to support the salary of the Financial Fitness Coordinator who would provide the Financial Fitness education course.	\$4,771
	<b><i>HRDC – Families Saving for Tomorrow Individual Development Accounts</i></b>	
PS - 9	Funding is requested for program operation and match for participant savings in IDA accounts.	\$10,000
	<b><i>HRDC - Growth Thru Art</i></b>	
PS - 10	Funds are requested to fund personnel and art supplies allowing the organization to continue to provide ongoing studio experiences, workshops, presentations and exhibitions, and opportunities to celebrate artists' personal growth through artistic expression for adults with disabilities.	\$25,000
PS - 11	<b><i>Southgate Cop Shop</i></b>	

	Funding is requested to assist with rent, utilities and insurance for this neighborhood cop shop.	\$6,000
	<b><i>St. Vincent de Paul – Vehicle Replacement</i></b>	
PS - 12	Funding is requested to purchase a replacement vehicle which will be used to pick up donations to the organization and to make deliveries of food and clothing.	\$15,000
	<b><i>Task Force Enhancement Fund</i></b>	
PS - 13	Funding is requested to provide support to neighborhood task forces for their newsletter mailings, officer insurance, leadership training, and organizational development.	\$5,000
	<b><i>Tree Trimming, Planting, &amp; Removal Program</i></b>	
PS - 14	Funding is requested to remove diseased or dangerous trees and to plant new trees for low-income households throughout the City of Billings.	\$10,000
	<b><i>Yellowstone County Council on Aging – Resource Center</i></b>	
PS - 15	Funds are requested for staff salaries to manage the Resource Center. This program assists the elderly, adults with physical disabilities in identification of needs, accessing services, completing program assistance applications, and advocacy.	\$2,000
	<b><i>Yellowstone Health Partnership - Medication Assistance Program</i></b>	
PS - 16	Funds are requested for salaries of staff for the Medication Assistance Program (MAP) at the Deering Clinic site.	\$9,000
	<b><i>Young Families Early Head Start - Child Care for High School Parents</i></b>	
PS - 17	Funding is requested to support salaries and benefits for staff who provide comprehensive child care and development services to infants and toddlers whose parents are teenagers, completing their high school education.	\$32,000
	<b><i>YWCA - Children's Services</i></b>	
PS - 18	Funding is requested to provide partial scholarships to low and moderate income families accessing YWCA Children's Services programs for affordable and quality care / educational experiences. The programs include preschool, child care, and after-school care.	\$2,100
	<b><i>YWCA - Gateway House Domestic Violence &amp; Sexual Assault Services</i></b>	
PS - 19	Funding is requested to support general operating expenses of the program, which includes utilities, phones, taxes, supplies, security, building repairs, and accountant contracted services. Gateway services include housing, support, education, and advocacy for victims of domestic violence and sexual assault.	\$12,000









COMMUNITY DEVELOPMENT DIVISION

Final Revenue FY 2007-2008

13-Mar-07

**CDBG REVENUE**

HUD CDBG Grant	\$726,175	Annual Allocation
Loan Principal	\$11,500	Parkview Convalescent
Loan Interest	\$9,500	Parkview Convalescent
CDBG Reprogrammed* Funds	\$79,450	See detail below
Transportation Grants	\$5,000	
<b>Housing Rehab Loans Repayment</b>	<b>\$47,223</b>	<b>At 50% year lapsed</b>
Prior Year Program Income - Rehab	\$43,425	Program income over estimate (Rehab / Loans)
Rental Rehab Loan Repayment	\$0	At 50% year lapsed
Rehab Interest	\$138	At 50% year lapsed
<b>CDBG Revenue Total:</b>	<b>\$922,411</b>	
<b>20% Cap on CDBG Administration:</b>	<b>\$168,592</b>	Includes only new revenue, not reprogrammed*

**PUBLIC SERVICE FUNDING**

15% of CDBG Allocation (\$726,175)	\$108,926
15% of previous year program income (\$181,239)	\$27,186
<i>Public Service Reprogrammed:</i>	
None	\$0
<b>PUBLIC SERVICE TOTAL:</b>	<b>\$136,112</b>

<b>CDBG Revenue Total:</b>	<b>\$922,411</b>
<b>Reduced by Public Services Total:</b>	<b>\$136,112</b>
<b>Total Available for Housing &amp; Neighborhood:</b>	<b>\$786,299</b>

**HOME REVENUE**

HUD HOME Grant	\$500,839	
<b>FTHB Loans Repayment</b>	<b>\$79,140</b>	<b>At 50% year lapsed</b>
Prior Year Program Income - FTHB	\$94,909	Program income over estimate (FTHB)
<i>HOME Reprogrammed*</i>		
Admin Savings 04-05	\$9,056	
<b>HOME Revenue Total:</b>	<b>\$683,944</b>	

<b>10% Cap on HOME Administration:</b>	<b>\$67,489</b>	Includes only new revenue, not reprogrammed*
<b>15% Mandatory CHDO Allocation:</b>	<b>\$75,126</b>	Includes 15% of new allocation, not reprogrammed*
<b>Total Available for HOME Activities:</b>	<b>\$541,329</b>	

*CDBG Reprogrammed Funds Detail:*

Economic Development 03-04	\$1,740	
UST Fields Pilot Project 03-04	\$23,050	
Affordable Housing Program 04-05	\$348	
CDBG Administration 04-05	\$3,077	Cancelled or completed projects
Child & Family Intervention / Graffiti 04-05	\$5,962	(not included in caps)
CDBG Administration 05-06	\$8,927	
Cobb Field Handicap Lift 05-06	\$10,000	
First Time Homebuyer 05-06	\$1,346	
Code Enforcement Abatement 06-07	\$25,000	
<b>HN / Admin Reprogrammed Total:</b>	<b>\$79,450</b>	

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