

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

August 27, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Clark
ROLL CALL
MINUTES – August 13, 2007
COURTESIES
PROCLAMATIONS
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. **Bid Awards**

(1) **W.O. 06-09 Big Ditch Trail, Phase 2 (CTEP), Arrowhead**

Chandelier Connector (Safe Routes to School). (Opened 8/14/07) Recommend JTL Group, Inc, \$162,000.00.

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

(2) **W.O. 07-08 Gabel Road & Zoo Drive Intersection**

Improvements. (Opened 8/14/07) Recommend JTL Group, Inc., \$301,360.00.

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

(3) **Mobile Data Terminals - Panasonic Toughbooks for Police**

Department. (Opened 8/14/07) Recommend Portable Computer Systems, \$112,445.04, for a 4-year lease with a \$1 buyout.

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

(4) Staples Reservoir Interior Coating System. (Opened 8/14/07)

Recommend Purcell Painting & Coatings, \$546,658.64.

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

B. Contract with Red Oak Consulting for Water/Wastewater Rate & Fee Study; \$178,186.00.

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

C. Contract with Thyssen-Krupp Elevator for city-wide elevator service and maintenance (3-year contract); \$146,377.00.

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

D. Contract with Northwestern Energy for light district ownership, energy, and maintenance for Special Improvement Light Maintenance District 301 – Josephine Crossing Subdivision.

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

E. Contract Amendment #1 to the Professional Services Contract with Great West Engineering for Tier 2 landfill-gas emissions analysis; \$20,000.00.

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

F. Development Agreement with MWSH BILLINGS LLC, for Certificate of Survey 1648, Amended Tract 1.

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

G. Lease with Edwards Jet Center Montana, Inc. for Airport Commercial Lot 8; \$16,446.12 first year annual revenue.

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

H. Lease renewal with Edwards Jet Center Montana, Inc. for Airport Commercial Lot 2; \$11,727.24 annual revenue.

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

I. Lease renewal with FES Development, L.L.C. for Airport hangar at 2431 Overlook Drive; \$19,110.00 first year annual revenue.

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

J. Approval and acceptance of the Domestic Violence Unit and Victim Witness Assistance Program Grants awarded by the Montana Department of Justice, Board of Crime Control.

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

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

(1) Parcel 9: Portion of Tract A, Certificate of Survey 622, Frontier Real Estate Group, Co-Trustees Rick Rosekelly and Sue Marshon. \$10,050.00.

[\(Corresponding Staff Memo K1\)](#)

(2) Parcel 26: Portion of Lot 20, Amended Plat of Lot 11, Kuhlman Subdivision, Ludmilla M. Tallmadge, \$15,600.00.

[\(Corresponding Staff Memo K2\)](#)

(3) Parcel 50: Portion of Lot 22, Block 1, Broadmoor Subdivision, Mabel M. Dolan, \$7,087.50.

[\(Corresponding Staff Memo K3\)](#)

(4) Parcel 53: Portion of Lot 23, Block 2, Broadmoor Subdivision, Rita J. Reinert, \$7,550.00.

[\(Corresponding Staff Memo K4\)](#)

(5) Parcel 78: Portion of Lot 18, Block 1, Arrowhead Subdivision, Todd and Julie Grebe, \$4,042.50.

[\(Corresponding Staff Memo K5\)](#)

L. W.O. 04-36 Briarwood Sanitary Sewer Main Extension approval of Right-of-Way Agreement and Perpetual Right-of-Way Easement with Robert B. Johnson and Michele R. Johnson with changes as recommended by staff, \$3,517.50.

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

M. Street Closures:

(1) Parade of Homes BikeNet Benefit Concert, 5:30 p.m. – 8:30 p.m., September 22, 2007, Josephine Crossing Neighborhood near the intersection of Mallowney Lane and Elysian Road.

[\(Corresponding Staff Memo M1\)](#)

(2) Holy Rosary Catholic School Barnyard Bingo and Street Fair, 8:00 a.m. – 6:00 p.m., September 9, 2007, Custer Avenue between 5th and 6th Streets West.

[\(Corresponding Staff Memo M2\)](#)

N. Acceptance of donation from ConocoPhillips to the Southwest Corridor Cop Shop, \$1,545.00.

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

O. Approval of sale of City surplus property by public auction on September 29, 2007, at the Billings Operations Center, 4848 Midland Road.

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

P. Resolution temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, for Bureau of Land Management large-scale fire fighting cache staging and tanker base operations, July 16, 2007, through October 31, 2007, in the Billings Airport's Business Park.

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

Q. Resolution designating the alley in Block 90, Billings Original Town, located between 1st and 2nd Avenues North, one-way northbound.

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

R. Second/Final reading ordinance adopting the International Fire Code (IFC), 2006 Edition, as the Billings Fire Code.

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

S. Bills and Payroll

(1) July 30, 2007

[\(Corresponding Staff Memo S1\)](#)

(2) August 3, 2007

[\(Corresponding Staff Memo S2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTIONS** creating a Tourism Business Improvement District and appointing a Board of Trustees. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

3. **RESOLUTION** awarding sale of bonds relating to \$168,000 Pooled Special Improvement District Series 2007 to _____, _____% true interest rate. **Recommendation to be made at meeting.** **(Action:** approval or disapproval of staff recommendation.)

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

4. **CHANGE ORDER #1**, New Baseball and Multi-Use Stadium at Athletic Park, Langlas & Associates, Inc., \$_____. **Recommendation to be made at meeting.** **(Action:** approval or disapproval of staff recommendation.)

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

5. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #813:** A zone change from Residential 9600 to Planned Development generally located on the southeast corner of the intersection of Rimrock Road and Avalon Road; including the Yellowstone Racquet Club. TenFish Company, owner; Engineering, Inc., representative. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #816:** A zone change from Residential 7000 to Neighborhood Commercial on a 1.14-acre lot addressed as 848 Wicks Lane and generally located on the south side of Wicks Lane, east of Bench Boulevard. Colleen Baker, owner. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

7. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #817:** A zone change from Public to Residential 8000 on 48,799 square feet of

property located north and south of the Lake Hills Golf Course Clubhouse on the east side of Clubhouse Way; north of Lake Hills Drive. Lake Hills Golf Club, owner; Patrick Ludden, representative. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

8. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#818: A text amendment to Section 27-623, Zoning Compliance Permits Required. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#819: A text amendment to Section 27-1429 and Map Amendment to Section 27-1430, Extension of Shiloh Corridor Overlay, extending the South Shiloh Corridor Overlay District along the south side of King Avenue West between Shiloh Road and 32nd Street West. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

10. PUBLIC HEARING AND SPECIAL REVIEW #848: A special review to add an outdoor patio lounge to a location with an existing on-premise all beverage liquor license zoned Community Commercial described as Lots 1 through 6, Block 1, Houser Subdivision; located at 1425 Broadwater Avenue and known as Doc & Eddy's Plaza. CNJ Distributing, owner; Tom Williams, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

11. PUBLIC HEARING AND SPECIAL REVIEW #850: A special review to expand a location with an existing on-premise all beverage liquor license zoned Controlled Industrial described as Lot 2A, Sugar Subdivision, located at 4900 Laurel Road and known as the Muzzleloader Café and Powderhorn Lounge. Marlon Engberg and Rick Steinmetz, owners; Jerry Jones, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

12. PUBLIC HEARING AND SPECIAL REVIEW #851: A special review for expansion of a church facility on a 20-acre parcel of land zoned Residential 9600 described as Tracts 5A-1 and 5A-2, Certificate of Survey 1648, located at 328 South Shiloh Road. Emmanuel Baptist Church, owner; Durward K. Sobek and Ray Cucancic, agents. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 12\)](#)

13. **APPROVAL AND AWARD OF FIELD LIGHT SALVAGE** from the existing Cobb Field to the American Legion Baseball organization. Delayed from August 13, 2007, Council agenda. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 13\)](#)

14. **APPROVAL AND AWARD OF RED DIRT AND SOD SALVAGE** from the existing Cobb Field to the Montana District 1 and American Legion Baseball. Delayed from August 13, 2007, Council agenda. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 14\)](#)

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

Council Initiatives

ADJOURN

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

A1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: W.O. 06-09 – Big Ditch Trail, Phase 2 (CTEP), Arrowhead Chandelier Connector (Safe Routes to School), Federal Aid No. STPE 1099(54), UPN 6128, Construction Contract Award

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: This project combines the CTEP Big Ditch Trail – Phase 2 which extends a multi-use path from approximately Larchwood Lane (see the attached area map) to Rimrock West Park near 46th Street West with the Safe Routes to School (SRTS) Arrowhead Chandelier Connector which extends a trail connection across the Big Ditch to Shiloh Point Subdivision. The attached map provides an overview of the proposed project. The Base Bid is for a trail extending to the east end of the park (Schedule 1) and for the connector across the Big Ditch (Schedule 2), and the Additive Alternate No. 1 continues the trail to the west end of the park. Bids were opened for the project on August 14, and, by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: Funding for this project is available from a federal CTEP grant; a required local match for the CTEP grant from the parks and trails G.O. bond; a Safe Routes to School grant; funds pledged by BikeNet, a local non-profit group; and funds pledged by Bikes Belong Coalition, a Boulder, Colorado based bicycling advocacy group.

Location of Work: Platted park land between Shiloh Road and 46th Street West

Funding Sources: CTEP Grant (\$147,620), required local match (\$22,880), SRTS grant (\$25,000), BikeNet pledge (\$10,100), Bikes Belong grant (\$5,000)

Approved Dollar Amount for Project: \$210,600

Spent (and obligated) to date:	\$ 19,983
Funding available:	\$190,617

Bids were opened on August 14, 2007, with the following results:

Firm	Base Bid (Schedules 1 & 2)	Total Base Bid Plus Additive Alternate No. 1
JTL Group, Inc.- Billings	\$125,670.00	\$162,000.00
CMG Construction, Inc.	\$140,925.00	\$186,175.00
HL Ostermiller Const., Inc.	\$147,943.03	\$199,920.36
EHC, LLC	\$155,925.00	\$216,025.00
HL Construction	\$217,254.99	\$299,579.99
<i>Engineer's Estimate</i>	<i>\$113,520.00</i>	<i>\$161,920.00</i>

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 06-09 – Big Ditch Trail, Phase 2, Arrowhead Chandelier Connector (Safe Routes to School), Federal Aid No. STPE 1099(54), UPN 6128, for the Base Bid (Sch 1 & 2) and Additive Alternate No. 1 to JTL Group, Inc.-Billings for \$162,000.00 and 35 calendar days, contingent on CTEP concurrence.

ATTACHMENT

- A. Big Ditch Trail Overview (1 page)

Approved By: City Administrator _____ City Attorney _____

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A2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: W.O. 07-08 – Traffic Signal at Zoo Drive and Gabel Road
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received for Work Order 07-08 on August 14, 2007. This project is a cooperative effort between the City of Billings and the Montana Department of Highways, to install a traffic signal at the intersection of Zoo Drive and Gabel Road. The Department of Transportation will furnish traffic signal poles, the signal controller and cabinet, and other signal related equipment. The City will fund and administer the construction contract. Work is expected to start in mid-September, and the signal should be in place and operational by mid-November. There will be some final pavement marking work that will not be completed until Spring 2008, unless temperatures stay unseasonably warm very late this fall. It is not expected that re-bidding the project would result in significant cost savings.

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

Only a single bid was received for the project as follows:

	Base Bid	Alternate 1	Total Base+Alt
<i>Engineer's Estimate</i>	\$191,904.00	\$16,445.00	\$208,349.00
JTL Group, Inc.	\$ 301,360.00	\$32,092.00	\$333,452.00

Budget:

CIP ENG R0901	\$250,000.00
Add'l Arterial funds	\$107,440.00
Less previously purchased equipment	(\$ 9080.00)
Less Construction administration fees	<u>(\$25,000.00)</u>
Available funds	\$323,360.00 (w/ 7% contingency)

RECOMMENDATION

Staff recommends that Council approve a construction contract with JTL Group, Inc. for the base bid work only for Work Order 07-08, Zoo and Gabel Traffic Signal, in the amount of \$301,360.00.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Bid Award – Panasonic Toughbooks
DEPARTMENT: Billings Police Department
PRESENTED BY: Chief Rich St. John

PROBLEM/ISSUE STATEMENT: Currently the Billings Police Dept. has Mobile Data Terminals (MDT) in each of its 74 patrol vehicles. The MDT's were purchased in 2001 and communicate with dispatch via our 800 MHz radio system. For years, these systems have served the Department well, but they are now in desperate need of replacement. The MDT's are no longer under warranty and are continuously breaking down. This spring, staff evaluated several different makes, models, and configurations of MDT's available on the market. As part of this evaluation, we purchased two Panasonic Toughbooks and have been working with them in a pilot project now for over 2 months. We have found the Toughbooks, along with the vehicle docking station and mounts, to be a great solution to our mobile computing needs. In addition to new MDT's, we are recommending moving to a secure cellular broadband connection to communicate with dispatch and to access our internal resources. The secure broadband connection would replace our reliance on the 800 MHz system for data communications and would offer greatly enhanced speed and full access to our criminal records, such as mug shots from the county jail system. Cellular broadband connections are used by city, county, state, and federal agencies throughout the country and are very secure. Police Administration and the I.T. staff highly recommend purchasing 74 new Panasonic Toughbooks, the docking stations, and associated mounts to replace the failing MDT systems in our patrol cars. The replacement of the 74 MDT systems are an approved part of the FY2008 Technology Replacement Plan (TRP). An Invitation to Bid was advertised on July 19th and 26th, 2007, with a sealed bid opening of Tuesday, August 14, 2007, at 2 p.m. Bids were received from Verizon Select Services, Acorn Technologies Inc., Portable Computer Systems and CDW Government Inc. The following is the respective four year lease prices by each company: \$528,832.76, \$475,004.68, \$449,780.16 and no lease option given. Staff reviewed the bids and recommends Portable Computer Systems.

FINANCIAL IMPACT: The entire purchase price for 74 Panasonic Toughbooks, the vehicle docking stations, and associated mounts is \$ \$404,500 purchase price. In order to lessen the

budget impact for FY08 and future years, staff recommends that we enter into a 4-year \$1 buyout lease agreement with Portable Computer Systems to fund the entire purchase. The lease option allows us to level out the on-going costs of purchasing and maintaining reliable mobile computers for our police officers in the field. The new units would be under full warranty and supported by Information Technology staff. The lease price of \$ \$112,445.04, along with the estimated cost of \$ 46,176/year for unlimited broadband access to all of the cars was budgeted in FY08 budget as part of the approved Technology Replacement Plan. Comparing their lease to borrowing from the State Intercap Loan Program, the lease will cost \$1,335.84 more over four years given today's Intercap rate which is variable year to year. However, with the lease the Police Department can buy the equipment for \$1 or give it back to the company eliminating the need for disposal.

RECOMMENDATION

Staff recommends that Council approve that Portable Computer Systems be awarded the bid for 74 Panasonic Toughbooks and associated hardware at a lease cost of \$112,445.04 and additionally approve the recommendation to enter into a 4-year \$1 buyout lease for the purchase of the equipment.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Staples Reservoir Interior Coating Bid Award
DEPARTMENT: Public Works
PRESENTED BY: David Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Staples Reservoir is a six (6) million gallon buried concrete reservoir located at the north end of Stanford Drive. The reservoir is largest reservoir in the Billings Water System, providing storage that is essential for distribution system management, especially during summer peak periods. This reservoir has leaked into the toe-drain system surrounding the reservoir for an extended period. Repairs to the concrete floor in 2002 reduced the leakage, but did not eliminate the problem. Additional repair options were evaluated and a flexible coating system for the bottom portion of the reservoir was selected. The flexible coating system will be installed this fall when system demands are low enough that the reservoir can be removed from service. This project is listed in the approved Capital Improvement Plan for FY2008.

FINANCIAL IMPACT: Adequate funding for this purchase is available in the Water Storage Capital Account. Bids were received on August 14, 2007. The bidding results are as follows:

Contractor	Total Bid
Quality Maintenance Contractors, Inc.	\$578,951.40
Specialty Painting and Sandblasting LLC	Non-responsive
Purcell Painting & Coatings	\$546,658.54

RECOMMENDATION

Staff recommends that Council approve a contract with Purcell Painting & Coatings for installation of an interior coating system in Staples Reservoir for their bid price of \$546,658.54 plus a 10% contingency fund of \$54,666.00.

Approved By: City Administrator ____ City Attorney ____

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B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Water/Wastewater Rate & Fee Study
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: In 2004 and 2005 the City Council approved a multi-year program of increases for the water and wastewater system development fees and user rates, respectively. The last phase-in of this program went into effect July 1 of this year and, as a result, there are no further increases scheduled. The water/wastewater master plan completed in 2006 identified approximately \$260 million of improvements to the systems over the next several years. Funding of these improvements will require additional user rate revenues as well as debt financing. In addition, staff believes it is time to review the level of system development fees as well. This will be done utilizing a stakeholder committee with participation by the Home Builders Association, Public Works staff, Public Utilities Board and City Council. The consultant will also examine miscellaneous water/wastewater fees. Staff hopes to complete the study in time to allow the outcome to be reflected in the FY09 budget.

ALTERNATIVES ANALYZED: The alternatives considered are:

- Approve the contract.
- Disapprove the contract.

FINANCIAL IMPACT: Sufficient funds are available in the FY08 water and wastewater O & M accounts to cover the contract amount.

RECOMMENDATION

Staff recommends that Council approve the contract with Red Oak Consulting in the amount of \$178,186 for the water/wastewater rate and fees study.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

Attachment A – Contract for Professional Architectural and Engineering Services

INTRODUCTION

All scheduled rate and fee increases are now in effect. In order to help fund future system improvements and continue to provide for adequate operation and maintenance activities, user rates, system development fees and miscellaneous fees need to be reviewed.

BACKGROUND

The last user rate study was performed in 2005 and system development fees were last reviewed in 2004. The majority of the miscellaneous fees were last updated in the mid-1980's. To help assure that the rates and fees remain equitable, it is important that they be periodically reviewed. This is especially important given the magnitude of the improvements identified in the 2006 master plan and the need for continued funding of operation and maintenance activities.

Requests for proposals for consulting services were publicly advertised in May of this year with the following firms submitting proposals:

- CDM
- Red Oak Consulting
- Brown & Caldwell
- Burns & McDonnell
- Black & Veatch

Following the city's selection process, a committee reviewed the proposals and selected Red Oak Consulting. Since state law requires involvement from the development community in regard to system development fees, individuals representing that faction were asked to participate in the selection process. The selection committee consisted of the following individuals:

Alan Towlerton - Public Works
Dwile Weagel - Public Works
Bob Glasgow – JTL/Home Builders Assoc.
Myles Egan - Realtor

The FY08 budget contains funds to undertake this study.

ALTERNATIVES ANALYSIS

Approve The Contract – Approval of the contract provides for evaluation of the various rates and fees. Because of the need to fund future improvements and continue operation and maintenance activities, it is important to balance the revenues from rates and fees against debt financing. The process will allow this evaluation to be done using accepted methods to develop the rates and fees. State law requires that adjustments in system development fees be done with involvement of the development community. Under this contract the consultant will facilitate meetings with a

stakeholder group and develop system development and construction fees that are equitable to all parties.

Disapprove The Contract – Not approving the contract will result in rates and fees either staying at the present level or being increased on a uniform percentage basis. If left unchanged, it will be difficult to fund all the improvements identified in the 2006 master plan. Increasing fees on a uniform percentage basis may not account for all factors that result in equitability. Raising system development fees on a uniform percentage basis likely will not satisfy the state law requirements for proportional share. In addition, there are various levels of system development fees, each resulting in development paying more toward growth-related improvements. Not approving the contract will not allow the exploration of these various fee levels.

STAKEHOLDERS

The development community interests were represented, at least in part, by involvement of two of the individuals on the selection committee. Staff feels this will help pave the way for continued cooperation during the system development/construction fee portion of the process. The development community expressed an interest in using the same process that was used in 2004 when the current system development and construction fees were developed. The Public Utilities Board will have two of its members involved in the stakeholder group. In addition, staff and the consultant will present interim and final findings of the rate and fees study to the entire Public Utilities Board prior to consideration by the City Council.

RECOMMENDATION

Staff recommends that Council approve the contract with Red Oak Consulting in the amount of \$178,186 for the water/wastewater rate and fees study.

ATTACHMENT

A – Contract for Professional Architectural and Engineering Services

Water/Wastewater Rate & Fees Study

In consideration of the mutual promises herein, City of Billings and Red Oak Consulting agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 9 pages (Basic Services of Contractor);
- Appendix B consisting of 1 pages (Methods and Times of Payment);
- Appendix C consisting of 0 pages (Additional Services of Contractor);
- Appendix D consisting of 0 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 pages (Project Schedule);
- Appendix F consisting of 10 pages (Certificate(s) of Insurance); and

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Red Oak Consulting.

Section 2. Scope of Services.

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

- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Contractor shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on July 1, 2008.

Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

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

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to

the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

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

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:

1. Workers' compensation and employer's liability coverage as required by Montana law.
 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
 3. Commercial automobile liability -- \$500,000 per accident.
 4. Professional liability in the amount of \$1,500,000 per claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

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

Billings:	Alan L Towleron City of Billings Department Public Works PO Box 30958 Billings, Montana 59111	FAX: (406) 657-8319
Contractor:	Paul L. Matthews Malcolm Pirnie Inc. 12670 NW Barnes Road, Suite 104 Portland, OR 97229	FAX: (503) 644-2414

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
 - 2. Strikes or Work stoppages.

3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

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

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

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.

- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

PART II

GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

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

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Contractor: Richard D. Giardina
Vice President

Billings: City Council or Authorized Designee

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the District Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any agent, employee or subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

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

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

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

City of Billings

Contractor

City Council or Designee

Date: _____

Name: _____

Title: _____

Date: _____

ATTEST:

IRS Tax ID # _____

Cari Martin
City Clerk

Date: _____

STATE OF MONTANA)
 :ss.
COUNTY OF YELLOWSTONE)

On this ____ day of _____, 2004, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

Notary Public for the State of Montana
Page 28 of 306

Residing at Billings, Montana
My Commission Expires: _____

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

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

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

- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- J. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Paul L. Matthews.

Section 2. Billings Rights and Duties.

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

Section 3. Scope of Work.

The scope of work for this project is described in the attached letter from Paul L. Matthews to Alan L. Towleron dated August 14, 2007. This letter is incorporated into this agreement by reference.

August 14, 2007

Alan L. Towleron, PE
Deputy Director of Public Works
City of Billings
2251 Belknap Ave
Billings, MT 59101

Re: Scope of Services for Water/Wastewater Rate and Fee Study

Dear Mr. Towleron:

This letter presents our proposed scope of services for the City of Billings Water and Wastewater Rate and Fee study. We have organized our approach in eleven tasks. Each of these tasks is described below.

Task 1: Project Initiation Meeting

As part of this task, but prior to the project initiation meeting, Red Oak will provide the City a preliminary data request list.

A key goal of the project initiation meeting is preparing a list of preliminary evaluation criteria that the project team can use throughout the study. The initial list of criteria will serve as the starting point in the process of developing the final evaluation criteria for the rates and system development/construction fees (SDFs).

During the project initiation meeting, Red Oak will review the preliminary data request and answer remaining data questions. We will also discuss the City's goals and objectives for the study. This is important as it will shape the direction of evaluations and policy decisions that will be made throughout the workshop process.

Red Oak will also present a draft of the survey questions, and the template we will use in conducting the survey of other cities in Montana. During the meeting, Red Oak will work with the staff to revise the survey questions and identify the utilities the City would like to have surveyed.

We will review a draft of the presentation prepared for the first FAC workshop. The presentation will include the preliminary evaluation criteria and an overview of the major phases of this study:

- Financial Planning
- Cost-of-Service Analyses
- System Development/Construction Fees

Based on our experience, we believe that the FAC would have relatively little interest in the miscellaneous fees portion of this study, and have not scoped it as part of their duties.

Task 2: First FAC Workshop

During the first FAC workshop, Red Oak will:

- Present the presentation reviewed with staff during the project initiation meeting
- Lead the FAC through a process of revising and adopting the project goals and objectives
- Lead the FAC through a process of revising and adopting evaluation criteria.

Red Oak will provide each FAC member with a customized notebook for the project. These attractive notebooks instill a sense of purpose in the FAC and provide them a mechanism to organize their papers and efforts. During each workshop, Red Oak will provide each FAC member an additional tab and handout of the presentation. The handouts go into the project notebooks along with the presentations themselves. Although a small gesture, we have found that treating citizens on committees like the FAC with a little professional courtesy early on in the process can help them be more effective advocates for the community.

Task 3: Water & Wastewater Finance Plans

We have previously developed computerized cash-flow models that balance rate increases, accumulations of reserves, SDF and construction fee revenues, the issuance of debt, etc., to maintain the financial health of each utility. The models balance all of these factors, while ensuring the utility has adequate funding for the capital improvement plans (CIPs) for each utility. We will use these pre-existing models to update the City's financial plans.

Once we have updated the cash-flow models, we will prepare a draft technical memorandum (TM) on our findings. After providing the City the draft TM, Red Oak will conduct a workshop with City staff to review the initial financial plans. During that meeting, we will use the dynamic capabilities of the model to provide real-time results using the financial plan's graphical user interface (GUI). This will provide the study with the revenue requirements we will use in the next part of the study.

After the workshop, Red Oak will revise the draft TM based on feedback from the City and the revised financial plans that emerged from the workshop. Red Oak will incorporate the final TM into the final report for the study.

During the same trip to Billings as the first FAC workshop, Red Oak will present its findings to date to the Public Utilities Board (PUB). The presentation will include a review of the evaluation criteria, findings from the financial plan update, and progress on the SDFs and construction fees.

Task 4: FAC Workshops II through IV

As soon after the FAC's first workshop as possible, Red Oak will conduct a series of three

workshops with the FAC to review specific questions that are part of adopting revised SDFs and construction fees.

The goal is to ensure the FAC is fully aware of the implications of these issues and can provide meaningful guidance in developing the final recommendations.

Task 5: Water & Wastewater Rate Analyses

Red Oak will conduct Task 5 coincidentally with Task 4.

Review Cost Allocations

Red Oak will review the allocations of system function and the utility components that Red Oak developed for the City's current cost-of-service models. We will discuss the allocations with you to capture potential changes to the City's system. Allocating costs in this manner enhances the accuracy and equity of the cost allocations to customer classes.

Develop Customer Characteristics

Each customer class has unique usage characteristics. These service requirements can be measured and, therefore, form an objective and credible basis for the cost-of-service analyses.

For water utilities, the AWWA recommends two methods for cost allocation called the commodity-demand method and the base/extra-capacity method. To be consistent with past practices, and ensure compliance with your wholesale water agreement with Billings Heights, Red Oak will use the base/extra-capacity method, which includes the following customer characteristics:

- Base Costs.
- Extra-Capacity Costs.
- Customer Costs.
- Fire Protection Costs.

Update Existing Models

Red Oak will update the City's existing cost-of-service models for its existing customer classes.

Present Results and Technical Memorandum on Rates

Red Oak will prepare a draft TM of the findings for the City's review. At the same time as the second FAC workshop, Red Oak will meet with the City to discuss the findings in the draft TM. Based on comments from the City, Red Oak will revise the draft TM and provide a final TM to the City. Red Oak will also incorporate the TM into the final report for the study.

Task 6: Rate Structure Design Analyses

Red Oak will prepare a rate impact model (RIM) that will allow the City to compare proposed

alternative rate designs. The model will provide a comparison for each alternative using the criteria developed during the project initiation meeting.

Red Oak will conduct a working session with the City to use the model to evaluate competing rate design alternatives for each utility. During these work sessions, Red Oak and the City will prepare evaluations of the alternatives.

The rate design alternatives model will project revenues and compares the results to the revenues under the City's financial plan. The model will predict average changes in customers' bills and provide:

- Number of customers whose bills exceed a specified increase under each alternative rate design.
- Projected water savings by month or season, including average-day and peak-season savings.
- Revenue stability (that is, a comparison of the changes in revenues that the City can expect for each rate design scenario).

The customer data for the RIM will come directly from the City's utility billing system.

Prepare 3 Preliminary Alternative Rate Scenarios

Based on the criteria developed during the project initiation meeting, Red Oak will develop three preliminary alternative rate scenarios for consideration.

Workshop – Preliminary Alternative Rate Scenarios

Red Oak will conduct a workshop with the City to review and refine the preliminary rate design alternatives.

Present Results

To present the results of the RIM analyses, Red Oak will conduct a workshop at a forum chosen by the City. Together, Red Oak and the City will settle on final evaluation of the rate alternatives.

Prepare Technical Memorandum of Findings

Red Oak will prepare a draft TM of the findings for the City to review. Based on feedback from the City, Red Oak will prepare a final TM for the City. Red Oak will also incorporate the final TM into the final report for the study.

Task 7: System Development/Construction Fee Analyses

Review Existing System Development/Construction Fee Methodologies

Red Oak will review the City's current SDF and construction fee methodologies to understand the existing approach. This review will consist of reviewing available reports, ordinances,

resolutions, and other materials provided by the City.

Conduct System Development/Construction Fee Analyses

Develop Computer Models

Red Oak will develop a computer model in Microsoft Excel that calculates SDFs and construction fees under up to four alternative methodologies. The model will incorporate the remaining tasks in the analyses.

Value Fixed Assets

The model will include SDFs and construction fees using the four valuation methods that are commonly used when valuing a system's existing fixed assets:

- Original cost
- Book value
- Replacement cost new (RCN)
- Replacement cost new less depreciation (RCNLD)

Red Oak will use information on the fixed assets of the utility from the cost-of-service analyses, augmented with further information provided by the City, to develop all four values of the water and wastewater systems' fixed assets.

Determine Capacity Available in the Existing Water System

As a subconsultant to Red Oak, HDR will estimate the capacity available in the existing systems for new connections. This step requires City staff assistance and an organization of the assets into water and wastewater functions. Some common water system functions are:

- Source of Supply
- Treatment
- Transmission
- Distribution
- Storage
- Meters and services
- Administration, etc.

Common wastewater system functions include:

- Conveyance
- Major Collectors
- Treatment
- Biosolids and Solids Handling
- Industrial Services

- Administration, etc.

Within the treatment works, HDR will develop a list of unit processes and develop estimates of capacity for each unit process. Also, HDR will determine the average requirement for each function and unit process for a typical single-family dwelling unit. Capacity in the existing systems will be represented by the number of equivalent dwelling units (EDUs) that can be served. One EDU is typically a typical single-family residential user.

Compile Capital Improvement Plan and Allocate Multi-Purpose Project Costs

Red Oak will incorporate the City's water and wastewater capital improvement projects into the respective SDF models. HDR will allocate projects in the CIPs between those projects improving the systems for existing customers and those projects required to expand the systems for new customers. Often a project will serve both functions and will need to be allocated between the two following one of several accepted allocation approaches.

Determine Capacity Provided by the CIP for New Customers

Next, HDR will evaluate the CIP projects, allocate these projects to system functions and unit processes, and estimate the capacity provided for growth. HDR will also represent the capacity by the new EDUs that can be served by the projects.

Calculate New SDFs and Construction Fees

Based on the guidance from the FAC, the two components of the analysis—the buy-in component and the improvement component—will be combined to calculate the recommended SDF per EDU.

Develop System Development /Construction Fee Assessment Schedule

Red Oak will review the City's current assessment schedules and discuss alternatives with City Staff. A common assessment schedule is an actual use schedule based on the City's actual use and demand data by meter size. Red Oak will develop the SDF/construction fee schedules based on the outcome of these discussions.

Prepare System Development/Construction Fee Methodologies

Red Oak will prepare and submit draft Technical Memorandum that describes the methodologies with recommendations on the SDFs and construction fees. The draft TMs will describe the calculation and methodologies of the recommended fees as required by Montana Code Annotated (MCA) Title 7, Chapter 6, Part 16, Impact Fees to Fund Capital Improvements. Red Oak will incorporate comments from the City into the final TMs. Red Oak will include the TMs in the draft and final reports for the entire study.

FAC Workshop VI – Review SDF and Construction Fee Findings

Red Oak will conduct the final FAC workshop to review the findings of the SDF and construction fee analyses. We will present the impact that the policy recommendations made in Workshops II, III, and IV helped to shape the resulting SDFs and construction fees. Red Oak will present a range of fees for each utility for evaluation and recommendation by the FAC.

Task 8: Miscellaneous Fee Analyses

Red Oak will review the City's existing miscellaneous fees and charges as a basis for updating them.

Determine Fees

This task is anticipated to be conducted largely by the City. Red Oak will review the calculations of miscellaneous fees provided by the City. Red Oak will also integrate the findings of the City's fee study into its draft and final reports.

Present Results and Technical Memorandum on Rates

Red Oak will prepare a draft TM of the updated miscellaneous fees for the City's review. Red Oak will meet with the City to discuss the findings in the draft TM. Based on comments from the City, Red Oak will revise the draft TM and provide a final TM to the City. The TM will also be incorporated into the final report for the study.

Task 9: Recalibrate Finance Plans

Using data from the rate analyses, RIMs, system development fee analyses, and miscellaneous fee analyses, Red Oak will recalibrate the City's finance plans. Incorporating the new rates, fees, and charges into the finance plans will provide the City with a final financial plan update that it can use in the future.

Task 10: Reports and Presentations**Survey of Cities**

Red Oak Consulting will survey 5 cities of the City's choosing. The surveys will be conducted by telephone and will be used to compare rates and SDFs to those proposed for the City.

Draft Report

Red Oak will prepare and submit a draft report incorporating the findings of the rate analyses, RIMs, system development fee analyses, and miscellaneous fee analyses. All of the previously submitted TMs will be incorporated into the draft report. Also included will be descriptions of the workshop process and steps taken in development of the new rates and SDFs. The draft report will be submitted as an Adobe Acrobat Portable Document Format (PDF) file.

Public Utilities Board Presentation

Red Oak Consulting will present the preliminary findings from the draft report to the PUB.

Final Report

After comments from the City are received, Red Oak will revise the draft report and provide the City thirty (30) bound copies of the final report. Also provided to the City will be electronic copies of the final report, technical memorandums, and computerized models used throughout the study.

Presentation to Council

Red Oak will present the results of the study to the City Council at two public meetings. These meetings will be either work sessions, general council meetings, or a public hearing.

Task 11: Project Management

A part of its responsibility to coordinate the project efforts and ensure quality, Red Oak will provide ongoing project management for the City's study.

Progress Reports

Red Oak will provide monthly progress reports to the City's project manager. The progress reports will provide a summary of work completed during the previous month, plus an estimate of the percentage of work completed by task.

Team Coordination

Red Oak will coordinate the efforts of the project team, and provide the main channel of contact between the City and the project team.

Very truly yours,

RED OAK CONSULTING

Paul L. Matthews
Principal Consultant

A590401

Appendix B

Methods and Times of Payment

Section 4. Payments for Basic Services.

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

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall deduct ten percent (10%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services outlined in Appendix A, the Engineer shall be paid a lump sum amount of \$178,186.
- B. Final payment shall be the above stated basic fee less all previous payments.

Section 5. Corrections.

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

Appendix E

Project Schedule

Based on a notice to proceed by Billings date no later than September 3, 2007, the completion date for the Contractor's work shall be:

- A. Submittal of the draft report by December 14, 2007
- B. Submittal of the final report by January 16, 2008
- C. Conduct Council Work Session on January 21, 2008
- D. Conduct Council Hearing on February 11, 2008

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

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

Appendix F

Certificate(s) of Insurance

Certificates attached to hard copy of contract

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Award of Contract for City-wide Elevator Service and Maintenance
 DEPARTMENT: Facilities Management
 PRESENTED BY: Saree Couture, City Facilities Manager

PROBLEM/ISSUE STATEMENT: The City solicited RFP's for a three (3) year contract to replace the existing Elevator Service/Maintenance Contract that is set to expire August 31, 2007. The RFP's were submitted on August 8, 2007. The City has elevators, escalators, and lifts throughout its Airport, Library, Fire Station (under separate Agreement), City Hall and ARFF facilities and has collectively bid for the routine, preventive maintenance, as well as the emergency repairs through a RFP process for a three-year term. This offers the City of Billings the best opportunity for consistent maintenance, as well as best pricing for parts and emergency repairs. The contract includes the following elevators: 2 at City Hall, 3 at the Library and one lift, 8 in Parking Garages, 8 at the Airport, 2 Airport escalators included as an optional bid, and 2 lifts at the Airport.

Proposals were submitted by Kone Elevators Escalators and Thyssen-Krupp Elevator. Proposals were evaluated on August 15, 2007, and Thyssen-Krupp's proposal was favored in the categories of quality, availability of technicians, and overall cost competitiveness, as well as elevator pricing. Each of the operating departments will see a net reduction of cost on their elevators with Thyssen-Krupp's proposal. Thyssen-Krupp was higher on escalators, but after evaluating options, the value in the proposal warrants the additional cost and less exclusion risk.

<u>PRICING</u>	<u>KONE</u>	<u>THYSSEN-KRUPP</u>
ELEVATORS (3 year)	\$ 120,173	\$ 112,830
ESCALATORS (3 year)	\$ 22,776	\$ 33,534
TOTAL	\$ 142,949	\$ 146,364

FINANCIAL IMPACT: The total cost of the contract will be approximately \$ 47,124 per year, escalating at 3.5% per year for the subsequent two years, for a three year total of \$146,364, less the varied start times of service, due to warranties. The source of funding for this project is within each facility's operating budget.

RECOMMENDATION

Staff review committee recommends Thyssen-Krupp Elevator be awarded a three-year contract in the amount of \$146,377, less the amounts of the varied start dates of some equipment due to warranties.

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

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D



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: SILMD 301 – Josephine Crossing Subdivision
DEPARTMENT: Public Works Department
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The City Council held a public hearing and created SILMD 301 at its August 13, 2007 meeting. Details of the creation including cost appropriations are included in the August 13th memo. Creation of the district required a contract between the City and NorthWestern Energy for light district ownership, energy, and maintenance by NorthWestern Energy. The contract is the standard form SILMD contract utilized on all NorthWestern Energy street light districts.

FINANCIAL IMPACT: All maintenance and energy costs for these proposed light districts would be paid for by assessments against properties within the district.

RECOMMENDATION

Staff recommends that Council approve the standard form SILMD contract with NorthWestern Energy for SILMD 301.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. SILMD 301 Contract

STREET LIGHTING AGREEMENT

THIS AGREEMENT, effective this 27th day of August, 2007, by and between NorthWestern Energy, a division of NorthWestern Corporation, doing business at 40 East Broadway Street, Butte, Montana 59701, hereinafter called the "Company" and THE CITY OF BILLINGS, a municipal corporation organized under the laws of the State of Montana, whose mailing address is PO Box 1178, Billings, Montana 59103, hereinafter called the "City".

WITNESSETH:

WHEREAS, Special Improvement Lighting Maintenance District No. 301 has been duly and regularly created by the City Council of the City of Billings, Montana for the purpose of providing new 100 Watt high pressure sodium (HPS) street lighting within the boundaries of said District; and

WHEREAS, the Company is willing to supply, install, operate and own the facilities within said lighting district(s), and furnish electrical energy to and maintenance for said lighting district(s), upon the terms and conditions hereinafter set forth;

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

SECTION 1. INSTALLATION OF NEW FACILITIES

The said facilities shall be of the type hereinafter specified and shall be installed at the locations and according to the specifications of the City given prior to the commencement of the work.

- (a) Type of facilities: 49 single mount; 1 twin mounted 100 watt, HPS, decorative pendant Cone style fixtures mounted at 20 feet on black fiberglass poles served by underground wire.

(b) Locations: There will be 50 units spaced and located in accordance with the map of said lighting district on file in the office of the City Engineer of the City of Billings, Montana. Type of equipment and number of lights may be modified only by the written consent of the parties hereto.

SECTION 2. OWNERSHIP

The facilities to be constructed and installed are, and shall remain, the property of the Company.

SECTION 3. MAINTENANCE, OPERATION AND REPAIR

a. Company agrees to operate and perform ordinary maintenance of the Facilities. Lights shall be turned on at dusk and turned off at dawn each day during the term of this Agreement.

b. The charges specified herein are based on normal conditions and do not cover charges for extraordinary repair and/or replacement costs.

c. Company will make necessary repairs and replacements within a reasonable time after receiving notice of any outage or other damage to the facilities. The Company shall have no obligation to patrol the facilities to determine that they are in operating condition.

SECTION 4. SUPPLY OF ENERGY TO SYSTEM

The Company agrees to supply electrical energy to said street lighting system for the charges hereinafter specified.

SECTION 5. CHARGES

a. The City undertakes and agrees to pay the Company for furnishing, operating and maintaining, as provided herein, said street lighting system to be constructed and owned by the Company and for supplying electrical energy thereto. The charge for each lighting unit shall be based on the rate schedule approved by the Montana Public Service Commission (PSC) and in effect at the time the lighting unit(s) are installed, subject to amendment or revision with prior PSC approval. The initial rate for each single mount unit is \$31.24 per month; twin mount is \$35.84 per month

CONFIDENTIAL/PROPRIETARY

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If additional units are subsequently installed by mutual consent of the parties hereto, the charges for such additional lights shall be in accordance with the rates in effect at the time said installations are made, subject to amendment or revision with prior PSC approval.

b. The Company shall have the right to make additional charges to City for the cost of labor (including applicable overheads) and the actual material cost for repairs to and/or replacement of street lighting facilities that are extraordinary repairs and/or replacement costs.

c. Bills for said services shall be due and payable in cash or valid warrants when rendered each month and will become delinquent thirty (30) days thereafter.

SECTION 6. FORCE MAJEURE

a. The Company shall not be liable for failure to comply with any of the terms and conditions of this Agreement where such failure is caused by acts of God, government regulations or orders, strikes or labor difficulties, fires, floods, droughts, riots, destruction of property, or by any other cause beyond its reasonable control.

b. If the Company is unable to fulfill any obligation by reason of a cause beyond its reasonable control, then it shall notify the City and the Company shall use its best efforts to complete the work in a timely manner.

SECTION 7. TERM

This agreement shall be and remain in full force and effect for a period of two (2) years and eleven (11) months from the date hereof, and shall thereafter continue in force and effect for successive periods of two (2) years and eleven (11) months each, until and unless terminated by either party giving to the other party notice in writing at least sixty (60) days prior to the expiration of the initial term hereof, or any renewal thereof, of its intention to terminate this agreement at the expiration of such initial term or any renewal. If, however, the customer terminates this Agreement before the Company recovers its installation costs, the Customer agrees to reimburse the Company for the remaining installation costs.

CONFIDENTIAL/PROPRIETARY

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SECTION 8. LIABILITY, RELEASE AND LIMITATION OF LIABILITY

a. The Company, in the construction, maintenance and operation of the street lighting system provided for herein, shall use reasonable care and shall indemnify, hold harmless and defend the City of Billings of and from any and all damages, injuries and expenses of any kind, including attorney's fees, caused by the negligence, acts or omissions of the Company, its agents, representatives, or employees, or by the failure of the Company to comply with the provisions of this Agreement.

b. If this Agreement terminates, City shall under no circumstances be entitled to claim or recover consequential damages of any nature arising, or claimed to have arisen, as a result of said termination.

SECTION 9. INDEPENDENT CONTRACTOR

For any services performed hereunder, Company is an independent contractor, responsible to the City only as to the results to be obtained and to the extent that the services shall be done in accordance with any plans or specifications furnished by the City.

SECTION 10. APPLICABLE LAW

a. This Agreement shall be governed in all respects by the laws of the State of Montana.

b. All hiring by the parties will be on the basis of merit and qualifications. The parties may not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin.

c. Company shall have and maintain complete control over all of its employees, subcontractors, agents and operations, being responsible for any required payroll deductions and providing required benefits, such as, but not limited to, workers' compensation and unemployment insurance.

SECTION 11. TERMINATION

Either party may terminate this Agreement if the other party defaults in performance or breaches any of the terms of this Agreement and fails to cure such default or breach within thirty (30) days after written notice of such default.

SECTION 12. INSURANCE

Without limiting any of the Company's obligations hereunder, Company shall provide and maintain comprehensive general liability and automobile liability insurance adequate to secure its indemnity obligation hereunder. City shall have the right to request proof of such insurance coverage.

SECTION 13. BINDING EFFECT AND ASSIGNMENT

- a. This Contract shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.
- b. Either party may assign this Agreement upon written consent of the other party.

SECTION 14. NO THIRD PARTY BENEFICIARY

This agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

SECTION 15. AUTHORITY

Each party represents that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

SECTION 16. INTEGRATION

This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding upon the parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly authorized officers.

NORTHWESTERN ENERGY L.L.C.

THE CITY OF BILLINGS

By: John J. Hudspeth
Billings MANAGER CONSTRUCTION

By: _____
Mayor

Date: 8-14-07

Date: _____

ATTEST: _____
City Clerk

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E

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Contract Amendment #1 to Professional Services Contract with Great West Engineering

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: Both the federal Clean Air Act and the Montana Air Quality Rules for municipal solid waste landfills require that the Billings Regional Landfill undergo Tier 2 landfill-gas sampling and analysis every 5 years to determine whether construction of a landfill-gas collection and control system is necessary. EMCON/OWT completed Tier 2 landfill-gas emissions analysis in December 2002. In order to remain in compliance with federal and state air quality regulations, another Tier 2 landfill-gas emissions analysis must be completed by December 2007. Council awarded a professional services contract to Great West Engineering in February 2007 for design and construction administration of a new landfill cell. The contract allows for additional services to be added with written authorization by the City. Contract Amendment #1 would add the necessary field sampling, laboratory testing, analysis, and reporting to conduct a Tier 2 gas demonstration.

ALTERNATIVES ANALYZED: The alternative to a contract amendment is a Request for Proposals to complete the Tier 2 analysis. Staff is recommending the contract amendment because it would be the most cost effective and allow for the work to be completed in a timelier manner and meet the regulatory December 2007 deadline. There are a limited number of providers for this specialized service involved in completing the study. The landfill gas collection requires specialized equipment and only a few laboratories are able to complete the analytical analysis. Great Western's portion of the study will actually be limited to coordination of the subcontract work and preparation of the study report.

FINANCIAL IMPACT: The current FY08 Solid Waste Division budget includes \$25,000 to complete Tier 2 landfill-gas emissions analysis.

RECOMMENDATION

Staff recommends that Council approve Contract Amendment #1 to the Professional Services Contract with Great West Engineering in the amount of \$20,000 to conduct Tier 2 landfill-gas emissions analysis at the Billings Regional Landfill.

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

ATTACHMENT

A – Contract Amendment #1 to Professional Services Contract, Great West Engineering

INTRODUCTION

The Billings Regional Landfill is subject to federal and state air quality regulations requiring landfill-gas emissions analysis every 5 years. The purpose of the Tier 2 landfill-gas emissions analysis is to determine whether construction of a landfill-gas extraction system is necessary to control landfill emission levels of non-methane organic compounds. The Solid Waste Division recommends approval of Contract Amendment #1 for professional services with Great West Engineering in the amount of \$20,000 to conduct Tier 2 landfill-gas emissions analysis at the Billings Regional Landfill.

BACKGROUND

In March 1996, the United States Environmental Protection Agency (U.S. EPA) promulgated a rule under the Clean Air Act to control landfill-gas emissions from municipal solid waste landfills. Landfills that exceed the maximum emission rate of 50 metric tons of non-methane organic compounds per year are required to install a landfill-gas control system. To assess whether a landfill exceeds the maximum emission limit, the rule requires landfill owners and operators to calculate the landfill's emission rate through a tiered system.

A Tier 1 landfill-gas emission analysis is a desktop calculation using a U.S. EPA landfill-gas emission model. If results from the Tier 1 analysis indicate emissions greater than 50 metric tons per year, the landfill owner may opt to either install a landfill-gas emission control system or proceed with the Tier 2 analysis. The Tier 2 analysis uses actual gas concentrations derived from samples collected in the field and typically gives emission rates considerably lower than those derived through the Tier 1 analysis.

In September 1997, EMCON/OWT completed a Tier 1 analysis for the Billings Regional Landfill and calculated a potential emission rate of 140 metric tons per year. Based upon the results of the Tier 1 analysis, the Solid Waste Division directed EMCON/OWT to conduct Tier 2 testing to determine if the installation of a landfill-gas control system could be deferred to a later date.

In October 1997, 50 samples of landfill gas were collected from various locations throughout the Billings Regional Landfill and analyzed for non-methane organic compounds. Results from the Tier 2 testing demonstrated that the 1998 landfill-gas emission rate was well below the regulatory limit of 50 metric tons per year. Based upon the results of the Tier 2 analysis, the Montana Department of Environmental Quality granted the Billings Regional Landfill a five-year waiver from additional testing, annual reporting requirements and construction of a landfill-gas extraction system. A second Tier 2 analysis was completed in 2002 and another 5-year waiver was granted until December 2007.

RECOMMENDATION

Staff recommends that Council approve Contract Amendment #1 to the Professional Services Contract with Great West Engineering in the amount of \$20,000 to conduct Tier 2 landfill-gas emissions analysis at the Billings Regional Landfill.

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

ATTACHMENT

A – Contract Amendment #1 to Professional Services Contract, Great West Engineering

**AMENDMENT #1
TO ENGINEERING SERVICES CONTRACT FOR
CITY OF BILLINGS REGIONAL LANDFILL
PHASE 3 LANDFILL CELL**

This amendment agreed upon by the City of Billings, Montana, (Owner) and Great West Engineering, Inc., is for the purpose of modifying the said agreement dated February 26, 2007 for the City of Billings Regional Landfill Phase 3 Cell Expansion Project as follows:

SCOPE OF SERVICES

SCOPE OF SERVICES – GENERAL

The general scope of work involves the necessary field sampling, laboratory testing, analysis, and reporting to conduct a Tier II gas demonstration for the landfill as required every five years by the State of Montana. The work under this amendment will be completed on a time and materials basis not to exceed \$20,000 without prior approval from the Owner. The contract is broken into three Tasks as detailed below.

TASK 1 – ON-SITE SAMPLING

The Consultant shall award a sub-contract to a firm to conduct the Tier II sampling at the landfill. The sampling contractor shall be responsible for the successful collection of gas samples from 50 points on the closed portion of the landfill. Great West Engineering will coordinate the timing of the sampling event with the sampling contractor and the contract laboratory to insure that sampling canisters are available and are shipped to the laboratory properly.

TASK 2 – LABORATORY ANALYSES

Great West Engineering will retain an analytical laboratory to analyze the gas samples collected from the landfill. Great West will provide oversight of the shipping procedures, turnaround time at the laboratory, and reasonability of the analytical results.

TASK 3 – DATA EVALUATION, MODELING AND REPORTING

Great West Engineering will review the data validation records of the Tier II analytical results provided by the laboratory to determine if the testing process falls within acceptable parameters. Great West will then use the provided data in a U.S. Environmental Protection Agency-approved mathematical model to predict the future non-methane landfill gas emissions. Most of the non-analytical data required by the model are currently available to Great West, or are available from the landfill records.

Great West Engineering will assemble the raw data and modeling results, and report them to the Montana Department of Environmental Quality as required by state regulations.

Billing rates are in accordance with the referenced contract.

The City of Billings, Montana and Great West Engineering, Inc. hereby agree to this amendment.

Great West Engineering, Inc.


Robert Church, PE

7/30/07
Date

Vice President _____

City of Billings, Montana

By: _____
Mayor

Date: _____

Attest: _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Development Agreement with MWSH BILLINGS LLC, owner of Certificate of Survey 1648, Amended Tract 1
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: City Council approved the annexation of Certificate of Survey 1648, Amended Tract 1 at Central Avenue and Shiloh Road at the August 28, 2006, council meeting. As a condition of approval of the annexation, the property was to enter into a development agreement with the City of Billings outlining necessary public improvements. MWSH is currently constructing a senior living center on this parcel. MWSH BILLINGS LLC has submitted the attached Development Agreement, and the council will consider whether to approve it.

ALTERNATIVES ANALYZED:

1. Approve development agreement with MWSH BILLINGS LLC for Certificate of Survey 1648, Amended Tract 1.
2. Do not approve development agreement with MWSH BILLINGS LLC for Certificate of Survey 1648, Amended Tract 1.

FINANCIAL IMPACT: There is no financial impact to the City with this development agreement.

RECOMMENDATION

Staff recommends that Council approve the development agreement with MWSH BILLINGS LLC for Certificate of Survey 1648, Amended Tract 1.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Development Agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this 28 day of JUNE, 2007, by and between **THE CITY OF BILLINGS, MONTANA**, a municipal corporation, c/o City Hall, Billings, Montana 59101, hereinafter referred to as the "CITY," and **MWSH BILLINGS LLC**, an Oregon limited liability company, 3220 State Street, Suite 200, Salem, Oregon 97301, hereinafter referred to as "OWNER"; and

WHEREAS, Owner owns and intends to develop certain real property situated in the City of Billings, Yellowstone County, Montana, more particularly described as follows:

Amended Tract 1 of Certificate of Survey No.1648, according to the official certificate of survey thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana under document No. 1749237 (hereinafter the "PROPERTY"); and

WHEREAS, the City Council conditionally approved the Resolution of Annexation of the Property at a meeting held August 28th, 2006.

WHEREAS, a condition of said annexation approval is that a Development Agreement be executed between Owner and the City requiring specific infrastructure improvements and providing guarantees for said improvements.

WHEREAS, Owner desires to develop a mixed use of residential rental/lease units and commercial development, and the City and Owner desire to place mutually agreeable requirements on said development.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

I. Streets

Owner will enter into Private Contract No. 572 for the construction of all required improvements for Bell Avenue, which is adjacent to the development. Said improvements shall include 30-foot wide asphalt pavement with standard curb and gutter along the north side.

Except as otherwise provided, Owner shall install and construct said required improvements with cash or private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender.

All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the city engineer and utility department manager.

Owner will provide to the City a cash contribution for the improvements required by this Agreement on Central Avenue. The amount of said cash contribution shall be based on a construction cost estimate for one-half of a residential street equivalent for the frontage of Amended Tract 1 of Certificate of Survey No. 1648. Said cash contribution shall be required prior to issuance of a building permit on the Property.

2. *Storm Drainage*

New storm drain shall be installed in Bell Avenue under Private Contract No. 572. Said storm drain will outfall to the Shiloh Drain lying east of the Property.

All development within Amended Tract 1 of Certificate of Survey No. 1648 will meet the criteria of the City of Billings *Stormwater Management Manual*. The sizing, number of laterals, their location, and the total discharge allowed from the site will be subject to review and approval by the engineering department in conformance with the *Stormwater Management Manual*. Drainage details will be in accordance with the stormwater management report prepared at the time of site plan submittal.

3. *Water*

Water Main in Bell Avenue shall be constructed under Private Contract No. 572.

Owner may apply for reimbursement for a portion of the cost of installing said water main, as outlined within Section 26-500 of the Billings City Code, "Reimbursement and Compensation of Water and Wastewater Extensions and Replacement Costs."

4. Amended Tract 1 of Certificate of Survey No. 1648 will be served by extension of water main from Bell Avenue. Said main and services will be approved by the City Engineer and shall be installed in conformance with the design standards, specifications, rules and regulations of the City of Billings and Montana Department of Environmental Quality. *Sanitary Sewer*

Sewer improvements for Amended Tract 1 of Certificate of Survey No. 1648 will include extension of a private sewer main from Central Avenue. Said main and services will be approved by the City Engineer and shall be installed in conformance with the design standards, specifications, rules and regulations of the City of Billings and Montana Department of Environmental Quality.

5. *Sidewalks*

Sidewalk will be installed on Bell Avenue at the time of street construction. Sidewalk shall be 5-foot wide boulevard walk on Bell Avenue adjacent to Amended Tract 1 of Certificate of Survey No. 1648.

Sidewalk on Central Avenue will be either included in the cash contribution outlined herein and installed by City, or installed by Owner at the time of development of the Property, at the discretion of the City.

6. *Landscaping*

Open areas in the public right-of-way adjacent to Amended Tract 1 of Certificate of Survey No. 1648 will be landscaped at the time of site development. Maintenance of all site landscaping, including that in the public right-of-way, shall be the responsibility of the lot owner.

7. *Street Lighting*

Construction or installation of streetlights shall not be required at this time.

8. *Private Utilities*

All power, telephone, gas, and cable television lines within the public right-of-way shall be installed underground prior to street paving. Appropriate private utility easements will be provided across Amended Tract 1 of Certificate of Survey No. 1648 for service to the proposed development.

9. *Assignment and Transfer*

Owner may assign its rights and obligations in this Agreement to a third party. In the event of such assignment or in the event of any transfer or conveyance of the Property by Owner to a third party, Owner shall be released from its obligations under this Agreement, and the City agrees to

execute and deliver any and all documents reasonably requested to effectuate such release.

10. *Binding Effect*

Owner, by signature subscribed hereinbelow agrees, consents, and shall be bound by the provisions of this Agreement. The covenants, agreements, and all statements in this Agreement shall run with the land and shall be binding on the personal representatives, successors and assigns of the respective parties.

11. *Attorney's Fees*

If any arbitration, suit or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue shall be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

12. *Amendments and Modifications*

Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

13. *Signatures and Counterparts*

The Parties agree that the signatures to this Agreement transmitted by facsimile shall have the same force and effect as original signatures. At the request of either Party, the Party delivering this Agreement by facsimile will confirm facsimile transmission by signing and delivering a duplicate original agreement. This Agreement may be executed in counterparts, each of which shall constitute an original, all of which together shall constitute one and the same Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

"CITY"
THE CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this ____ day of _____, 2007, before me, a Notary Public in and for the State of Montana, personally appeared _____, and _____, who executed the foregoing instrument as the Mayor and City Clerk, respectively, of the City of Billings, and who acknowledged to me that they executed the same. Witness my hand and seal the day and year hereinabove written.

Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____

"OWNER"

MWSH BILLINGS LLC

By: [Signature]

Its: CEO

STATE OF OREGON)
 : ss
County of Marion)

On this 28 day of June, 2007, before me, a Notary Public in and for the State of Oregon, personally appeared Kelley D. Hamilton known to me to be the CEO of MWSH BILLINGS LLC, the company which executed the foregoing instrument and acknowledged to me that said company executed the same. Witness my hand and seal the day and year hereinabove written.



Lillian J. Busch
Notary Public in and for the State of Oregon
Printed name: Lillian J. Busch
Residing at: Salem, OR
My commission expires: Jan 21, 2011

Approved as to Form:

City Attorney

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G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Council Approval of Commercial Aviation Ground Lease with Edwards Jet Center – Lot 8

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Edwards Jet Center Montana, Inc., desires to construct a new large aircraft hangar on a currently vacant parcel known as Commercial Lot 8 located at the east end of the Airport. This twenty (20) year ground Lease would be for 73,094 square feet. The Airport averages two or three leases per year using this type of lease, either for a new lease or for a lease renewal. The Lease identifies that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language. This parcel was previously leased by Big Sky Airlines and returned to the Airport. The parcel was advertised for lease and the only response received was from Edwards Jet Center Montana, Inc.

FINANCIAL IMPACT: This ground Lease will generate \$16,446.12 in the first year of the Lease. The ground Lease rate of \$0.225 per square foot per annum is in line with the rate being paid by other ground lease tenants located in this area. Future lease year rentals will be adjusted annually by the Consumer Price Index for all Urban Consumers (CPI-U).

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a new twenty-year Commercial Aviation Ground Lease at Billings Logan International Airport with Edwards Jet Center Montana, Inc.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Renewal of Commercial Aviation Ground Lease with Edwards Jet Center – Lot 2

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The lease term for the Commercial Aviation Ground Lease with Edwards Jet Center Montana, Inc. for the use of Commercial Lot 2 at the Billings Logan International Airport expired July 31, 2007. The original ten-year Lease expired in 2005 and the Lease was extended twice for one (1) additional year. This parcel sits directly east of the Airport Terminal Building, and extends from the taxiway system on the north end of the parcel to the Airport's frontage road on the south. Since this parcel is adjacent to the Airport frontage road, the potential exists that some portion of this parcel may be impacted by the forthcoming design for the new Airport Road Improvements that will rebuild secondary Highway 318 from the Airport down to Alkali Creek and the Airport's entrance. In order to safeguard against holding up this important road improvement project, staff is recommending that this Lease be once again renewed for only one (1) additional year until it is known what the final design of the Airport Road Improvements will be. At that point, staff can negotiate a new lease term for this 64,899 square foot parcel, which Edwards Jet Center Montana, Inc. uses in its Fixed Base Operator (FBO) business.

FINANCIAL IMPACT: This one-year Lease will generate \$11,727.24 over the next year for the City's Airport Operation. This rate was calculated by adjusting the old lease rate by the increase in the Consumer Price Index for All Urban Consumers (CPI-U). The adjusted rate of \$0.1807 per square foot is similar to the other lease rates in place for commercial aviation property, including Edwards Jet Center's other ground leases.

RECOMMENDATION

Staff recommends that Council approve the one-year renewal of the Commercial Aviation Ground Lease with Edwards Jet Center Montana, Inc. for the Airport's Commercial Lot 2 parcel.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Lease of City Hangar Property to FES Development, L.L.C.
DEPARTMENT: Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E, Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The City is the owner of a 60 foot by 70 foot aircraft hangar on the west end of the Airport at 2431 Overlook Drive. The current Lease expired July 31. The most recent tenant was FES Development, L.L.C. This hangar is located in the executive hangar area and includes office space with full utilities. This type of hangar is typically used in a corporate setting and tends to be difficult to lease to the general aircraft owner populace, due to the higher square foot price. FES Development desires to renew its one-year lease with a one-year option to renew.

FINANCIAL IMPACT: The execution of this Lease will generate annual revenues of \$19,110 in the first year, and the subsequent year would be adjusted for the effects of inflation using the Consumer Price Index for All Urban Consumers (CPI-U). The renewal rate of \$4.55 per square foot per year includes this year's adjustment for inflation.

RECOMMENDATION

Staff recommends that Council approve the Non-Commercial Aviation Building and Ground Lease with FES Development, L.L.C.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Approval of Domestic Violence Unit & Victim Witness Assistance Sub-Grants
DEPARTMENT: City Attorney's Office
PRESENTED BY: Brent Brooks, City Attorney

PROBLEM/ISSUE STATEMENT: Since July 2000, the City Attorney's Office has annually applied for, and been successfully awarded federal Violence Against Women Act monies through the Montana Board of Crime Control in the form of sub-grants. These sub-grants help fund positions within the City Attorney's Office Domestic Violence Unit and Victim Witness Assistance Program which together provide statutorily-mandated services to victims of violent crime including domestic violence, sexual assault, stalking, simple assault and violations of protective orders.

FINANCIAL IMPACT:

- The total amount of the sub-grant awards from the Board of Crime Control for FY 2007-2008 are:
- \$38,000.00 (partial funding for the Victim Witness Assistance Program Director position), and
- \$52,000.00 (partial funding for the Domestic Violence Dedicated Prosecutor position).

Victim Witness Program Grant (Program Director)

Original Request by City:

Total Project Budget:	\$ 67,473.00	
City Contribution:	\$ 29,473.00	\$ 29,473.00
MBCC Match:	\$ 38,000.00	\$ 38,000.00 (Amount Awarded by BOCC)

Domestic Violence Unit Grant (Prosecutor)

Original Request by City:

Total Project Budget:	\$ 95,050.17	\$
City Contribution:	\$ 43,050.17	\$ 43,050.00
MBCC Match:	\$ 55,000.00	\$ 52,000.00 (Amount Awarded by BOCC)

The grant budget for the Domestic Violence Unit has been adjusted according to the actual amount awarded. The city’s contribution has been increased by \$3000.00 due to the fact that the MBCC reduced their contribution by that amount. This amount will be absorbed by the City and funded by the Victims Surcharge Fund assessed by Municipal Court.

It is important to note that these budgets only address the amounts the two grant awards from the BOCC will cover *not* the total expenses involved.

Without this grant funding, the City would have the burden of fully funding these positions in order to maintain the staff and materials necessary to fulfill statutory mandated services to victims of violent crime pursuant to Montana Code Annotated (MCA) sections 46-24-101 through 46-24-212 (2007).

Because the BOCC determines grant awards after the City has finalized its FY budget, each year the grant award amounts are estimated and inserted into the proposed fiscal year City Attorney department budget. In FY 08 the City’s match for the Victim Witness Assistance Program grant totals \$29,473.00 and the City’s match for the Domestic Violence Unit grant is \$43,050.00.

RECOMMENDATION

Staff recommends that the Mayor and City Council approve the acceptance of the Domestic Violence Unit and Victim Witness Assistance Program grants as awarded by the Montana Department of Justice, Board of Crime Control.

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

ATTACHMENTS

- A. Grant Awards
- B. Amended Project Budget (Domestic Violence Unit only)

COPY



STATE OF MONTANA
 BOARD OF CRIME CONTROL
 PO Box 201408 - 3075 N Montana Ave - Helena MT 59620
 Phone: (406) 444-3604 Fax: (406) 444-4722

ORIGINAL
PLEASE RETURN

GRANT AWARD

Subgrant: **07-W03-90064 Domestic Violence Unit**

Grantee: Billings City PO Box 1178 Billings, MT 59103	FEIN: 816001237 Duration: 07/01/2007 through 06/30/2008 Proj. Dir: Melanie Pfeifer
---	--

Award Date:	07/01/2007	Personnel:	\$80,334.00
Federal Amount Awarded:	\$52,000.00	Contract Services:	\$0.00
State Amount Awarded:	\$0.00	Travel:	\$500.00
Guaranteed Local Matching:	\$36,498.00	Equipment:	\$0.00
Total:	\$88,498.00	Operating:	\$7,664.00
		Total:	\$88,498.00

Source of Federal Funds: 16.588 - Violence Against Women Formula Grant

Special Conditions
Please see attached Special Conditions

I am pleased to inform you that the Board of Crime Control has approved your application for Federal financial assistance. This grant is subject to the special conditions listed above, general conditions attached hereto, and must be implemented and administered along guidelines already established by your agency. This grant shall become effective, as of the date of award, when the grantee signs and returns a copy of this grant award to the Board of Crime Control.

Funds allocated to this project, both awarded and matching, must be obligated prior to: **06/30/2008**

		
Roland Mena	Executive Director	Date
	Board of Crime Control	7-10-07

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above described grant on the terms and conditions set forth above or incorporated by reference therein.

_____	Mayor	_____	Date
Ron Tussing			

SPECIAL CONDITIONS

Subgrant 07-W03-90064 Domestic Violence Unit

Billings City

1. If your agency receives \$500,000.00 or more in federal assistance from all sources during the fiscal year, you are required to have an audit conducted in accordance with federal circular A-133.

The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133. This audit must be performed in accordance with GAO's Government Auditing Standards. In conjunction with the beginning date of the award, the audit report period of the state or local governmental entity to be audited under the single audit requirement is 07/01-2007 to 06-30-2008. The audit report must be submitted no later than 03/31/2009 and for each audit cycle thereafter covering the entire award period as originally approved or amended. Subsequent audits must be submitted no later than nine (9) months after the close of the recipient organization's audited fiscal year.

An original copy of the audit report shall be sent to:

Montana Board of Crime Control
 PO Box 201408
 Helena, MT 59620-1408

2. The applicant hereby assures and certifies compliance with all federal statutes, regulations, policies, guidelines and requirements, including EO 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements, 28 CFR, Part 66, Common Rule, that govern the application, acceptance and use of federal funds for this federally assisted project. Also, the applicant assures and certifies that in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to MBCC.
3. This grant award is conditional upon availability of Federal funding.
4. Award of this grant does not commit the Board of Crime Control to future funding.
5. Applicant must maintain time and attendance records to support personnel costs associated with grant project.
6. Subgrantee must keep records documenting the services provided. Records should show the type of service provided, who provided the service, who received the service, the time and location of service and amount charged.
7. State rates for mileage, per diem, and lodging are maximum amounts that can be charged to subgrants funded by MBCC.

Mileage rate: Effective 01/01/2007 .485 cents per mile

Meals Allowance:	In-State	Out-of State
Morning Meal (12:01AM-10:00AM)	\$5.00	\$7.00
Midday Meal: (10:01AM-3:00PM)	\$6.00	\$11.00
Evening Meal: (3:01PM-12:00AM)	\$12.00	\$18.00
	\$23.00	\$36.00

SPECIAL CONDITIONS

Subgrant 07-W03-90064 Domestic Violence Unit

Billings City

In order to claim reimbursement for a meal, you must be in a travel status for more than 3 continuous hours within one of the time ranges. To receive the morning meal you must leave before 7:00AM and to receive the evening meal you must return after 6:01PM.

The lodging rate for Montana and federal lodging rate for out-of state lodging is available through the Internet at the following location:

<http://doa.mt.gov/DOAtravel/travelmain.asp>

Grant funds may not be used to pay for out-of state travel without prior approval from MBCC.

Reimbursement for lodging without a receipt will be \$12.00

Allowable expenses include emergency working supplies taxi fares, and business telephone calls. Paid receipts must support individual expense items of \$25.00 or more.

8. The applicant assures that any information furnished by any person and identifiable to any specific private person shall not be used for any purpose other than the purpose for which it was obtained. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding.
9. No more than 5% of the total project budget is to be used for public awareness or public education type expenditures.
10. Quarterly progress and financial reports are required for calendar quarters ending: September 30, December 31, March 31, and June 30. These reports are to be received by the Montana Board of Crime Control within 20 days following the end of the calendar quarter. Subgrantees who fail to submit reports by the due date will be subject to the following:

FIRST LATE REPORT: Subgrantee will be notified to cease all expenditures of grant funds until the reports are submitted.

SECOND LATE REPORT: Cancel the grant. Project must appear before the Subgrant Review Committee and petition to get the grant reinstated.
11. Subgrantee may be required to appear before a subcommittee, at the Board's discretion, to explain their progress towards successful implementation of the grant. Should grant problems or deficiencies be detected, the subcommittee is authorized to initiate corrective actions.
12. Subgrantee will assist victims in seeking available crime victim compensation benefits. Such assistance may be achieved by identifying and notifying potential recipients of the compensation program and assisting them with application forms and procedures. Program must demonstrate that it will coordinate its activities with the State Victims Compensation Program.
13. Any funds not properly obligated during the grant period shall lapse and revert to the Montana Board of Crime Control.
14. Funding for this project is designated for improving the justice system's response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that priority for services

SPECIAL CONDITIONS

Subgrant 07-W03-90064 Domestic Violence Unit

Billings City

from your program be given to women who are victims of gender-motivated crime, especially domestic violence, dating violence, sexual assault, and stalking.

15. Funding for this project is designated for improving services and the criminal justice response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that your Tribal Government certify compliance with the following two conditions by signing these special conditions.

That its laws, policies and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that an abused person bear the costs associated with filing criminal charges against a domestic violence offender or the costs associated with the issuance or service of a warrant, protection order, or witness subpoena.

That the Indian tribal government, unit of local government, or another governmental entity incur full out-of-pocket costs of forensic medical examinations for victims of sexual assault. "Full out-of-pocket costs means any expense that may be charged to a victim in connection with a forensic medical examination for the purpose of gathering evidence of a sexual assault (e.g., the full cost of the examination, an insurance deductible, or a fee established by the facility conducting the examination).

16. Education, prevention and awareness campaigns are not allowable under the STOP Violence Against Women Grant Program.
17. The grantee shall submit one copy of all proposed publications resulting from this agreement to the Montana Board of Crime Control. Any publications (written, visual, or sound), printed with these funds shall contain the following statement.

This project was supported by Grant No. _____ awarded by the Montana Board of Crime Control (MBCC) through the Office of Justice Programs, US Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of Justice.

All media, press releases and public presentations must acknowledge funding through Montana Board of Crime Control.

18. All information furnished to VAWA subgrantee agencies by victims of gender specific violence, including identifying information, is confidential, with the following exceptions:
- a) in situations where a trained professional assesses that a victim is in danger of harming herself or others (i.e., suicide or homicide),
 - b) the victim informs the subgrantee that she is violating a court order or that there is a warrant out for her arrest, and
 - c) in the event that the victim provides written consent for a release of information.

Programs are required by state statute MCA 26-1-812 Advocate Privilege, to maintain confidentiality of victims, privilege belongs to the victim and may not be waived even if the victim is unreachable. This privilege terminates upon death of a victim.

SPECIAL CONDITIONS

Subgrant 07-W03-90064 Domestic Violence Unit

Billings City

19. The subgrantee agrees to comply with the National Environmental Policy Act (NEPA) and other related federal environmental impact requirements in the use of these grant funds either directly or indirectly by sub-contractors.
20. Subgrantee must submit quarterly statistical reports via the PDQ database in electronic format. In addition, subgrantee must submit quarterly narrative reports via mail. Reports are due within 20 days following the end of the calendar quarter. Failure to do so will require the subgrantee to cease all expenditures and appear before the Subgrant Review Committee to petition for reinstatement.
21. The recipient agrees to provide services to victims of federal and tribal crimes on the same basis as victims of state and local crimes.
22. Recipient understands and agrees that it CANNOT use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval from MBCC.

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above special conditions.

Don Truesing

Mayor

Date



U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND
OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

**2. DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS
(DIRECT RECIPIENT)**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510—

- A. The applicant certifies that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

**3. DRUG-FREE WORKPLACE
(GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620—

- A. The applicant certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an on-going drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

CERTIFICATION FORM

Recipient Name and Address: City of Billings P.O. Box 1178 Billings, MT 59103
Grant Title: Domestic Violence Unit Grant Number: 07-W03-90064 Award Amount: \$52,000.00
Contact Person Name and Title: Melanie Pfeifer, Deputy City Attorney Phone Number: (406) 657-8487

Federal regulations require recipients of financial assistance from the Office of Justice Programs (OJP), its component agencies, and the Office of Community Oriented Policing Services (COPS) to prepare, maintain on file, submit to OJP for review, and implement an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R §§ 42.301-308. The regulations exempt some recipients from all of the EEOP requirements. Other recipients, according to the regulations, must prepare, maintain on file and implement an EEOP, but they do not need to submit the EEOP to OJP for review. Recipients that claim a complete exemption from the EEOP requirement must complete Section A below. Recipients that claim the limited exemption from the submission requirement, must complete Section B below. A recipient should complete either Section A or Section B, not both. If a recipient receives multiple OJP or COPS grants, please complete a form for each grant, ensuring that any EEOP recipient certifies as completed and on file (if applicable) has been prepared within two years of the latest grant. Please send the completed form(s) to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, D.C. 20531. For assistance in completing this form, please call (202)307-0690 or TTY (202) 307-2027.

Section A- Declaration Claiming Complete Exemption from the EEOP Requirement. Please check all the boxes that apply.

- | | |
|--|---|
| <input type="checkbox"/> Recipient has less than 50 employees, | <input type="checkbox"/> Recipient is an Indian tribe, |
| <input type="checkbox"/> Recipient is a non-profit organization, | <input type="checkbox"/> Recipient is an educational institution, or |
| <input type="checkbox"/> Recipient is a medical institution, | <input type="checkbox"/> Recipient is receiving an award less than \$25,000 |

I, _____ [responsible official], certify that _____ [recipient] is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R §42.302. I further certify that _____ [recipient] will comply with applicable Federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Print or type Name and Title	Signature	Date
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Section B- Declaration Claiming Exemption from the EEOP Submission Requirement and Certifying That an EEOP Is on File for Review.

If a recipient agency has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to OJP for review as long as it certifies the following (42 C.F.R. § 42.305):

I, _____ [responsible official], certify that the _____ [recipient], which has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR §42.301, *et seq.*, subpart E. I further certify that the EEOP has been formulated and signed into effect within the past two years by the proper authority and that it is available for review. The EEOP is on file in the office of: _____ [organization], at _____ [address], for review by the public and employees or for review or audit by officials of the relevant state planning agency or the Office for Civil Rights, Office of Justice Programs, U. S. Department of Justice, as required by relevant laws and regulations.

Print or type Name and Title	Signature	Date
------------------------------	-----------	------

Complete top and either Section A or B.

Section 2. Amended Project Budget
 Subgrant Application for Montana Board of Crime Control

A. Personnel	MBCC/Fed.	Local Match	TOTAL
Designated Prosecutor (salary)	\$52,000.00	\$15,116.80	\$67,116.80
<i>Employee Fringe Benefits</i>		\$19,405.37	\$19,405.37
TOTAL	\$52,000.00	\$34,522.17	\$86,522.17
B. Contracted Services	MBCC/Fed.	Local Match	TOTAL
	\$		
TOTAL	\$		
C. Travel and Per Diem	MBCC/Fed.	Local Match	TOTAL
Training		\$750.00	\$750.00
TOTAL	\$	\$750.00	\$750.00
D. Equipment	MBCC/Fed.	Local Match	TOTAL
	\$		
TOTAL	\$		
E. Operating Expenses	MBCC/Fed.	Local Match	TOTAL
Office Rent & Parking	\$	\$4,940.00	\$4,940.00
Computer Maintenance & Office Supplies		\$1448.00	\$1448.00
LEXIS Computer Legal Research		\$ 637.00	\$637.00
Phone		\$ 753.00	\$ 753.00
TOTAL	\$	\$7,778.00	\$7,778.00
Total Project Budget -- Combined totals for all columns	\$52,000.00	\$43,050.17	\$95,050.17
MBCC Share of Project Budget _____ %	54.7 %	45.3 %	100 %

COPY



STATE OF MONTANA
BOARD OF CRIME CONTROL

PO Box 201408 - 3075 N Montana Ave - Helena MT 59614-0088

Phone: (406) 444-3604 Fax: (406) 444-4722

ORIGINAL
PLEASE RETURN

GRANT AWARD

Subgrant: 07-W03-90065 City Attorney Victim Witness Program

Grantee: Billings City FEIN: 816001237
PO Box 1178 Duration: 07/01/2007 through 06/30/2008
Billings, MT 59103 Proj. Dir: Karen Benner

Award Date:	07/01/2007	Personnel:	\$67,473.00
Federal Amount Awarded:	\$38,000.00	Contract Services:	\$0.00
State Amount Awarded:	\$0.00	Travel:	\$0.00
Guaranteed Local Matching:	\$29,473.00	Equipment:	\$0.00
		Operating:	\$0.00
Total:	\$67,473.00	Total:	\$67,473.00
Source of Federal Funds: 16.588 - Violence Against Women Formula Grant			

Special Conditions
Please see attached Special Conditions

I am pleased to inform you that the Board of Crime Control has approved your application for Federal financial assistance. This grant is subject to the special conditions listed above, general conditions attached hereto, and must be implemented and administered along guidelines already established by your agency. This grant shall become effective, as of the date of award, when the grantee signs and returns a copy of this grant award to the Board of Crime Control.

Funds allocated to this project, both awarded and matching, must be obligated prior to: 06/30/2008



Roland Mena Executive Director Date
Board of Crime Control 7-10-07

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above described grant on the terms and conditions set forth above or incorporated by reference therein.

Ron Tussing Mayor Date

SPECIAL CONDITIONS

Subgrant 07-W03-90065 City Attorney Victim Witness Program Billings City

1. If your agency receives \$500,000.00 or more in federal assistance from all sources during the fiscal year, you are required to have an audit conducted in accordance with federal circular A-133.

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8. No more than 5% of the total project budget is to be used for public awareness or public education type expenditures.
9. Quarterly progress and financial reports are required for calendar quarters ending: September 30, December 31, March 31, and June 30. These reports are to be received by the Montana Board of

SPECIAL CONDITIONS

Subgrant 07-W03-90065 City Attorney Victim Witness Program Billings City

Crime Control within 20 days following the end of the calendar quarter. Subgrantees who fail to submit reports by the due date will be subject to the following:

FIRST LATE REPORT: Subgrantee will be notified to cease all expenditures of grant funds until the reports are submitted.

SECOND LATE REPORT: Cancel the grant. Project must appear before the Subgrant Review Committee and petition to get the grant reinstated.

10. Subgrantee may be required to appear before a subcommittee, at the Board's discretion, to explain their progress towards successful implementation of the grant. Should grant problems or deficiencies be detected, the subcommittee is authorized to initiate corrective actions.
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12. Any funds not properly obligated during the grant period shall lapse and revert to the Montana Board of Crime Control.
13. Funding for this project is designated for improving the justice system's response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that priority for services from your program be given to women who are victims of gender-motivated crime, especially domestic violence, dating violence, sexual assault, and stalking.
14. Funding for this project is designated for improving services and the criminal justice response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that your Tribal Government certify compliance with the following two conditions by signing these special conditions.

That its laws, policies and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that an abused person bear the costs associated with filing criminal charges against a domestic violence offender or the costs associated with the issuance or service of a warrant, protection order, or witness subpoena.

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SPECIAL CONDITIONS

Subgrant 07-W03-90065 City Attorney Victim Witness Program Billings City

This project was supported by Grant No. _____ awarded by the Montana Board of Crime Control (MBCC) through the Office of Justice Programs, US Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of Justice.

All media, press releases and public presentations must acknowledge funding through Montana Board of Crime Control.

17. All information furnished to VAWA subgrantee agencies by victims of gender specific violence, including identifying information, is confidential, with the following exceptions:
- a) in situations where a trained professional assesses that a victim is in danger of harming herself or others (i.e., suicide or homicide),
 - b) the victim informs the subgrantee that she is violating a court order or that there is a warrant out for her arrest, and
 - c) in the event that the victim provides written consent for a release of information.

Programs are required by state statute MCA 26-1-812 Advocate Privilege, to maintain confidentiality of victims, privilege belongs to the victim and may not be waived even if the victim is unreachable. This privilege terminates upon death of a victim.

18. The subgrantee agrees to comply with the National Environmental Policy Act (NEPA) and other related federal environmental impact requirements in the use of these grant funds either directly or indirectly by sub-contractors.
19. Subgrantee must submit quarterly statistical reports via the PDQ database in electronic format. In addition, subgrantee must submit quarterly narrative reports via mail. Reports are due within 20 days following the end of the calendar quarter. Failure to do so will require the subgrantee to cease all expenditures and appear before the Subgrant Review Committee to petition for reinstatement.
20. The recipient agrees to provide services to victims of federal and tribal crimes on the same basis as victims of state and local crimes.
21. Recipient understands and agrees that it CANNOT use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval from MBCC.

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above special conditions.

Ron Tussing

Mayor

Date



U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510—

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an on-going drug-free awareness program to inform employees about—
- (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

CERTIFICATION FORM

Recipient Name and Address: City of Billings PO Box 1178 Billings, MT 59103

Grant Title: Victim Witness Program Grant Number: 07-W03-90065 Award Amount: \$38,000.00

Contact Person Name and Title: Karen Benner Program Director Phone Number: (406) 247-8668

Federal regulations require recipients of financial assistance from the Office of Justice Programs (OJP), its component agencies, and the Office of Community Oriented Policing Services (COPS) to prepare, maintain on file, submit to OJP for review, and implement an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R §§ 42.301-308. The regulations exempt some recipients from all of the EEOP requirements. Other recipients, according to the regulations, must prepare, maintain on file and implement an EEOP, but they do not need to submit the EEOP to OJP for review. Recipients that claim a complete exemption from the EEOP requirement must complete Section A below. Recipients that claim the limited exemption from the submission requirement, must complete Section B below. A recipient should complete either Section A or Section B, not both. If a recipient receives multiple OJP or COPS grants, please complete a form for each grant, ensuring that any EEOP recipient certifies as completed and on file (if applicable) has been prepared within two years of the latest grant. Please send the completed form(s) to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, D.C. 20531. For assistance in completing this form, please call (202)307-0690 or TTY (202) 307-2027.

Section A- Declaration Claiming Complete Exemption from the EEOP Requirement. Please check all the boxes that apply.

- Q Recipient has less than 50 employees,
- Q Recipient is a non-profit organization,
- Q Recipient is a medical institution,
- Q Recipient is an Indian tribe,
- Q Recipient is an educational institution, or
- Q Recipient is receiving an award less than \$25,000

I, _____ [responsible official], certify that _____ [recipient] is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R §42.302. I further certify that _____ [recipient] will comply with applicable Federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Print or type Name and Title _____ Signature _____ Date _____

Section B- Declaration Claiming Exemption from the EEOP Submission Requirement and Certifying That an EEOP Is on File for Review.

If a recipient agency has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to OJP for review as long as it certifies the following (42 C.F.R. § 42.305):

I, _____ [responsible official], certify that the _____ [recipient], which has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR §42.301, *et seq.*, subpart E. I further certify that the EEOP has been formulated and signed into effect within the past two years by the proper authority and that it is available for review. The EEOP is on file in the office of: _____ [organization], at _____ [address], for review by the public and employees or for review or audit by officials of the relevant state planning agency or the Office for Civil Rights, Office of Justice Programs, U. S. Department of Justice, as required by relevant laws and regulations.

Print or type Name and Title _____ Signature _____ Date _____

Complete top and either Section A or B.

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

K1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Approval of Right-of-Way Agreement, Warranty Deed, and Right-of-Way Easement for Parcel #9, a Portion of Tract A of Certificate of Survey No. 622 With Fronteer Real Estate Group, Co-Trustees Rick Rosekelly and Sue Marshon

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 #9 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 perpetual right-of-way easement, the right-of-way land acquisition, any appurtenant features, and the construction permit at a value of \$10,050.00. A perpetual easement for right-of-way purposes has the same value as a fee simple right-of-way acquisition. A combination of acquisition and easement were negotiated for this parcel because the property owner did not want the new property boundary to be too close to the existing mobile homes, as would have been the case in a solely land acquisition deal. A copy of the right-of-way agreement; warranty deed; right-of-way easement; 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 \$10,050.00. The cost of this acquisition and easement is equal to the sum of the appraised value of the perpetual right-of-way easement, the right-of-way land acquisition, 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, Warranty Deed, and Right-of-Way Easement for right-of-way and easement acquisition for Parcel #9, a Portion of Tract A of Certificate of Survey No. 622 with Fronteer Real Estate Group, Co-Trustees Rick Rosekelly and Sue Marshon, in the amount of \$10,050.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement, Right-of-Way Easement, and Warranty Deed (8 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

- October 2007 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

BACKGROUND

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

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

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement, Warranty Deed, and Right-of-Way Easement for right-of-way and easement acquisition for Parcel #9, a Portion of Tract A of Certificate of Survey No. 622 with Fronteer Real Estate Group, Co-Trustees Rick Rosekelly and Sue Marshon, in the amount of \$10,050.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement, Right-of-Way Easement, and Warranty Deed (8 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
9	Tract A, COS 622	22	1N	26E

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

FRONTEER REAL ESTATE GROUP, CO TRUSTEES, RICHARD
ROSEKELLY AND SUE MARSHON
1217 N FRONTAGE ROAD
BILLINGS, MT 59101
259-1650

- 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.)

4,304 square feet existing easement in fee	\$ 430.00
3,228 square feet by easement	\$6,456.00
Improvements (sidewalk, asphalt, sod)	\$2,365.00
- OTHER COMPENSATION:

2,152 square feet Temporary Construction Permit	\$ 430.00
Relocate on-premise sign out side the right-of-way	\$ 350.00
- TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$10,050.00.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$10,050.00, to be made payable to FRONTEER REAL ESTATE GROUP, CO TRUSTEES, RICHARD ROSEKELLY AND SUE MARSHON and mailed to 1217 N FRONTAGE ROAD, BILLINGS, MT 5910
- 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. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
- 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
- At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:
Reconfigure and repair sprinkler system, if any, affected by project.
Grantors understand and agree that upon completion of the construction of this item located upon the Grantors' land, they shall be considered the sole property of the Grantors, and the maintenance and repair of said property shall be the responsibility of the Grantors.

Initials R I E R

(Continued from Previous Page)

- 10. It is understood and agreed by and between the parties hereto that included in the amount payable under "Other Compensation" herein is payment in full to compensate the Grantor for the expense of performing the following work: Relocate the on-premise sign outside the right-of-way on or before August 1, 2007

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

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

Billings
re our

Richard Rosekelly 6-27-07
Signature: RICHARD ROSEKELLY (Date)

Signature: _____ (Date)

Signature: _____ (Date)

Tax ID No.

RECOMMENDED FOR APPROVAL:

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Ronald E. Olson 6-27-07
Ronald E. Olson, Olson Land Services (Date)

Mayor, City of Billings (Date)

Nicholas J. Barber 8/1/07
City of Billings, Public Works Department (Date)

ATTEST:

City Clerk (Date)

LER-009.200 Fronteer

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

RIGHT-OF-WAY EASEMENT

THIS INDENTURE, made and entered into this 12th day of July, 2007, by and between the following:

FRONTEER REAL ESTATE GROUP, CO TRUSTEES, RICK ROSEKELLY AND
SUE MARSHON
1217 N FRONTAGE ROAD
BILLINGS, MT 59101

hereinafter referred to as **GRANTOR** and

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

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

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

Parcel No. 9 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 A of Certificate of Survey Number 622, on file under Document No. 514371, 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 3,228 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 2,152 sq. ft..

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

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

Project No. : W.O. 04-33

Parcel No. 9

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

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

IN WITNESS WHEREOF

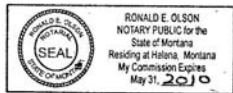
Richard E. Roskelley

State of Montana)

County of Yellowstone)

This instrument was acknowledged before me on July 12, 2007 (date)

by Richard E. Roskelley, AS Trustee for Frontier Real Estate Group, Co Trustees, Rich Roskelley and Sue Marshall (names)



Ronald E. Olson
Notary Signature Line
Ronald E. Olson
Notary Printed Name
Notary Public for State of Montana
Residing at: Helena
My Commission Expires: May 31, 2010

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

CITY OF BILLINGS,
a Montana Municipal Corporation

By: _____
MAYOR

ATTEST:

City Clerk

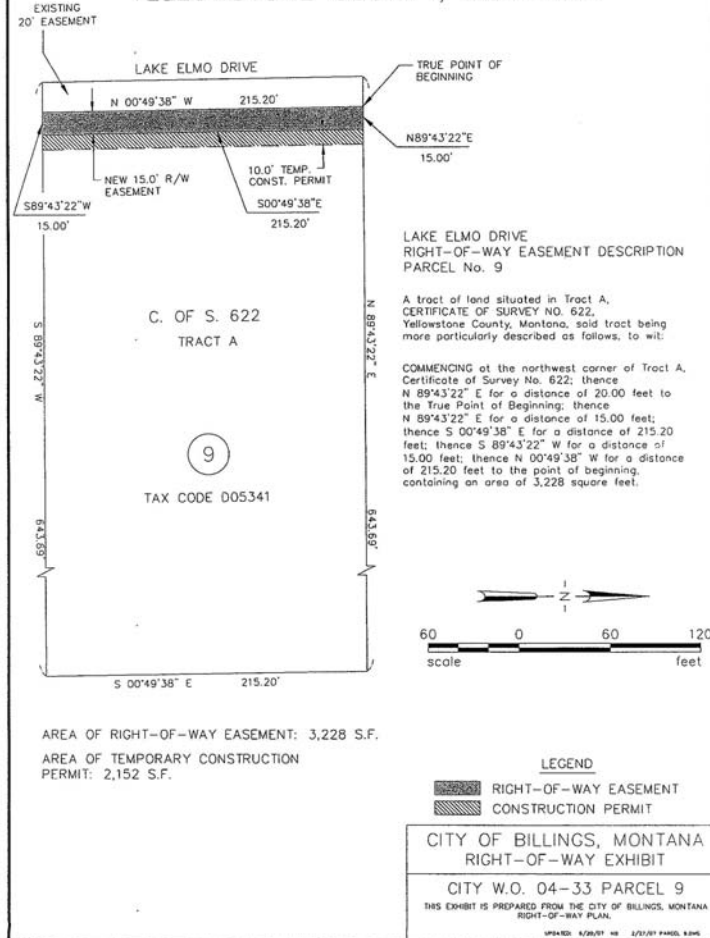
STATE OF MONTANA)
:SS
COUNTY OF _____)

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

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

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

EXHIBIT A
 RIGHT-OF-WAY EASEMENT
 AND TEMPORARY CONSTRUCTION PERMIT
 SITUATED IN TRACT A,
 CERTIFICATE OF SURVEY NO. 622,
 YELLOWSTONE COUNTY; MONTANA



AREA OF RIGHT-OF-WAY EASEMENT: 3,228 S.F.
 AREA OF TEMPORARY CONSTRUCTION PERMIT: 2,152 S.F.

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

Project No. W.O. 04-33 Parcel No. 9 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 12th day of July, 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:

FRONTEER REAL ESTATE GROUP,
CO TRUSTEES, RICK ROSEKELLY AND SUE MARSHON
1217 N FRONTAGE ROAD
BILLINGS, MT 59101

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. 9 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 A of Certificate of Survey Number 622, on file under Document No. 514371, 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 4,304 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. 9

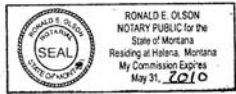
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Richard E Roskelley

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on July 12, 2007
(date)

by Richard E Roskelley, AS trustee for the Trustee
Real Estate Group, Co Trustees, Rich Roskelley and Sue Mmsh
(names)



Ronald E Olson
Notary Signature Line
Ronald E Olson
Notary Printed Name
Notary Public for State of Montana
Residing at: Helena
My Commission Expires: May 31, 2010

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.

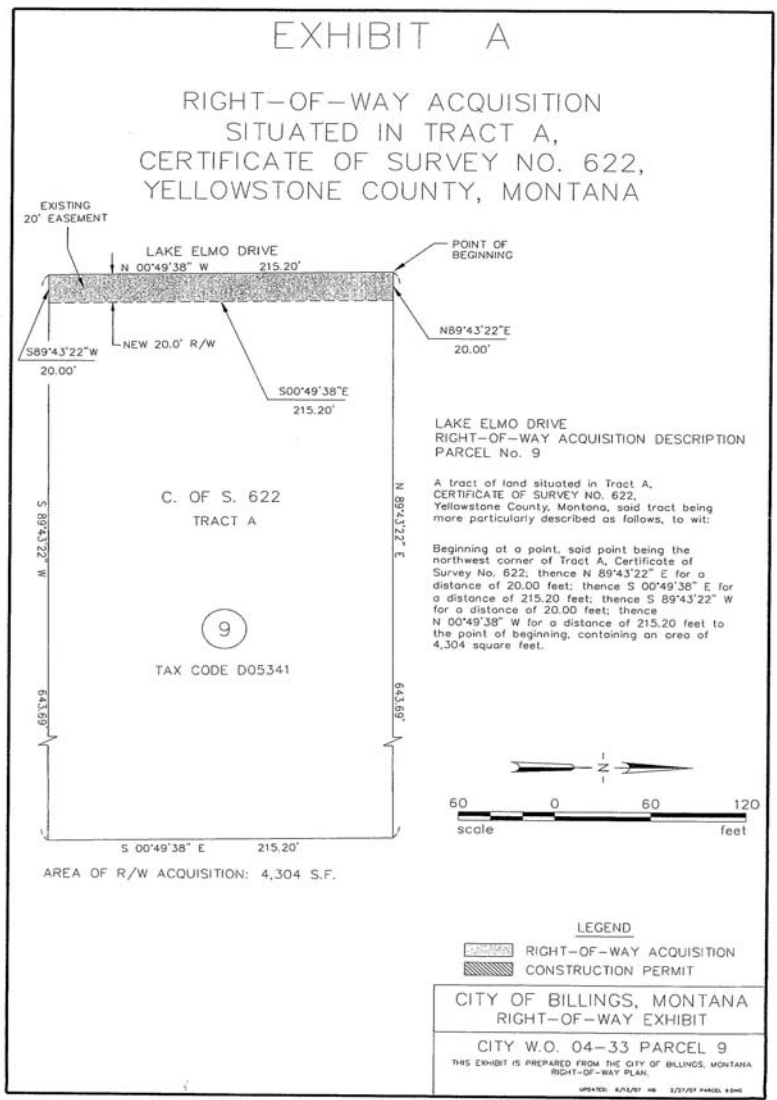
Mayor, City of Billings Date

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 _____



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 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 Right-of-Way Easement for Parcel #26, a Portion of Lot 20, Amended Plat of Lot 11, Kuhlman Subdivision With Ludmilla M. Tallmadge

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 #26 of the parcels to be acquired (there are some numbered parcels within the project limits from which right-of-way does not need to be acquired). The appraisal for this easement made a conclusion of value for the easement, any appurtenant features, and the construction permit at a value of \$15,600.00. A perpetual easement for right-of-way purposes has the same value as a fee simple acquisition. An easement was negotiated for this parcel because the property owner did not want the new property boundary to be within approximately 12 feet from their existing mobile home. A copy of the right-of-way agreement; easement; appraisal; tax documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$15,600.00. The cost of this easement is equal to the sum of the appraised value of the easement, any appurtenant features, and the construction permit. Funding is available for this easement from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #26, a Portion of Lot 20, Amended Plat of Lot 11, Kuhlman Subdivision With Ludmilla M. Tallmadge in the amount of \$15,600.00, and authorize the Mayor to

execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- October 2007 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

BACKGROUND

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

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

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #26, a Portion of Lot 20, Amended Plat of Lot 11, Kuhlman Subdivision with Ludmilla M. Tallmadge in the amount of \$15,600.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement and Right-of-Way Easement (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
26	Lot 20, Amended Plat of Lot 11, Kuhlman Subdivision	22	1N	26E

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

LUDMILLA M. TALLMADGE
408 KUHLMAN DRIVE
BILLINGS, MT 59105
545-3611

- 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.)

1,981 square feet by easement	\$8,419.00
Improvements (Sod, trees, fence)	\$6,851.00
- OTHER COMPENSATION:

683 square feet Temporary Construction Permit	\$ 290.00
---	-----------
- TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$15,600.00.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$15,600.00, to be made payable to LUDMILLA M. TALLMADGE and mailed to 408 KUHLMAN 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. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
- 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 Grantor and at the time of street construction, permission is hereby granted the City to enter upon the Grantor's land, where necessary, at the location and for the purpose described as:

Reconfigure and repair sprinkler system, if any, affected by project. Relocate mail box if applicable.

Grantor understands and agrees that upon completion of the construction of this item located upon the Grantor's land, they shall be considered the sole property of the Grantor, and the maintenance and repair of said property shall be the responsibility of the Grantor.

(Continued from Previous Page)

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

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

X Ludmilla M. Tallmadge 7/12/07 61
Signature: LUDMILLA M. TALLMADGE (Date)

Signature: _____ (Date) _____

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

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

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 7/12/07
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

Stephanie Z. Bailey 8/1/07
City of Billings, Public Works Department (Date)

ATTEST:

City Clerk (Date)

LER-026.200 Tallmadge

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

RIGHT-OF-WAY EASEMENT

THIS INDENTURE, made and entered into this 12th day of July, 2007, by and between the following:

LUDMILLA M. TALLMADGE
408 KUHLMAN DRIVE
BILLINGS, MT 59105

hereinafter referred to as **GRANTOR** and

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

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

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

Parcel No. 26 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 20, Amended Plat of Lot 11, Kuhlman Subdivision, on file under Document No. 568349, 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 1,981 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 683 sq. ft..

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

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

Project No. : W.O. 04-33

Parcel No. 26

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

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

IN WITNESS WHEREOF

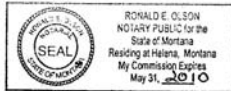
Ludmilla M Tallmadge
LUDMILLA M. TALLMADGE

State of Montana)

County of Yellowstone)

This instrument was acknowledged before me on July 12, 2007
(date)

by LUDMILLA M. TALLMADGE
(names)



Ronald E Olson
Notary Signature Line

Ronald E Olson
Notary Printed Name

Notary Public for State of Montana
Residing at: Helena
My Commission Expires: May 31, 2010

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

CITY OF BILLINGS,
a Montana Municipal Corporation

By: _____
MAYOR

ATTEST:

City Clerk

STATE OF MONTANA)

COUNTY OF _____)
:ss

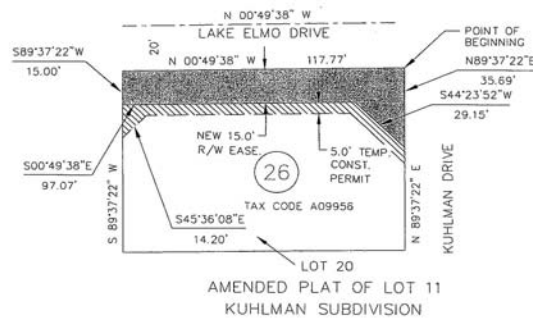
On this _____ day of _____, 2007, before me, _____, a Notary Public in and for the State of Montana, personally appeared known to me to be _____ and acknowledged to me that they executed the foregoing instrument.

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

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

EXHIBIT A
RIGHT-OF-WAY EASEMENT
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 20, AMENDED PLAT
OF LOT 11, KUHLMAN SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA

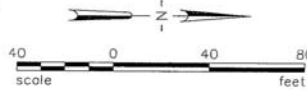
LAKE ELMO DRIVE
 RIGHT-OF-WAY EASEMENT DESCRIPTION
 PARCEL No. 26



A tract of land situated in Lot 20, of Amended Plat of Lot 11, KUHLMAN SUBDIVISION, Yellowstone County, Montana, said tract being more particularly described as follows, to wit:

Beginning at a point, said point of beginning being the northwest corner of Lot 20, Amended Plat of Lot 11, KUHLMAN SUBDIVISION; thence N 89°37'22" E for a distance of 35.69 feet; thence S 44°23'52" W for a distance of 29.15 feet; thence S 00°49'38" E for a distance of 97.07 feet; thence S 89°37'22" W for a distance of 15.00 feet; thence N 00°49'38" W for a distance of 117.77 feet to the point of beginning, containing 1,981 square feet.

AREA OF RIGHT-OF-WAY EASEMENT: 1,981 S.F.
 AREA OF TEMPORARY CONSTRUCTION PERMIT: 683 S.F.



LEGEND

	RIGHT-OF-WAY EASEMENT
	CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
 RIGHT-OF-WAY EXHIBIT

PROJECT No. 96-09 PARCEL 26
 THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA
 RIGHT-OF-WAY PLAN.
UPDATED: 6/15/07 HB PARCEL 26-241

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 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 #50, a Portion of Lot 22, Block 1 of Broadmoor Subdivision With Mabel M. Dolan

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 #50 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 \$6,750.00. The negotiation history for this parcel notes that Ms. Dolan felt her property was worth more than the appraisal value based on her conversations with neighbors (who received higher valuations per square foot based on higher zoning classification). The City's Land Acquisition Policy allows staff or consultants the latitude to offer up to five percent (5%) above the appraisal amount for property acquisitions. This higher amount, \$7,087.50, was acceptable to the property owner. 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 \$7,087.50. The cost of this acquisition is equal to five percent (5%) above 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 #50, a Portion of Lot 22, Block 1 of Broadmoor Subdivision with Mabel M. Dolan in the amount of \$7,087.50, 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

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Future Items

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- 2008-2009 – Design and construction of street improvements (in approved CIP)

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<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 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition (this memo)
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition (this memo)
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #50, a Portion of Lot 22, Block 1 of Broadmoor Subdivision with Mabel M. Dolan in the amount of \$7,087.50, and authorize the Mayor to execute these documents.

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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
50	Lot 22, Block 1 of Broadmoor Subdivision	22	1N	26E

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

MABEL M. DOLAN
402 JUDITH LANE
BILLINGS, MT. 59105
259-5711

- 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.)

1,062 square feet by deed	\$4,567.00
Improvements (Sod, trees, fence)	\$2,028.00
- OTHER COMPENSATION:

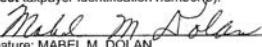
339 square feet Temporary Construction Permit	\$ 146.00
Administrative Settlement	\$ 337.50
- TOTAL COMPENSATION (includes all damages to the remainder): \$7,087.50.
- IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$7,087.50, to be made payable to MABEL M. DOLAN and mailed to 402 JUDITH LANE, 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. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
- 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 Grantor and at the time of street construction, permission is hereby granted the City to enter upon the Grantor's land, where necessary, at the location and for the purpose described as:
Reconfigure and repair sprinkler system, if any, affected by project.
Grantor understands and agrees that upon completion of the construction of this item located upon the Grantor's land, they shall be considered the sole property of the Grantor, and the maintenance and repair of said property shall be the responsibility of the Grantor.

Initials MD

(Continued from Previous Page)

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

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

 6/27/07
 Signature: MABEL M. DOLAN (Date) _____

Signature: _____ (Date) _____

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

RECOMMENDED FOR APPROVAL:

 6/27/07
 Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

_____ (Date)
 Mayor, City of Billings

ATTEST:

 8/1/07
 City of Billings, Public Works Department (Date)

_____ (Date)
 City Clerk

LER-050.200 Dolan

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

Project No. W.O. 04-33 Parcel No. 50 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 27th day of June, 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:

MABEL M. DOLAN
402 JUDITH LANE
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. 50 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 22, Block 1 of Broadmoor Subdivision, on file under Document No. 411808, 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 1,062 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 339 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 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 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. 50

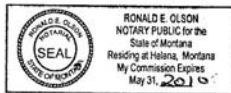
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Mabel M. Dolan

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on June 27 2007
(date)

by Mabel M. Dolan
(names)



Ronald E. Olson
Notary Signature Line

Ronald E. Olson
Notary Printed Name

Notary Public for State of Montana

Residing at: Helena

My Commission Expires: May 31 2010

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

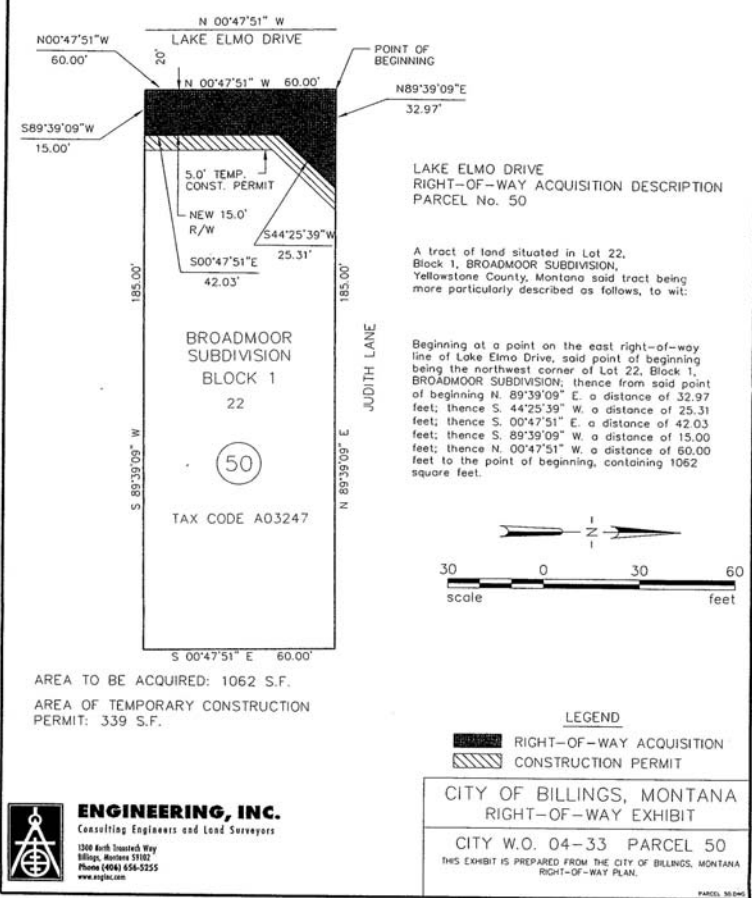
County of Yellowstone)

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 22,
BLOCK 1,
BROADMOOR SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 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 #53, a Portion of Lot 23, Block 2 of Broadmoor Subdivision With Rita J. Reinert

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 #53 of the parcels to be acquired (there are some numbered parcels within the project limits from which right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$7,550.00. 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 \$7,550.00. 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 #53, a Portion of Lot 23, Block 2 of Broadmoor Subdivision with Rita J. Reinert in the amount of \$7,550.00, 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

- October 2007 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

BACKGROUND

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

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

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #53, a Portion of Lot 23, Block 2 of Broadmoor Subdivision with Rita J. Reinert in the amount of \$7,550.00, 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
53	Lot 23, Block 2 of Broadmoor Subdivision	22	1N	26E

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

RITA J. REINERT
1335 LAKE ELMO DRIVE
BILLINGS, MT. 59105

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.)

900 square feet by deed	\$5,850.00
Improvements (Asphalt, sod)	\$1,496.00
3. OTHER COMPENSATION:

300 square feet Temporary Construction Permit	\$ 195.00
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4. TOTAL COMPENSATION (includes all damages to the remainder): \$7,550.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$7,550.00, to be made payable to RITA J. REINERT and mailed to 1335 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 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 DATES SHOWN:

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 that we have provided our correct taxpayer identification number(s).

X Rita J. Reinert 7-26-07
Signature: RITA J. REINERT (Date)

Signature: _____ (Date) _____ Tax ID No.

Signature: _____ (Date) _____ Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 7/26/07
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

Michelle T. Barber 8/1/07
City of Billings, Public Works Department (Date)

ATTEST:

City Clerk (Date)

LER-053.200 Reinert

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

Project No. W.O. 04-33 Parcel No. 53 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 26th day of July, 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:

RITA J. REINERT
1335 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. 53 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 23, Block 2 of Broadmoor Subdivision, in the City of Billings, on file under Document No. 411808, 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 900 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 300 sq. ft..

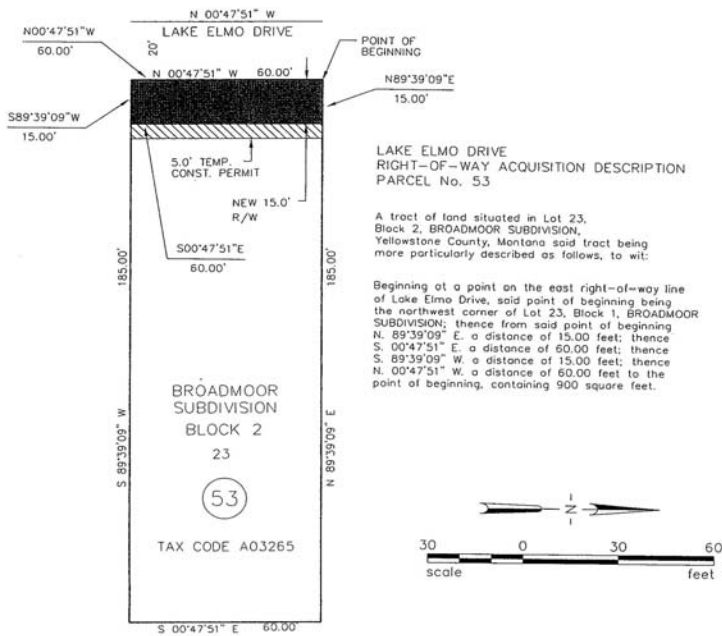
PURPOSE OF ACQUISITION is to create a right-of way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

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.

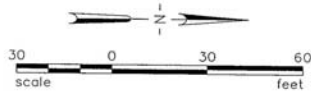
EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 23,
BLOCK 2,
BROADMOOR SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



LAKE ELMO DRIVE
RIGHT-OF-WAY ACQUISITION DESCRIPTION
PARCEL No. 53

A tract of land situated in Lot 23, Block 2, BROADMOOR SUBDIVISION, Yellowstone County, Montana said tract being more particularly described as follows, to wit:

Beginning at a point on the east right-of-way line of Lake Elmo Drive, said point of beginning being the northwest corner of Lot 23, Block 1, BROADMOOR SUBDIVISION; thence from said point of beginning N. 89°39'09" E. a distance of 15.00 feet; thence N. 00°47'51" E. a distance of 60.00 feet; thence S. 89°39'09" W. a distance of 15.00 feet; thence N. 00°47'51" W. a distance of 60.00 feet to the point of beginning, containing 900 square feet.



AREA TO BE ACQUIRED: 900 S.F.
 AREA OF TEMPORARY CONSTRUCTION PERMIT: 300 S.F.

LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 53
 THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA RIGHT-OF-WAY PLAN.



ENGINEERING, INC.
 Consulting Engineers and Land Surveyors

1302 Bank Tower Way
 Billings, Montana 59102
 Phone (406) 656-5255
 www.enginc.com

PARCEL 53.DWG

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 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 #78, a Portion of Lot 18, Block 1 of Arrowhead Subdivision With Todd and Julie Grebe

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 #78 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. The negotiation history for this parcel notes that the property owners felt their property was worth more than the appraisal value based on loss of trees shading the west side of the house. The City's Land Acquisition Policy allows staff or consultants the latitude to offer up to five percent (5%) above the appraisal amount for property acquisitions. This higher amount, \$4,042.50, was acceptable to the property owner. 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 \$4,042.50. The cost of this acquisition is equal to five percent (5%) above 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 #78, a Portion of Lot 18, Block 1 of Arrowhead Subdivision with Todd and Julie Grebe in the amount of \$4,042.50, 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

- October 2007 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

BACKGROUND

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

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

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #78, a Portion of Lot 18, Block 1 of Arrowhead Subdivision with Todd and Julie Grebe in the amount of \$4,042.50, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Project No. W.O. 04-33 Parcel No. 78 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 12th day of July, 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:

TODD GREBE AND JULIE GREBE
4240 BIG HORN VALLEY ROAD
CUSTER, MT. 59024

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. 78 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 18, Block 1 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 414 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. 78

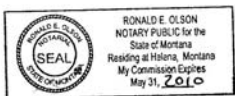
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

X Todd Grebe)
Todd Grebe)
X Julie Grebe)
Julie Grebe)

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on July 12, 2007
(date)

by Todd Grebe, Todd Grebe, same person and
Julie A Grebe, Julie Grebe, (names), same person



Ronald E Olson
Notary Signature Line
Ronald E Olson
Notary Printed Name

Notary Public for State of Montana
Residing at: Helena
My Commission Expires: MAY 31, 2010

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

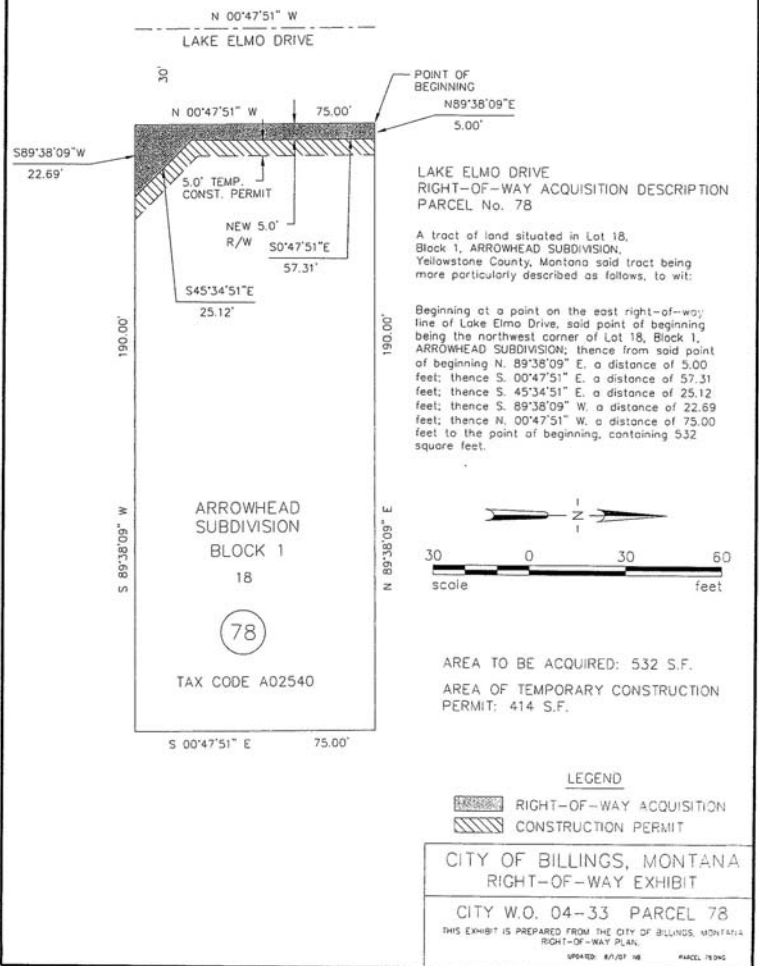
ATTEST: _____
City Clerk

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 18,
 BLOCK 1,
 ARROWHEAD SUBDIVISION,
 YELLOWSTONE COUNTY, MONTANA



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

Table with 5 columns: Parcel No., Parcel Description, Section, Township, Range. Row 1: 78, Lot 18, Block 1 of Arrowhead Subdivision, 22, 1N, 26E

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

TODD GREBE AND JULIE GREBE
4240 BIG HORN VALLEY ROAD
CUSTER, MT. 59024
679--4500(c); 856-4100(h)

- 1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto...
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)
3. OTHER COMPENSATION:
4. TOTAL COMPENSATION ROUNDED PER THE APPRAISAL (includes all damages to the remainder):
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit...
8. This agreement, upon execution by an agent of the City and presentation to the Grantors...
9. It is understood and agreed that the Temporary Construction Permit area will be leveled...
10. 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...

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DAT

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

Todd Grebe
Signature: TODD GREBE (Date)

Julie Grebe
Signature: JULIE GREBE (Date)

Signature: (Date)

RECOMMENDED FOR APPROVAL:
Ronald E. Olson 7-12-07
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

Michelle A. Pauling 8/1/07
City of Billings, Public Works Department (Date)

ATTEST:

City Clerk (Date)

LER-078.200 Grebe

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, Approval of Right-of-Way Agreement and Perpetual Right-of-Way Easement with Robert B. Johnson and Michele R. Johnson

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The preferred alternative identified in the Preliminary Engineering Report (PER) for the above-named project recommended that the new 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 a force main across the Yellowstone River then to the existing sewer in the South Frontage Road of I-90. Due to utility congestion and/or adverse slopes in most places along the Blue Creek Road (MDT) right-of-way, it is necessary to obtain easements from property owners along the proposed sewer route. There are a total of thirteen (13) easements necessary from eleven (11) different property owners; three easements were approved by Council in 2006, one easement was approved by Council on March 26, 2007, and another easement was approved by Council on May 29, 2007. Council also approved a resolution authorizing condemnation for all of the other necessary easements, including the easement for this property, on March 26, 2007. In negotiations with the Johnsons, staff committed to bringing the *Agreement to Convey Perpetual Easement and Right-of-Way* and the *Perpetual Easement and Right-of-Way* prepared by their attorney for Council consideration (unedited as Attachments A and B, respectively, to this memo). However, Legal and Public Works staff recommend several text changes (indicated by underlines and strikethroughs) to the documents are shown in the Attachments C and D, to this memo. Staff recommends approval of the documents with these text changes made. The total cost of this easement is \$3,517.50. This cost represents the appraised value of the easement (\$3,350.00) plus 5% of the appraisal amount (\$167.50). The City’s Land Acquisition Policy allows staff or consultants the latitude to offer up to five percent (5%) above the appraisal amount for property acquisitions. A copy of the right-of-way agreements, easements, appraisal, review appraisal, correspondence, and negotiation history for the Johnson property is on file with the City Clerk.

FINANCIAL IMPACT: Funding for this easement is available from project funds. The budgeted amount for this entire project (CIP# PWB-1), including engineering, right-of-way acquisition, and construction is \$600,000 in FY 2005 and \$4,335,350 in FY 2007.

RECOMMENDATION

Staff recommends that Council approve the *Agreement to Convey Perpetual Easement and Right-of-Way* and the *Perpetual Easement and Right-of-Way* with Robert B. Johnson and Michele R. Johnson, with the text changes recommended by Staff (as found in Attachments C and D respectively), in the amount of \$3,517.50, and authorize the Mayor to execute these documents.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Agreement to Convey Perpetual Easement and Right-of-Way (3 pages)(unedited as presented by the Johnsons)
- B. Perpetual Easement and Right-of-Way (5 pages)(unedited as presented by the Johnsons)
- C. Agreement to Convey Perpetual Easement and Right-of-Way, version 080607(4 pages)(includes changes made by Staff)
- D. Perpetual Easement and Right-of-Way, version 080607 (8 pages) (includes changes made by Staff)

INTRODUCTION

The Preliminary Engineering Report (PER) for this project recommended that the new sewer follow a route generally along Blue Creek Road as the preferred alternative. The preferred alternative allowed the southerly portion of the sewer to 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 a force main across the Yellowstone River to the existing gravity sewer infrastructure in the South Frontage Road.

The City has been negotiating for the easements necessary for construction of the sewer main for over a year. The perpetual and temporary construction easements were identified on the design plans, and appraisals were obtained for the necessary areas. The City's hired Right-of-Way Negotiator was unable to complete the negotiations for this easement.

PROCEDURAL HISTORY

Completed Items

- February 28, 2005 – Services Contract awarded to Morrison-Maierle, Inc.
- October 24, 2005 – Council authorized submittal of a State Revolving Fund (SRF) backed loan application
- April 2006 – Appraisals completed for the necessary easements
- May 2006 – Easement negotiations began
- May 2006 – Preliminary Engineering Report (PER) accepted by SRF
- June 26, 2006 – Council approved property purchase on Blue Creek Road
- July 25, 2006 – 85% Plans and specs submitted to the City and SRF for approval
- October 23, 2006 – Council approved four (4) easements for this project
- March 2, 2007 – Review appraisals completed on the outstanding parcels
- March 26, 2007 – Council approved one easement (Buchanan)
- March 26, 2007 – Council approved a resolution authorizing condemnation of the properties for which easements have not been obtained
- May 29, 2007 – Council approved one easement (Atchison, Inc.)

Future Items

- September 2007 – “Last and Best Offer” letters to be sent to the owners of properties for which easements have not been obtained as an initial step in the process of obtaining the easements through eminent domain
- Fall 2007 – Final plans approved by the City and SRF
- Fall 2007 – Necessary easements or “right of entry” obtained
- Fall 2007 – Advertising for bids and bid opening
- Fall/Winter 2007 – Construction contract award/SRF concurrence
- Winter 2007 – Construction begins
- Fall 2008 – Construction complete

BACKGROUND

The overall purpose of this project is to replace the Briarwood WWTF with a sanitary sewer main that connects to existing trunk sewer in the South Frontage Road area.

The project is to be financed using wastewater capital funding from a State Revolving Fund (SRF) backed loan. The budgeted amount for this project, including engineering, right-of-way acquisition, and construction is \$600,000 in FY 2005, and (proposed) \$4,335,350 in FY 2007.

During the Preliminary Engineering Report (PER) phase of design, the consultant evaluated several alternative means for crossing the Yellowstone River (siphon, gravity, lift station, or bridge appurtenance), several methods for constructing the river crossing (open cut, bore and jack or directional drilling), and several ways to connect to the existing sewer infrastructure (force main or gravity). The preferred alternative identified in the Preliminary Engineering Report (PER) for the above-named project recommended that the new 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 a force main across the Yellowstone River then to the existing gravity sewer infrastructure in the South Frontage Road. It became apparent during detailed design that the property lying southeast of the Santiago Boulevard –Blue Creek Road intersection was a better lift station site than the existing City-owned property south of Santiago Boulevard). Council authorized the purchase of approximately 11 acres along Blue Creek Road in order to place the lift station. The preferred route also requires obtaining utility easements in thirteen different properties.

The seven (7) properties from which easements are still outstanding and a summary of the negotiations to date are as follows:

Parcel #1 The Briarwood (Golf Course)

Negotiations are progressing for this easement. Access routes and lateral sewer main(s) need to be finalized. Staff is hopeful that this easement can be completed outside of eminent domain.

Parcel #4 Graham

Negotiations have reached an impasse. The owner of this parcel has not accepted the City's offer.

Parcel #5 Johnson (This memo)

The Johnson's attorney prepared the attached *Agreement to Convey Perpetual Easement and Right-of-Way* and the *Perpetual Easement and Right-of-Way*.

Parcels #9 & #10 Yellowstone Valley Electric Cooperative (YVEC)

Negotiations with this property owner have reached an impasse. The attorney for YVEC responded to the City's last request to negotiate with a response that YVEC believes "it is not in their best interest to enter into any type of easement agreements at this time." It is staff's understanding that YVEC does not intend to oppose eminent domain proceedings to obtain an easement through their properties.

Parcel 11 Hoff

Negotiations have reached an impasse. The last time Staff met with him, Mr. Hoff wanted to wait until the YVEC agreed to an easement before continuing any negotiations. At that time, Mr. Hoff also stated that "whatever the City is offering, I want twice that" in regards to compensation for the easement through his parcel.

Parcel 12 Kenney

Negotiations have reached an impasse. The property owners have deferred numerous requests to meet to negotiate. They have repeatedly noted that they are still upset that their driveway was left in poor condition after the water main was extended in 2003 in the highway right-of-way fronting their property.

ALTERNATIVES ANALYSIS

Approve the easement and agreement as presented. Staff does not recommend this option. Several clauses of the documents require actions on the City's part that Staff cannot support.

Approve the easement and agreement with Staff's text changes. Staff recommends this option. This option would conform with established policies.

Do not approve the easement and agreement. Staff will continue with actions to acquire the easement by eminent domain.

STAKEHOLDERS

It is Staff's understanding that the Johnsons do not want any changes to the documents as presented to Staff. It can be expected that the Johnsons will address Council about this easement during the meeting.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The intent of several of Staff's text changes to the documents presented by the Johnsons to bring them into conformance with adopted policies. One text change involves the value of the acquisition. The City's Land Acquisition Policy allows staff or consultants the latitude to offer

up to five percent (5%) above the appraisal amount for property acquisitions. The total cost of the easement (\$3,517.50) is reduced to represent the appraised value of the easement (\$3,350.00) plus 5% of the appraisal amount (\$167.50) as an allowance for attorney's fees that the Johnsons incurred in preparing the *Agreement to Convey Perpetual Easement and Right-of-Way (Agreement)* and the *Perpetual Easement and Right-of-Way* included as Attachments A and B, respectively, to this memo. The Johnsons had included \$800.00 in the *Agreement* for attorney's fees. Another text change involves deletion of verbiage in the *Agreement* allowing hook up to water and sanitary sewer services without payment of appropriate fees upon annexation. It is established City policy to not waive these fees.

RECOMMENDATION

Staff recommends that Council approve the *Agreement to Convey Perpetual Easement and Right-of-Way* and the *Perpetual Easement and Right-of-Way* with Robert B. Johnson and Michele R. Johnson, with the text changes recommended by Staff (as found in Attachments C and D respectively), in the amount of \$3,517.50, and authorize the Mayor to execute these documents.

ATTACHMENTS

- A. Agreement to Convey Perpetual Easement and Right-of-Way (3 pages)(unedited as presented by the Johnsons)
- B. Perpetual Easement and Right-of-Way (5 pages)(unedited as presented by the Johnsons)
- C. Agreement to Convey Perpetual Easement and Right-of-Way, version 080607(4 pages)(includes text changes made by Staff)
- D. Perpetual Easement and Right-of-Way, version 080607 (8 pages) (includes text changes made by Staff)

Attachment A

AGREEMENT TO CONVEY PERPETUAL EASEMENT AND RIGHT-OF-WAY

unedited, as presented

THIS AGREEMENT TO CONVEY PERPETUAL EASEMENT AND RIGHT-OF-

WAY ("Agreement") is made and entered into this _____ day of _____, 2007, by and between **ROBERT B. JOHNSON AND MICHELE R. JOHNSON**, husband and wife, 2705 Blue Creek Road, Billings, Montana 59101 ("GRANTORS") and **THE CITY OF BILLINGS**, a municipal corporation and political subdivision of the State of Montana of the address of City Hall, Billings, Montana 59101 ("GRANTEE");

WHEREAS, GRANTEE is in the process of acquiring right-of-way easements for the Briarwood Sewer Main Extension, Work Order number 04-36, MMI Project No. 0686.170-0211 pursuant to which GRANTEE will construct one or more underground sanitary sewers through GRANTORS' real property described as Tract 11, Blue Creek Acreage Tracts Subdivision in Section 28, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana; and

WHEREAS, the parties have agreed upon the terms and conditions under which GRANTORS will convey such an easement to GRANTEE, and are desirous of setting forth the terms and conditions of said agreement in writing;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. EASEMENT – GRANTORS shall grant unto GRANTEE a Perpetual Easement And Right-of-Way upon the terms and conditions of the attached Exhibit "A", which is by this reference incorporated herein (hereinafter referred to as the "Easement").

2. CONSIDERATION – As consideration for the Easement, GRANTEE agrees as follows:

unedited

- (a) As the cash consideration for the Easement, GRANTEE shall pay to GRANTORS the sum of Three Thousand Three Hundred Fifty Dollars (\$3,350.00), in the time and manner set forth below;
- (b) During construction of the initial sanitary sewer to be placed within the Easement, GRANTEE shall, at its sole cost and expense, construct tee-connections to GRANTEE's water line and the new sanitary sewer line to be constructed within the Easement, which connections shall be located on the northern line of the Easement within the western quadrant of the Easement;
- (c) If GRANTORS' real property described above is annexed into GRANTEE, GRANTEE will waive all connection or hook-up fees to GRANTEE's water and sewer lines;
- (d) GRANTEE shall, at its sole cost and expense, pave a 5-foot apron on both of the driveways providing access to and from GRANTORS' real property;
- (e) GRANTEE shall construct and maintain, at its sole cost and expense, metal gates to be placed between property owners;
- (f) GRANTEE acknowledges that the promises and undertakings set forth in the attached Exhibit "A" constitute additional consideration for the Easement; and
- (g) GRANTEE shall pay to GRANTORS the sum of Eight Hundred Dollars (\$800.00) to reimburse GRANTORS for attorney's fees incurred in negotiating this Agreement and the Perpetual Easement And Right-of-Way attached hereto as Exhibit "A".

Within ten days from the date of this Agreement GRANTEE shall mail to GRANTORS at their address set forth above a warrant in the amount of Four Thousand One Hundred Fifty Dollars (\$4,150.00) as payment for the cash portion of the consideration and the reimbursement for attorney's fees as set forth above. GRANTORS shall execute the Perpetual Easement And Right-of-Way in the form of the attached Exhibit "A" at any time requested by GRANTEE thereafter.

3. ENTIRE AGREEMENT – This Agreement constitutes the entire agreement between the parties, and each party acknowledges that there are no promises or representations that form a part of their agreement except those set forth herein.

A3

unedited

4. **BINDING EFFECT** – This Agreement inures to the benefit of, and is binding upon, the parties, their heirs, successors and assigns.

DATED this _____ day of _____, 2007.

GRANTORS:

ROBERT B. JOHNSON

MICHELE R. JOHNSON

GRANTEE:

RECOMMENDED FOR APPROVAL

APPROVED FOR AND ON BEHALF OF
CITY OF BILLINGS

City of Billings, (Date)
Public Works Department

Mayor, City of Billings (Date)

ATTEST:

City Clerk (Date)

Attachment B
unedited, as presented
PERPETUAL EASEMENT AND RIGHT-OF-WAY

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this _____ day of _____, 2007, the undersigned ROBERT B. JOHNSON AND MICHELE R. JOHNSON, 2705 Blue Creek Road, Billings, Montana 59101 and their heirs, successors and assigns (hereinafter collectively referred to as "GRANTORS") hereby GRANT AND CONVEY unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, and its successors and assigns (hereinafter referred to as "GRANTEE"), a perpetual easement and right-of-way over, across, under and through Tract 11, Blue Creek Acreage Tracts Subdivision in Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana (hereinafter referred to as "GRANTORS' Real Property") which easement and right-of-way is more particularly described as follows, to-wit:

A permanent 18 foot wide sanitary sewer easement in Tract 11, Blue Creek Acreage Tracts Subdivision in Section 28, T.1S., R.26E., P.M.M. Yellowstone County, Montana, more particularly described as follows:

Being the Southerly 18 feet of said Tract 11 coincident with the Northerly right-of-way boundary of State Highway F.A.P. 416 1(3) 1, containing 0.072 acres, more or less, as is disclosed on the attached Exhibit A, which is by this reference incorporated herein (hereinafter referred to as the "Easement"); but

SUBJECT TO all existing easements, either of record or as are apparent from an inspection of the surface of GRANTORS' Real Property; and the promises and covenants of GRANTEE as set forth below.

1. USE OF THE EASEMENT - - The Easement is granted to GRANTEE for the sole purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing one or more underground sanitary sewers within the Easement. GRANTEE shall have the right of ingress to and egress from the Easement at all times for the purposes set forth above;

unedited

B2

PROVIDED, HOWEVER, GRANTEE agrees that access to the Easement shall be limited to entry through gates in GRANTORS' existing fences. PROVIDED FURTHER, GRANTEE agrees to give GRANTORS reasonable notice under the circumstances before performing any work within the Easement.

2. RESTRICTIONS ON GRANTORS' USE OF THE EASEMENT - - GRANTORS retain the right to use the portion of GRANTORS' Real Property that is subject to the Easement so long as such use does not interfere with GRANTEE's use of the Easement, and subject to the following specific restrictions:

- A. GRANTORS shall not construct or cause to be constructed within the Easement any building or structure, new fences or any other fixed objects of any kind except as may be approved by GRANTEE;
- B. GRANTORS shall not plant nor cause to be planted within the Easement any trees, bushes, shrubs, hedges or other plantings of a similar nature except as may be approved by GRANTEE;
- C. GRANTORS shall obtain the permission of the Public Works Departments of GRANTEE prior to placing or removing any material amount of fill dirt within the Easement, and if such permission is granted, the GRANTORS shall, at their own expense, perform any work necessary to modify any existing sanitary sewers and appurtenances prior to placing or removing said fill dirt.

3. GRANTEE'S PROMISES AND COVENANTS - - By acceptance of the Easement, and as part of the consideration therefor, GRANTEE agrees to the following:

- A. GRANTEE shall not fence the Easement;
- B. To the extent it is necessary to take down any existing fence within or

unedited

B3

bordering the Easement, GRANTEE shall promptly rebuild and repair the same at its own expense;

C. GRANTEE shall promptly backfill and compact to existing grade any trench made by it within the Easement and promptly repair and reseed any damage to the surface of GRANTORS' Real Property and restore the same to its prior existing grade and condition, at its sole cost and expense. Upon receipt of a written request by GRANTORS, GRANTEE shall complete any appropriate repair within fourteen (14) days, and shall reseed the surface as soon and as often as necessary to cause it to be fully restored;

D. Excepting only the loss of use of the Easement as set forth in paragraph 2 hereof, GRANTEE shall be liable for and pay to GRANTORS reasonable compensation for any damage to or loss of use of GRANTORS' Real Property, and their personal property located thereon, that is caused by or in way related to GRANTEE's activities within the Easement, or in any way related to GRANTEE's construction, reconstruction, maintenance, operation, service, repair or replacement of any sanitary sewers and related facilities of which any portion thereof is located within the Easement;

E. GRANTEE shall indemnify and hold GRANTORS harmless from any cost, expense or liability that GRANTORS are or may become liable for, including reasonable attorney's fees, arising from or in any way related to GRANTEE's construction, reconstruction, maintenance, operation, service, repair or replacement of any sanitary sewers and related facilities of which any portion thereof is located within the Easement; and

unedited

F. GRANTEE agrees that the Easement granted herein cannot be used for any purpose other than that specifically described in paragraph I above.

GRANTEE further agrees that the Easement cannot be used for constructing and maintaining a sewer lift station, PROVIDED, HOWEVER, underground sewer force mains may be placed within the Easement.

4. ATTORNEY'S FEES - - If a disagreement may arise between the parties concerning the parties' rights and obligations under this Perpetual Easement and Right-Of-Way, the parties agree that the non-prevailing party shall pay to the prevailing party reasonable attorney's fees incurred in resolving said disagreement.

5. MONTANA LAW AND VENUE - - The parties agree that any litigation brought to enforce or declare any parties' rights or obligations under this Perpetual Easement and Right-Of-Way shall be governed in all respects by the laws of the State of Montana, and the parties agree that venue for any such litigation shall be in the Montana Thirteenth Judicial District Court for Yellowstone County.

6. EASEMENT TO RUN WITH THE LAND - - The Easement shall run with the land and the provisions herein shall be binding upon and shall inure to the benefit of the parties and their heirs, successors and assigns.

ROBERT B. JOHNSON

MICHELE R. JOHNSON

unedited

B5

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this _____ day of _____, 2007, before me, a Notary Public in and for the State of Montana, personally appeared ROBERT B. JOHNSON and MICHELE R. JOHNSON, known to me to be the persons who signed the foregoing instrument and acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.

(SEAL)

Notary's Printed Name: _____
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission expires: _____

Attachment C
includes changes by Staff
AGREEMENT TO CONVEY PERPETUAL EASEMENT
AND RIGHT-OF-WAY

THIS AGREEMENT TO CONVEY PERPETUAL EASEMENT AND RIGHT-OF-WAY ("Agreement") is made and entered into this ____ day of _____, 2007, by and between **ROBERT B. JOHNSON AND MICHELE R. JOHNSON**, husband and wife, 2705 Blue Creek Road, Billings, Montana 59101 ("**GRANTORS**") and **THE CITY OF BILLINGS**, a municipal corporation and political subdivision of the State of Montana of the address of City Hall, Billings, Montana 59101 ("**GRANTEE**");

WHEREAS, GRANTEE is in the process of acquiring right-of-way easements for the Briarwood Sewer Main Extension, Work Order number 04-36, MMI Project No. 0686.170-0211 pursuant to which GRANTEE will construct one or more underground sanitary sewers through GRANTORS' real property described as Tract 11, Blue Creek Acreage Tracts Subdivision in Section 28, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana; and

WHEREAS, the parties have agreed upon the terms and conditions under which GRANTORS will convey such an easement to GRANTEE, and are desirous of setting forth the terms and conditions of said agreement in writing;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. EASEMENT - GRANTORS shall grant unto GRANTEE a Perpetual Easement And Right-of-Way upon the terms and conditions of the attached Exhibit "A", which is by this reference incorporated herein (hereinafter referred to as the "Easement").

2. CONSIDERATION - As consideration for the Easement, GRANTEE agrees as follows:

includes Staff changes

C2

(a) As the cash consideration for the Easement, GRANTEE shall pay to GRANTORS the sum of Three Thousand Three Hundred Fifty Dollars (\$3,350.00), in the time and manner set forth below;

~~(b) During construction of the initial sanitary sewer to be placed within the Easement, GRANTEE shall, at its sole cost and expense, construct tee connections to GRANTEE's water line and the new sanitary sewer line to be constructed within the Easement, which connections shall be located on the northern line of the Easement within the western quadrant of the Easement;~~

(b) During construction of the initial sanitary sewer main to be placed within the Easement, GRANTEE shall, at its sole cost and expense, construct a 1-inch dia. copper service connection with water shut off (curb stop) to GRANTEE's water main and a 6-inch dia. sanitary sewer service line to the GRANTEE's sanitary sewer main line. The water shut off shall be placed at the GRANTOR's property line, and the sewer service will be stubbed to the edge of the trench for the sewer main construction. The services shall have the customary separation (10 feet) between them and be placed at (for water service) and in (for sewer service) the western portion of the GRANTOR's said Tract 11. It is understood that connections from the property to these service stubs will require payments of the applicable fees to do so.

~~(c) If GRANTORS' real property described above is annexed into GRANTEE, GRANTEE will waive all connection or hook-up fees to GRANTEE's water and sewer lines;~~

~~(c)(d) GRANTEE shall, at its sole cost and expense, pave a 5-foot apron on both of the driveways providing access to and from GRANTORS' real property;~~

~~(d)(e) GRANTEE shall construct and maintain, at its sole cost and expense, metal gates to be placed in property line fences between property owners;~~

~~(e)(f) GRANTEE acknowledges that the promises and undertakings set forth in the attached Exhibit "A" constitute additional consideration for the Easement; and~~

(f)(g) GRANTEE shall pay to GRANTORS the sum of One Hundred Sixty Seven and 50/100 Dollars (\$167.50) ~~Eight Hundred Dollars (\$800.00)~~ to reimburse GRANTORS for attorney's fees incurred in negotiating this Agreement and the Perpetual Easement And Right-of-Way attached hereto as Exhibit "A".

includes Staff changes

C3

Within ten (10) days from the date the easement is accepted for recording by the
Yellowstone County Clerk & Recorder, Within ten days from the date of this Agreement
GRANTEE shall mail to GRANTORS at their address set forth above a warrant in the
amount of ~~Four~~ Three Thousand ~~One~~ Five Hundred ~~Fifty~~ seven ~~Seventeen~~ and 50/100
Dollars (~~\$4,150.00~~ 3,517.50) as payment for the cash portion of the consideration and the
reimbursement for attorney's fees as set forth above. GRANTORS shall execute the
Perpetual Easement and Right-of-Way in the form of the attached Exhibit "A" at any time
requested by GRANTEE thereafter.

3. ENTIRE AGREEMENT - This Agreement constitutes the entire agreement between the parties, and each party acknowledges that there are no promises or representations that form apart of their agreement except those set forth herein.

4. BINDING EFFECT- This Agreement inures to the benefit of, and is binding upon, the parties, their heirs, successors and assigns.

DATED this _____ day of _____, 2007.

GRANTORS:

ROBERT B. JOHNSON

MICHELE R. JOHNSON

GRANTEE:

| RECOMMENDED FOR APPROVAL

APPROVED FOR AND ON BEHALF OF
CITY OF BILLINGS

City of Billings, (Date)
Public Works Department

Mayor, City of Billings (Date)

includes Staff changes

C4

ATTEST:

City Clerk

(Date)

Attachment D
includes changes by Staff

PERPETUAL EASEMENT AND RIGHT-OF-WAY

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this ___ day of _____, 2007, the undersigned ROBERT B. JOHNSON AND MICHELE R. JOHNSON, 2705 Blue Creek Road, Billings, Montana 59101 and their heirs, successors and assigns (hereinafter collectively referred to as "GRANTORS") hereby GRANT AND CONVEY unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall 210 North 27th Street, Billings, Montana 59101, and its successors and assigns (hereinafter referred to as "GRANTEE"), a perpetual easement and right-of-way over, across, under and through Tract 11, Blue Creek Acreage Tracts Subdivision in Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana (hereinafter referred to as "GRANTORS' Real Property") which easement and right-of-way is more particularly described as follows, to-wit:

A permanent 18 foot wide sanitary sewer easement in Tract 11, Blue Creek Acreage Tracts Subdivision in Section 28, T.1S., R.26E., P.M.M. Yellowstone County, Montana, more particularly described as follows:

Being the Southerly 18 feet of said Tract 11 coincident with the Northerly right-of-way boundary of State Highway F.A.P. 416 1(3)1, containing 0.072 acres, more or less, as is disclosed on the attached Exhibit A, which is by this reference incorporated herein (hereinafter referred to as the "Easement"); but

SUBJECT TO all existing easements, either of record or as are apparent from an inspection of the surface of GRANTORS' Real Property; and the promises and covenants of GRANTEE as set forth below.

1. USE OF THE EASEMENT - - The Easement is granted to GRANTEE for the sole purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing one or more underground sanitary sewers within the Easement. GRANTEE

includes Staff changes D2

shall have the right of ingress to and egress from the Easement at all times for the purposes set forth above;

PROVIDED, HOWEVER, GRANTEE agrees that normal access to the Easement shall be limited to entry through gates in GRANTORS' existing fences. PROVIDED FURTHER, GRANTEE agrees to give GRANTORS reasonable notice under the circumstances before performing any work within the Easement.

2. RESTRICTIONS ON GRANTORS' USE OF THE EASEMENT - -

GRANTORS retain the right to use the portion of GRANTORS' Real Property that is subject to the Easement so long as such use does not interfere with GRANTEE's use of the Easement, and subject to the following specific restrictions:

- A. GRANTORS shall not construct or cause to be constructed within the Easement any building or structure, new fences or any other fixed objects of any kind except as may be approved by GRANTEE;
- B. GRANTORS shall not plant nor cause to be planted within the Easement any trees, bushes, shrubs, hedges or other plantings of a similar nature except as may be approved by GRANTEE;
- C. GRANTORS shall obtain the permission of the Public Works Departments of GRANTEE prior to placing or removing any material amount of fill dirt within the Easement, and if such permission is granted, the GRANTORS shall, at their own expense, perform any work necessary to modify any existing sanitary sewers and appurtenances prior to placing or removing said fill dirt.

3. GRANTORS'S PROMISES AND COVENANTS – By acceptance of the Easement, GRANTORS agrees to the following:

includes Staff changes

D3

A. GRANTORS shall at all times fully relieve and save harmless the GRANTEE and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way by authorized representatives of the GRANTEE in the exercise of any of their rights under this Perpetual Easement and Right-of-Way.

GRANTORS shall reimburse the GRANTEE for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by the failure of GRANTORS or their agents to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this Perpetual Easement and Right-of-Way.

34. GRANTEE'S PROMISES AND COVENANTS - - By acceptance of the Easement, and as part of the consideration therefor, GRANTEE agrees to the following:

- A. GRANTEE shall not fence the Easement;
- B. To the extent it is necessary to take down any existing fence within or bordering the Easement, GRANTEE shall promptly rebuild and repair the same at its own expense;
- C. GRANTEE shall promptly backfill and compact to existing grade any trench made by it within the Easement and promptly repair and reseed any damage to the surface of GRANTORS' Real Property and restore the same to its prior existing grade and condition, at its sole cost and expense. Upon receipt of a written request by GRANTORS, GRANTEE shall complete any appropriate repair within fourteen (14) calendar days, and shall reseed the surface as soon and as often as necessary to cause it to be fully restored;
- D. Excepting only the loss of use of the Easement as set forth in paragraph 2 hereof, GRANTEE shall be liable for and pay to GRANTORS reasonable compensation for any

includes Staff changes

DA

damage to or loss of use of GRANTORS' Real Property, and their personal property

located thereon, that is caused by or in way related to GRANTEE's activities within the Easement, or in any way related to GRANTEE's construction, reconstruction, maintenance, operation, service, repair or replacement of any sanitary sewers and related facilities of which any portion thereof is located within the Easement;

E. GRANTEE shall indemnify and hold GRANTORS harmless from any cost, expense or liability that GRANTORS are or may become liable for, including reasonable attorney's fees, arising from or in any way related to GRANTEE's construction, reconstruction, maintenance, operation, service, repair or replacement of any sanitary sewers and related facilities of which any portion thereof is located within the Easement; and

F. GRANTEE agrees that the Easement granted herein cannot be used for any purpose other than that specifically described in paragraph 1 above. GRANTEE further agrees that the Easement cannot be used for constructing and maintaining a sewer lift station, PROVIDED, HOWEVER, underground sewer force mains may be placed within the Easement.

45. ATTORNEY'S FEES - - If a disagreement may arise between the parties concerning the parties' rights and obligations under this Perpetual Easement and Right-Of-Way, the parties agree that the non-prevailing party shall pay to the prevailing party reasonable attorney's fees incurred in resolving said disagreement.

56. MONTANA LAW AND VENUE - - The parties agree that any litigation brought ~~brought~~ instituted to enforce or declare any parties' rights or obligations under this Perpetual Easement and Right-Of-Way shall be governed in all respects by the laws of the State of

includes Staff changes

D5

Montana, and the parties agree that venue for any such litigation shall be in the Montana

Thirteenth Judicial District Court for Yellowstone County.

67. EASEMENT TO RUN WITH THE LAND - - The Easement shall run with the land and the provisions herein shall be binding upon and shall inure to the benefit of the parties and their heirs, successors and assigns.

GRANTORS

ROBERT B. JOHNSON

MICHELE R. JOHNSON

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this _____ day of _____, 2007, before me, a Notary Public in and for the State of Montana, personally appeared ROBERT B. JOHNSON and MICHELE R. JOHNSON, known to me to be the persons who signed the foregoing instrument as Grantors and acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.

(NOTARIAL SEAL) _____
Notary's Printed Name: _____
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission expires: _____

(SEAL)

includes staff changes DG

CITY: _____ CITY OF BILLINGS, a Montana
Municipal Corporation

By: _____
RON TUSSING, Mayor

ATTEST:

By: _____
CARI MARTIN, City Clerk

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this _____ day of _____, 2006 before me, a Notary Public for the State of Montana, personally appeared **RON TUSSING** and **CARI MARTIN**, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

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

(Signature)

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

includes Staff changes

D7

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledge receipt of this PERPETUAL EASEMENT AND RIGHT-OF-WAY and hereby accept the property interest conveyed through this instrument.

RON TUSSING, Mayor
CITY OF BILLINGS

ATTEST:

By: _____
CARI MARTIN, City Clerk

STATE OF MONTANA)
_____: ss.
County of Yellowstone)

On this _____ day of _____, 2006, before me, a Notary Public for the State of Montana, personally appeared RON TUSSING and CARI MARTIN, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

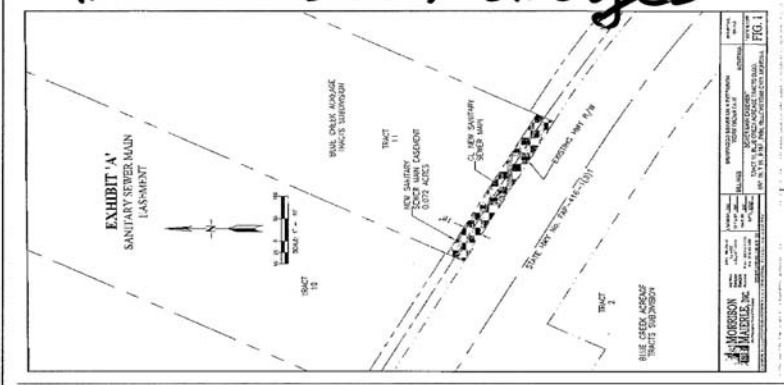
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(Signature)

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

includes Staff changes

D8



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

M1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Parade of Homes BikeNet Benefit Concert Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT:

Parade of Homes requests the closure of the neighborhood near the intersection of Mallowney Lane and Elysian Road on Saturday, September 22nd, 2007, from 5:30 pm - 8:30 pm for a benefit concert for BikeNet. Map is attached.

Recommended conditions of approval include that Parade of Homes:

1. Contact all residents and make them aware of the event 30 days in advance
2. Clean the area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Obtain proper open container (liquor license) and noise permits from the Police Department
5. Provide and install adequate traffic barricades and signs directing motorists around closure
6. Post "ROAD CLOSED TO THRU TRAFFIC" signing on Front Street at Willow Lane
7. Close the East-West alleys back where they join the North-South alleys so that people can not drive into the center of the closed area
8. Make provisions for emergency access
9. Provide a certificate of insurance naming the City of Billings as additional insured which also includes additional requirements on certificate as specified by City attorney

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approval the closure of the neighborhood near the intersection of Mullowney Lane and Elysian Road on Saturday, September 22nd, 2007 from 5:30 pm - 8:30 pm for a benefit concert for BikeNet.

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

ATTACHMENTS

- A. Letter from Parade of Homes (1 pages)
- B. Right of Way Special Activity Permit (2 pages)
- C. Closure map (1 page)
- D. Certificate of insurance (1 page)



1536 MULLOWNEY LANE - SUITE 100
BILLINGS, MONTANA 59101
PHONE: (406) 651-5354
FAX: (406) 651-5364

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

To Whom It May Concern:

We are a local home building company participating in the Fall Parade of Homes. Our home is located in Josephine Crossing, a new neighborhood near the intersection of Mullowney Lane and Elysian Road. During the last weekend of the Parade of Homes we would like to host a concert to benefit BikeNet and trails in our community. We have booked a band called Storyhill, a folk duo (www.storyhill.com). The event will take place on September 22nd from about 5:30-8:30. We would like to have the band set up on Front Street with the audience sitting in the pocket park (location shown on map included in this packet). Please let us know if you need any further information.

Thanks For Your Consideration,

A handwritten signature in cursive script that reads 'Kelsey McCall'.

Kelsey McCall
kelsey@mccallddevelopment.com
(406) 651-5354



**CITY OF BILLINGS
RIGHT-OF-WAY ACTIVITY PERMIT
APPLICATION**



Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure

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

PERSON MAKING APPLICATION Kelsey McCall
ORGANIZATION MAKING APPLICATION McCall Development
PHONE (406) 651-5354
ADDRESS 1536 Muldowney Ln. Billings MT 59101
City State ZIP

APPROXIMATE TIME EVENT WILL:
Assemble 1:00 p.m. Start 5:00 p.m. Disband 8:00 p.m.

DATE OF EVENT Sept. 22nd, 2007

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

This will be a benefit concert for BikeNet. It will be held in a pocket park (seating) in the Josephine Crossing Neighborhood. The band will be in the street.

EVENT ROUTE DESIRED: (Please attach map.)

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per individual claim and \$1,500,000 per occurrence, and (2) the City of Billings named on the Certificate of Insurance as an additional insured.

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

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

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



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

PLEASE COMPLETE BOTH SIDES

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

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

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

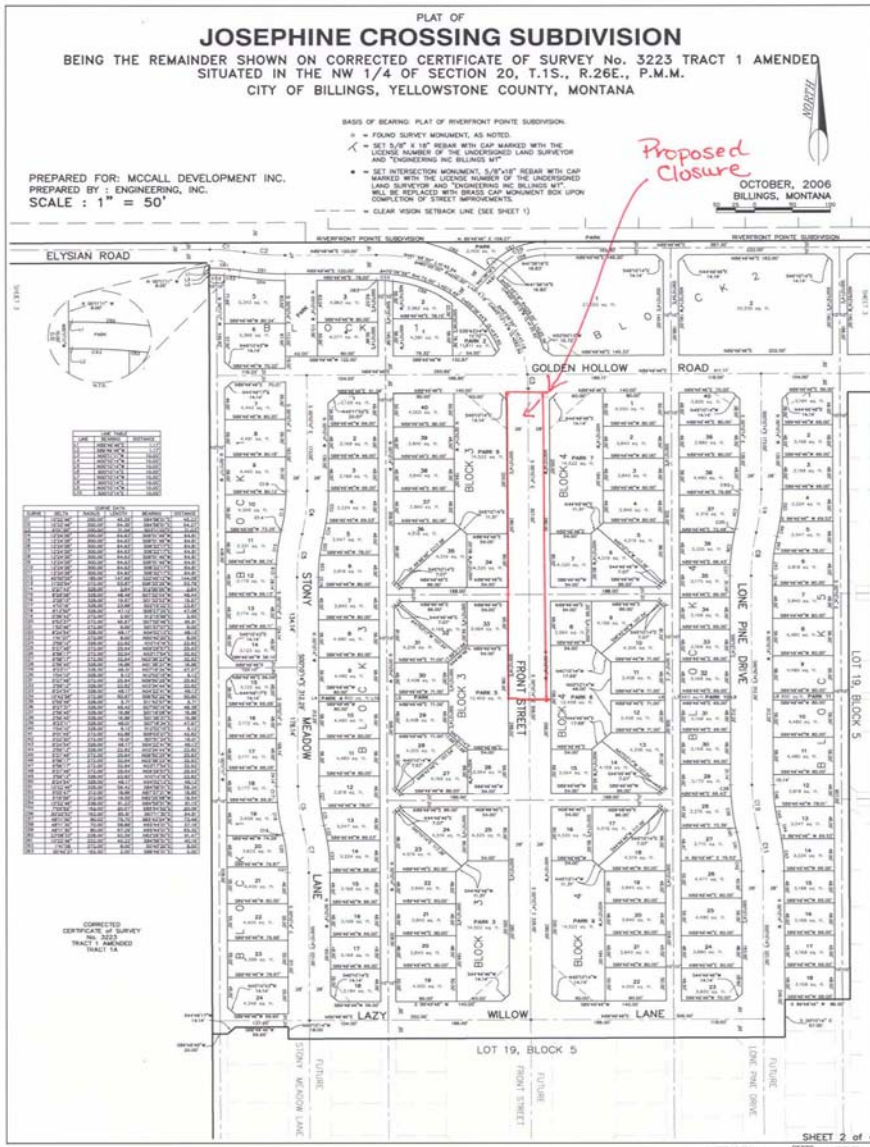
APPLICANT SIGNATURE Keberly McCall DATE 6/15/07
APPLICATION APPROVED _____ DATE _____
APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

FEE: _____
APPLICANT NOTIFIED BY: _____
DATE: _____

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



ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YY)			
PRODUCER Brooke Overbeek HUB-BHJ Insurance, Inc. 1101 Overland Ave P.O. Box 80310 Billings, MT 59102 406-652-9454 ... FAX 406-652-7838		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED McCall Development, Inc. 2751 Encampment, Suite 2 Billings MT 59102		COMPANIES AFFORDING COVERAGE COMPANY A Granite State Insurance Company COMPANY B American States Insurance Company COMPANY C New Hampshire Insurance Company COMPANY D Montana State Fund			
COVERAGE INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. THESE POLICIES AND THEIR FULL TEXT ARE AVAILABLE TO YOU BY REQUEST.					
CLASS	TYPE OF INSURANCE	POLICY NUMBER	START DATE (MM/DD/YY)	END DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTOR'S PROF	02LV22668906	12/03/2006	12/03/2007	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMMODITY \$ 2,000,000 PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 100,000 MED EXP (Any one person) \$ 5,000
B	<input type="checkbox"/> ANY UMBRELLA LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> MESSAGE LIABILITY <input type="checkbox"/> ANY AUTO	01CH3065121	12/03/2006	12/03/2007	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (per person) \$ BODILY INJURY (per accident) \$ PROPERTY DAMAGE \$
C	<input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	01UD46589284	12/03/2006	12/03/2007	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
D	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR, PARTNER, EXECUTIVE OFFICER AND OTHER <input type="checkbox"/> INCL. <input type="checkbox"/> EXCL.	022961336	10/01/2006	10/01/2007	<input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTHER B. EACH ACCIDENT \$ 100,000 B. DISEASE - POLICY LIMIT \$ 500,000 B. DISEASE - SA EMPLOYEE \$ 100,000
DESCRIPTION OF OPERATIONS/LOCATIONS/INCL/EXCL/SPECIAL ITEMS The City of Billings is listed as an additional insured per form CG2012					
CERTIFICATE HOLDER City of Billings PO Box 1178 Billings, MT 59102			CANCELATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL TO THE CERTIFICATE HOLDER, BY REGISTERED MAIL, A NOTICE OF CANCELLATION. FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.		

4064375997 MCALL-18L

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M2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27th, 2007

TITLE: Holy Rosary Catholic Church Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: Holy Rosary Catholic Church requests the closure of Custer Avenue between 5th and 6th from 8:00am-6:00pm on Sunday, September 9, 2007, for their Barnyard Bingo and Street Fair.

Recommended conditions of approval include Holy Rosary Catholic Church:

1. Clean the area to be used after the event and provide and empty waste cans
2. Contact all businesses/residences and make them aware of the event as soon as possible
3. Notify all emergency facilities, bus lines and media as soon as possible
4. Provide and install adequate traffic barricades directing motorists around closure
5. Provide a certificate of insurance with required liability amounts naming the City of Billings as additional insured
6. Obtain the proper permit if alcohol will be consumed in the public right of way

ALTERNATIVES ANALYZED:

3. Approve request to close streets for the event (recommended)
4. Deny the street closures

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

RECOMMENDATION

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

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Letter from Holy Rosary Catholic Church outlining event (1 page)
- B. Right of Way Special Activity Permit (2 pages)
- C. Course map (1 pages)
- D. Certificate of Insurance (2 page)



23 July, 2007

Dear Neighbor:

Hello from Holy Rosary Catholic Church!

We would like to invite you to attend an event we will be hosting on Sunday afternoon September 9, 2007 from 11am-4 pm. The event is called Barnyard Bingo. We will be using our parking lot and the area between the church and the school. There will be fun and games for adults and children, including inflatable slides, bingo and other carnival games. A barbecue and craft sale will also be included. Craft tables are available for a \$25.00 fee, if you are interested.

We have submitted a request to the city to close off Custer Avenue between 5th and 6th streets during the hours of our event. This will enable us to utilize the street for the games and provide safety for the children and families in attendance.

The city's application form requires that our neighbors be notified of and have no objection to the street closure. Therefore, we would like to ask for your support by signing the required petition. This event is a fund-raiser for an elevator for our church so our elderly and disabled members can participate in all of our events.

We will be in be contacting you within 2 weeks to ask for your signature to support the street closure. Thank you for being such a good neighbor and we hope to see you on September 9th!

Sincerely,

Deacon Mel Melius
Pastoral Administrator

501 Custer Avenue Office / 521 Custer Avenue Billings, Montana 59101 406-259-7611

"Love one another as I have loved you" - John 15:12



**City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT**

Please check the type of activity you are applying for:

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

Submit this application with a cover letter to: Director of Parks, Recreation and Public Lands, 390 North 23rd Street, Billings, Mt 59101. Application should be made at least 60 days in advance of the date of proposed event.

PERSON MAKING APPLICATION DEACON MEL MELIUS

ORGANIZATION MAKING APPLICATION HOLY ROSARY CHURCH

PHONE 406-259-7611

ADDRESS 521 CLUSTER AV BILLINGS MT. 59101

EMAIL ADDRESS HOLY ROSARY @ ISP . COM

APPROXIMATE TIME EVENT WILL:

Assemble 8:00 AM Start 12:00 PM Disband 6:00 PM

DATE OF EVENT SEPT 9, 2007

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

BARNYARD BINGO AND STREET FAIR. THE PURPOSE OF THIS
FUND RAISER IS TO PROVIDE AN ELEVATOR FOR THE CHURCH.
WE ARE LOOKING AT INFLATABLES, STAGE FOR TALENT CONTEST,
AND CRAFT TABLES IN THE STREET. THE BARNYARD BINGO WILL
TAKE PLACE ON CHURCH PROPERTY.

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

THE PROPOSED STREET CLOSURE WOULD BE BETWEEN
5TH & 6TH STREET WEST ON CLUSTER AVE.

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

THE HOLY ROSARY COMMUNITY WILL BE RESPONSIBLE
FOR ALL CLEAN-UP

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE DERON McMein DATE 7/18/07

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

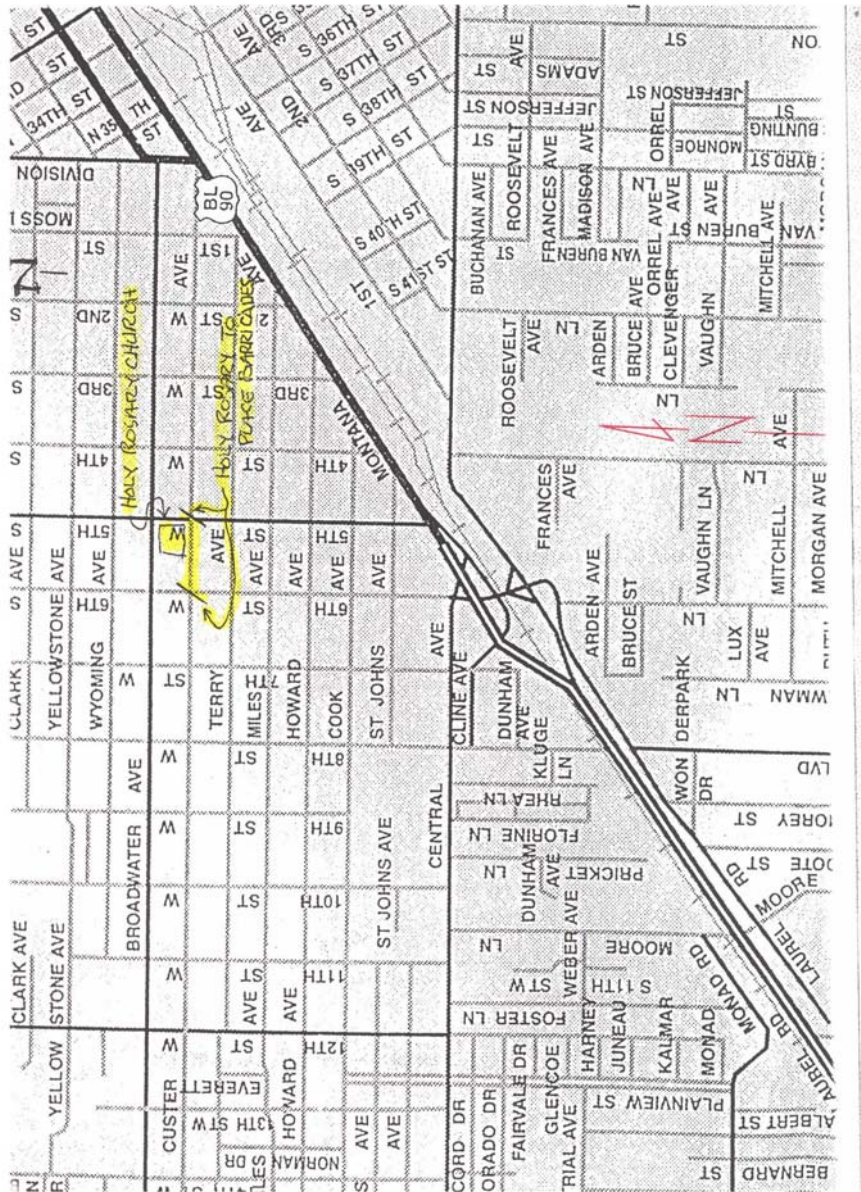
FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

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



ENDORSEMENT
(TO BE ATTACHED TO CERTIFICATE)

Effective Date of Endorsement 9/9/2007 Charge _____ Credit _____
Cancellation Date of Endorsement 9/10/2007
Certificate Holder The Roman Catholic Bishop of Great Falls
A Corporation Sole, Chancery Office
P O Box 1399
Great Falls, MT 59403

Certificate No. 8560 of The Catholic Mutual Relief Society is amended as follows:

SECTION II - ADDITIONAL PROTECTED PERSON(S)

It is understood and agreed that Section II - Liability (only with respect to Coverage D - General Liability, Coverage F - Medical Payments to Others and Coverage H - Counseling Errors and Omissions) is amended to include as an Additional Protected Person(s) members of the organizations shown in the schedule, but only with respect to their liability for the Protected Person(s) activities or activities they perform on behalf of the Protected Person(s).

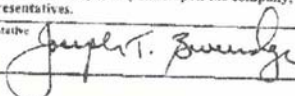
It is further understood and agreed that coverage extended under this endorsement is limited to and applies only with respect to liability assumed by contract or agreement; and this extension of coverage shall not enlarge the scope of coverage provided under this certificate or increase the limit of liability thereunder. Unless otherwise agreed by contract or agreement, coverage extended under this endorsement to the Additional Protected Person(s) will not precede the effective date of this certificate of coverage endorsement or extend beyond the cancellation date.

Schedule - ADDITIONAL PROTECTED PERSON(S)
City of Billings

Remarks: Coverage only extends for claims arising out of Holy Rosary Church; holding a fundraiser on September 9, 2007. Closure of the 500 block of Custer Avenue.

PKS-122 (1-99)


Authorized Representative

Certificate of Coverage		Date: 7/25/2007		
Certificate Holder The Roman Catholic Bishop of Great Falls A Corporation Sole, Chancery Office P O Box 1399 Great Falls, MT 59403		This Certificate is issued as a matter of information only and confers no rights upon the holder of this certificate. This certificate does not amend, extend or alter the coverage afforded below.		
Covered Location Holy Rosary Church 521 Custer Avenue Billings, MT 59102		Company Affording Coverage THE CATHOLIC MUTUAL RELIEF SOCIETY 10845 OLD MILL RD OMAHA, NE 68154		
Coverages This is to certify that the coverages listed below have been issued to the certificate holder named above for the certificate indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the coverage afforded described herein is subject to all the terms, exclusions and conditions of such coverage. Limits shown may have been reduced by paid claims.				
Type of Coverage	Certificate Number	Coverage Effective Date	Coverage Expiration Date	Limits
Property				Real & Personal Property
<input checked="" type="checkbox"/> Occurrence <input type="checkbox"/> Claim Made	8560	7/1/2007	7/1/2008	General Aggregate Products-Comp-OP Agg Personal & Adv Injury Each Occurrence 1,500,000 Fire Damage (Any one fire) Med Exp (Any one person)
Excess Liability				Each Occurrence
Other				Each Occurrence
Description of Operations/Locations/Vehicles/Special Items Coverage only extends for claims arising out of Holy Rosary Church holding a fundraiser on September 9, 2007. Closure of the 500 block of Custer Avenue.				
Holder of Certificate		Cancellation		
Additional Protected Person(s) City of Billings		Should any of the above described coverages be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the holder of certificate named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.		
0069000169		Authorized Representative: 		

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Acceptance of Donation from ConocoPhillips
DEPARTMENT: City Council/City Administrator’s Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: ConocoPhillips has donated \$1,545.00 to the City for the Southwest Corridor Cop Shop. Administrative Order #103 requires that all donations of more than \$500 be accepted by the City Council.

The donated funds will be used for operations of the Cop Shop.

ALTERNATIVES ANALYZED:

- Accept the donation,
- Do not accept the donation.

FINANCIAL IMPACT: The funds would be used to help operations of the Cop Shop.

RECOMMENDATION

Accept the donation and authorize the Mayor to sign a letter of thanks to ConocoPhillips.

Approved By: City Administrator ____ City Attorney ____

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

SUBJECT: Sale of Surplus Property
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Bruce McCandless, Assistant City Administrator
Liz Kampa-Weatherwax, Purchasing Agent

PROBLEM/ISSUE STATEMENT: The City of Billings will conduct an auction of surplus City items and police recovered property on Saturday, September 29, 2007, at the Billings Operations Center, located at 4848 Midland Road, Billings, MT 59101.

Attached is a list of those items departments would like sold at the City auction. The list has been circulated to all departments for their review. If other departments are interested in any of the items, they will not be auctioned.

The final list may change and will include only items no longer needed by the City of Billings.

RECOMMENDATION

Staff recommends that City Council declare the attached list of items as surplus property and give staff authorization to sell them at the public auction.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. City of Billings Auction List (available 8/29/07)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

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

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

The BLM is seeking an exemption from the City's RV and Camper Parking Ordinance for the BLM's annual seasonal fire mobilization operation for the period beginning July 16, 2007 through October 31, 2007 as it begins to mobilize for the fire season.

BMCC Section 24-411: Parking for Camping Purposes prohibits parking for camping in anything other than an authorized tourist park, except for a 10-hour rest period in a parking lot in which the owner permits it. The Ordinance also provides, however, for a temporary suspension of the Ordinance for a special event, as follows:

"Upon approval by resolution, the city council may temporarily suspend the requirements and restrictions imposed by section 24-411 in order to accommodate special events held within the city. The resolution of suspension shall become effective forty-eight (48) hours prior to the official start of the scheduled event and shall terminate forty-eight (48) hours after official conclusion of the event."

The BLM has conducted this vital operation at the Airport for many years and has cooperated fully and coordinated well with the Airport. This is the first time the question has been raised about whether the BLM's seasonal operations conflict with City Code. A March 27, 2006 amendment to the City Code provides the City Council with the ability to grant an exemption for special events. Additionally, the Airport enters into a Memorandum of Understanding establishing the terms and conditions of the BLM's use of the area for this seasonal operation.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: None anticipated. The BLM pays for any additional costs incurred in setting up the operation and restoring the location to condition prior to this use.

RECOMMENDATION

Approval of a resolution allowing camper parking in the Airport Business Park – BLM Leasehold area for forty-eight (48) hours on either side of the BLM's annual seasonal fire mobilization operations for the period of July 16, 2007 through **October 31, 2007**.

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

ATTACHMENTS:

- A. Resolution (1 Page)

RESOLUTION 07-_____

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

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

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

WHEREAS, the BLM utilizes temporary mobile structures, tents, aircraft, ground support equipment, and supplies, as well as campers to accommodate the rotation of fire fighting personnel during this vital component of the region's fire fighting operations. The BLM has requested that it be allowed to park campers and set up tents at the event site from July 16 through October 31, 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 a period of forty-eight (48) hours on either side of July 16 through October 31, 2007, at the Airport Business Park BLM leasehold, located at Billings Logan International Airport.

APPROVED AND PASSED by the City Council of the City of Billings, Montana this _____ day of _____ 2007.

THE CITY OF BILLINGS:

BY: _____
RON TUSSING, MAYOR

ATTEST:

CARI MARTIN, CITY CLERK

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Resolution designating alley in Block 90, Billings O.T., as one-way northbound

DEPARTMENT: Public Works Department – Engineering Division

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Since purchasing the Clock Tower Inn approximately two years ago, Steve Wahrlich has had concerns about traffic using the alley. His hotel is split by the alley between 1st Avenue North and 2nd Avenue North, and North 25th and North 26th. Even though Mr. Wahrlich has removed some trees along the edge of the alley to improve sight distance and posted advisory signs, he reports there have been two accidents between vehicles and a few near misses involving pedestrians crossing the alley.

ALTERNATIVES ANALYZED:

1. Vacate the alley.
2. Put speed humps in the alley.
3. Make the alley a one-way.

FINANCIAL IMPACT: The costs for the signing changes necessary to designate the alley one-way are nominal and would be absorbed in the operating budget for the Street-Traffic Division.

RECOMMENDATION

Staff and the Traffic Control Board recommend Council approval of a resolution designating the alley in Block 90, Billings Original Town, as one-way northbound between 1st Avenue North and 2nd Avenue North.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Council Resolution
- B. Property owner request

INTRODUCTION

Since purchasing the Clock Tower Inn approximately two years ago, Steve Wahrlich has had concerns about traffic using the alley. His hotel is split by the alley between 1st Avenue North and 2nd Avenue North, and North 25th and North 26th. Even though Mr. Wahrlich has removed some trees along the edge of the alley to improve sight distance and posted advisory signs, he reports there have been two accidents between vehicles and a few near misses involving pedestrians crossing the alley.

PROCEDURAL HISTORY

- Fall 2005, City staff collected traffic data in the alley after being contacted by Mr. Wahrlich
- April 10, 2007, formal written request to designate one-way alley received
- April 24, 2007 request considered by Traffic Control Board
- June 26, 2007 Traffic Control Board votes to recommend one-way alley designation

BACKGROUND

Mr. Wahrlich contacted City staff in the fall of 2005 asking what could be done to reduce non-hotel traffic using the alley. Traffic counts taken between October 12th & 17th, 2005, show an average of about 90 cars a day using this alley. Peak volume was 130 vehicles on a Friday. Approximately 82% of the traffic is southbound. Measured 85% percentile speeds are 13 MPH. Staff did not feel the volume or speed of traffic was unusual for a commercial alley.

In the spring of 2007, Mr. Wahrlich again contacted the Engineering Division asking for help in reducing the amount of traffic using the alley. Staff explained that vacation of the alley was unlikely because a sanitary sewer line serving properties north of 2nd Avenue North runs through the alley. Staff also explained that any changes in alley traffic flow should be concurred with by other businesses along the alley. Mr. Wahrlich subsequently submitted a request signed on behalf of all businesses in the block.

Staff took the request to the Traffic Control Board at their April 24, 2007 meeting. At the meeting staff suggested that the amount of traffic using the alley might decrease significantly once the Wells Fargo drive-up banking facility to the north is relocated to the Park II garage. It was also noted that the "alley" in the block to the north was previously vacated adjacent to the Bank properties and is actually signed to direct traffic north and south from the drive-up facility. The Traffic Control Board tabled the issue and asked that Staff discuss other options, including vacation of the alley, with Mr. Wahrlich.

At the June 26, 2007, Traffic Control Board meeting staff reported on the options discussed below. Vacation of the alley or the installation of speed bumps are not feasible alternatives. Mr. Wahrlich also addressed the Board and explained that he has taken steps such as trimming shrubbery to improve sight distance. The Traffic Control Board voted to recommend designation of the alley as one-way northbound.

ALTERNATIVES ANALYSIS

1. Vacating the alley. City policy requires that the City be compensated for the value of the property when a street or alley is vacated (transferred to private ownership). There is 6000 sq feet of alley at an estimated value \$10.00 per square foot. The City would have to retain an easement for the sanitary sewer main in the alley because it serves properties to the north. Paying \$60,000 for the property and then not being able to build on or over it is not an attractive option for Mr. Wahrlich.
2. Putting speed humps in the alley. Most speed humps are designed to reduce travel speeds to around 25 MPH—speeds in the alley are already lower than that. Speed humps would also create drainage problems unless an expensive storm drain line was extended in the alley.
3. Make the alley a one-way. The Solid Waste Division would prefer the alley be one-way southbound for garbage pickup. A one-way southbound would do little to reduce conflicts, since 85% of the traffic is already traveling southbound. Mr. Wahrlich is willing to relocate the dumpsters to accommodate garbage pickup. The apartment dumpster has already been moved to the east side of the alley, which improves sight distance where their parking lot exits onto the alley.

RECOMMENDATION

Staff and the Traffic Control Board recommend Council approval of a resolution designating the alley in Block 90, Billings Original Town, as one-way northbound between 1st Avenue North and 2nd Avenue North.

ATTACHMENTS

- A. Council Resolution
- B. Property owner request

RESOLUTION NO. 07-_____

A RESOLUTION DESIGNATING THE ALLEY IN BLOCK 90,
BILLINGS O.T. AS A ONE-WAY ALLEY FROM 1ST AVENUE
NORTH TO 2ND AVENUE NORTH

WHEREAS, a request to designate the alley in Block 90, Billings Original Town as one-way northbound from 1st Avenue North to 2nd Avenue North has been submitted to the City Traffic Engineer, and

WHEREAS, said one-way alley designation can be accomplished without creating significant impacts for motor vehicle traffic in the Downtown area, and

WHEREAS, the Traffic Control Board has reviewed the request and recommends approval of the one-way designation,

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

1. The alley in Block 90, Billings Original Town be designated as a one-way alley, northbound from 1st Avenue North to 2nd Avenue North.
2. All resolutions and regulations in conflict herewith are hereby repealed.

PASSED by the City Council and APPROVED this 27th day of August 2007.

CITY OF BILLINGS

By _____
Ron Tussing Mayor

ATTEST:

By _____
Cari Martin City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 27, 2007

TITLE: 2nd Reading. Ordinance Adopting International Fire Code (IFC), 2006 Edition, as the Billings Fire Code

DEPARTMENT: Fire Department

PRESENTED BY: Marvin L. Jochems, Fire Chief
Frank Odermann, Fire Marshal

PROBLEM/ISSUE STATEMENT: A public hearing and first reading were held at the City Council meeting of August 13, 2007. In 2005, the previously adopted fire code discontinued publishing and Billings adopted a new fire code, the 2003 National Fire Protection Association (NFPA1/UFC) Fire Code. The NFPA1/UFC has proved to be difficult to correlate with the other codes adopted statewide which are primarily from another family of model codes, the International Codes. Because of the difficulties encountered in attempting to correlate NFPA1/UFC with a different family of model codes, Billings government and industry would be better served by a fire code which is in the same family of International Codes under which construction is governed.

ALTERNATIVES ANALYZED: There are two model fire codes in the United States from which to choose; the National Fire Protection Association/Uniform Fire Code (NFPA1/UFC) and the International Fire Code (IFC). Pros and cons to the adoption of either code have been analyzed and are presented under the 'Alternatives Analysis' heading of this document.

FINANCIAL IMPACT: The financial impact of adopting the IFC will be primarily in the cost of developing and printing new inspection forms and purchasing code materials. The cost is estimated at \$2,500.00.

RECOMMENDATION

Staff recommends that, in order to maintain code compatibility with the other International Codes already in effect statewide, as well as to provide the City of Billings with a reasonable level of regulation to safeguard life and property from fire and other life-threatening conditions, the Billings City Council adopts the IFC 2006 Edition.

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

ATTACHMENTS

Attachment A: Proposed Ordinance for adoption of 2006 IFC

Attachment B: Letter from CTA Architects and Engineers

INTRODUCTION

The model codes are well into a new adoption cycle. Of nine (9) building construction codes used in Billings, six (6) have been adopted in 2006 editions.

Presently, the 2003 NFPA1/UFC is adopted by the City of Billings. To remain current with the construction codes, the Fire Code should be updated to a 2006 edition.

There are two model fire codes in the United States from which to choose; the NFPA1/UFC and the International Fire Code (IFC). Staff recommends that Council adopt the 2006 IFC.

BACKGROUND

- In June, 2005, the City adopted a new fire code because the previous code had discontinued publication. The City adopted the 2003 NFPA1/UFC Fire Code in 2005.
- Of nine (9) Codes which govern construction, six (6) are International Codes. The following is a list of those codes currently adopted in Billings:
 - International Building Code, 2006 edition
 - International Residential Code, 2006 edition
 - International Mechanical Code, 2006 edition
 - International Fuel Gas Code, 2006 edition
 - International Existing Building Code, 2006 edition
 - International Energy Conservation Code, 2006 edition
 - Uniform Plumbing Code, 2006 edition
 - National Electrical Code, 2005 edition
 - NFPA1/UFC Fire Code, 2003 edition
- The currently adopted Fire Code is not a companion code to the International Code family of model codes.
- Since the adoption of the NFPA1/UFC in 2005, the Fire Department, Building Department, Planning Department, architects, engineers, and other private industries have experienced difficulties in attempting to correlate the provisions of the adopted Fire Code with the provisions of the other non-companion codes which govern construction.
- Adoption of the International Fire Code will create a seamless correlation between the Fire Code and the other International Codes which are of the same family of model codes.
- Adoption of the 2006 IFC would ensure that this community is afforded the latest technological and philosophical advancements in fire and life safety protection.

ALTERNATIVES ANALYSIS

There are two model fire codes in the United States from which to choose; the NFPA1/UFC and the International Fire Code (IFC). Pros and cons to the adoption of either code have been analyzed and are discussed here under sub-headings 'Alternative 1' and 'Alternative 2'.

Alternative 1, Adoption of IFC

Pros:

- The IFC is a 'companion code' and, therefore, directly and seamlessly correlates to the other currently adopted International Codes.
- Of the nine (9) Codes which govern construction statewide, six (6) are International Codes. Adoption of the International Fire Code will provide seamless correlation between a family of codes and alleviate major difficulties which have resulted from efforts to correlate the non-companion codes.
- Private industry, including architects and engineers, is in support of the adoption of the IFC.
- The City's Building, Planning, and Engineering departments are in support of the adoption of the IFC.
- Kalispell has already adopted the IFC. Other municipal jurisdictions are in the process of doing so at this time.

Cons:

- Adoption of IFC will create non-conformity between Billings and other fire jurisdictions within the state which still use the NFPA1/UFC. However, this will have little negative impact on the code enforcement duties of the Billings Fire Department and the Fire Department is aware that there is a desire by other jurisdictions to adopt the International Fire Code.

Alternative 2, Retain Adoption of NFPA1/UFC

Pros:

- At this time, a majority of fire jurisdictions are still utilizing the NFPA1/UFC. However, indications reflect that more jurisdictions are looking toward adoption of the IFC.

Cons:

- NFPA1/UFC is not a 'companion code' to the International Codes which control construction in this State. This has proven to cause difficulties and increased workload for City agencies and private industry.

STAKEHOLDERS

Numerous representatives of private industry, as well as City departments have indicated the strong desire to be able to review projects under a family of model codes. Government and private industry will both benefit from the adoption of the IFC.

RECOMMENDATION

Staff recommends that, in order to maintain the ability to correlate Fire Codes with provisions of the

other adopted construction codes, as well as to provide the City of Billings with a reasonable level of regulation to safeguard life and property from fire and other life-threatening conditions, the Billings City Council adopts the IFC, 2006 edition.

In accordance with MCA 7-1-105, the 2006 IFC will be effective 30 days after second reading and final adoption.

From the date of second reading and final adoption until the effective date (30 days), industry may choose to have plans and premises reviewed under either the 2003 NFPA1 or under the 2006 IFC Fire Code. During this 30 day period, use of the 2006 IFC is recommended. However, the option to choose either code is available to the applicant.

ATTACHMENTS

Attachment A: Proposed Ordinance for adoption of 2006 IFC

Attachment B: Letter from CTA Architects and Engineers

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING FOR THE REPEAL OF SECTION 14-301 AND REPLACING IT WITH A NEW SECTION 14-301; PROVIDING FOR THE ADOPTION OF THE 2006 EDITION OF THE INTERNATIONAL FIRE CODE AND CERTAIN AMENDMENTS

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

Section 1. That Section 14-301 of the Billings, Montana City Code entitled “Adoption by reference of the NFPA1/Uniform Fire Code and Administrative Rules,” is hereby repealed and declared null and void and of no effect.

Section 2. That the Billings, Montana City Code be amended by adding a new section 14-301, to read as follows:

“Sec. 14-301. Adoption by reference of the 2006 edition of the International Fire Code

- (a) The International Fire Code, 2006 edition, including Appendices B and C, as published by the International Code Council, is adopted by reference as the Fire Code of the City of Billings. It regulates and governs the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; provides for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said Fire Code on file in the office of the Billings City Clerk are hereby referred to, adopted, and made a part hereof, as if fully set out, with the additions, insertions, deletions and changes, if any, set by ordinance.
- (b) The following sections of the Fire Code are revised as set out below:
 - Section 101.1. Insert: [City of Billings, Montana]
 - Section 109.3. Insert: [Misdemeanor, \$500.00, 6 months] so that such section shall read as follows:

“Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or by imprisonment not exceeding 6 months, or both such

fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Section 111.4. Insert: [not less than \$100 or more than \$500]

Section 906.1. Delete Exception to Section 906.1, #1.

“906.1 Where required.

Portable fire extinguishers shall be installed in the following locations.

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

~~Exception: In new and existing Group A, B and E occupancies equipped throughout with quick-response sprinklers, portable fire extinguishers shall be required only in locations specified in Items 2 through 6.~~

2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.
5. Where required by the sections indicated in Table 906.1.”

Section 907.15.1. When required by the Fire Code Official, non-required fire alarm systems shall be monitored by an approved supervising station in accordance with NFPA 72.

- (c) That the geographic limits referred to in certain sections of the 2006 *International Fire Code* are hereby established as follows:

Section 3204.3.1.1 LOCATION. Stationary containers shall be located in accordance with section 3203.6. Containers of cryogenic fluids shall not be located within diked areas containing other hazardous materials.

Section 3404.2.9.5.1 Locations where above-ground tanks are prohibited. Storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited within the limits established by the City of Billings and Yellowstone County Unified Zoning Regulations.

Section 3406.2.4.4 Locations where above-ground tanks are prohibited. Storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited within the limits established by the City of Billings and Yellowstone County Unified Zoning Regulations.

Section 3804.2 Locations where the storage of liquefied petroleum gas is restricted for the protection of heavily populated or congested areas. Storage of liquified petroleum gas in above-ground tanks outside of buildings is prohibited within the limits established by the City of Billings and Yellowstone County Unified Zoning

Regulations.

Section 3. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 4. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

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

Section 6. PUBLICATION OF NOTICE OF INTENT TO ADOPT THE 2006 INTERNATIONAL FIRE CODE BY REFERENCE. Notice of the intent to adopt the 2006 International Fire Code by reference shall be published both before first reading and public hearing and after first reading and prior to final adoption of the code. At least one copy of the code shall be filed in the Office of the City Clerk and be kept there, available for public use, inspection, and examination, for a period of thirty (30) days prior to final adoption of the ordinance.

Section 7. Nothing in this ordinance or in the Fire Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in *Section 1* of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

PASSED by the City Council on first reading this _____ day of _____, 2007.

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

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk



July 24, 2007

Christina Volek, City Administrator
City of Billings
4048 Palisades Park Drive
Billings, MT 59106

Dear Christina,

On behalf of CTA Architects Engineers, we are writing to request your support of the City's adoption of the 2006 IFC. As design professionals, we are working with the building codes and the fire codes on a daily basis. The International Building Code and NFPA 1 are not compatible codes. Because of this, we are often faced with code overlaps and gaps that need to be dealt with. It would be far better for us as design professionals and the code officials we interact with to have a fire code that is a true companion to the International Building Code.

Sincerely,

CTA ARCHITECTS ENGINEERS

Michael Radke, Associate, IBC Plans Examiner
Jeff Haidle, Associate PE – Electrical Engineer
Rick Demarnis, Associate PE – Fire Protection Engineer

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13 North 23rd Street • P.O. Box 1439 • Billings, Montana 59103 • 406. 248. 7455 • Fax: 406. 248. 3779
<http://www.ctagroup.com> • E-mail: info@ctagroup.com

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S1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,045,449.01 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 30, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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S2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,079,582.02 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 3, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Public Hearing and Resolution Creating a Tourism Business Improvement District and Resolution Appointing a Board of Trustees
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Assistant City Administrator

PROBLEM/ISSUE STATEMENT: The City received a petition from hotel property owners to create a Tourism Business Improvement District (TBID). The petitioners represent 62% of the hotels and 71% of the square footage of all hotels in Billings. On July 23, 2007, the Council adopted a resolution of intent to create a TBID and set a public hearing for August 27. Unless the protest threshold is met, the Council may adopt a resolution that creates the Billings TBID. The statute requires that a Board of Trustees be appointed to govern the district. The list of recommended appointees will be submitted at the Council meeting.

FINANCIAL IMPACT: There will be a small financial impact on the City. The City Finance Division must provide the assessment documentation for the district each year. The documentation includes property ownership and assessment amounts that are transmitted to the County Treasurer for tax statement issuance and tax collection. Finance will receive payments from the County Treasurer, primarily in December and June, and will transfer the payment to the TBID. Finance does not intend to charge an administrative fee for these services since it does not charge for the identical services that are performed for the downtown Business Improvement District (BID).

RECOMMENDATION

Staff recommends that Council conduct the public hearing, consider any written or verbal protests and adopt the resolutions creating the Billings TBID and appointing the Board of Trustees.

Approved By: City Administrator ____ City Attorney ____
193 of ____

ATTACHMENTS

- A: Resolution creating the Billings TBID
- B: Resolution appointing the Billings TBID Board of Trustees

INTRODUCTION

The City received a petition from hotel property owners to create a Tourism Business Improvement District (TBID). The petitioners represent 62% of the hotels and 71% of the square footage of all hotels in Billings. On July 23, 2007, the Council adopted a resolution of intent to create a TBID and set a public hearing for August 27. The Council will conduct a public hearing in order to hear any protests to creating the district. Unless the protest threshold is met, the Council may adopt a resolution that creates the Billings TBID. The statute requires that a Board of Trustees be appointed to govern the district. The list of recommended appointees will be submitted at the Council meeting. Staff recommends that Council adopt the resolutions.

PROCEDURAL HISTORY

House Bill 235, amending the current BID law, was adopted by the 2007 Legislature and the Governor signed the bill on April 26th. The amendments allow local governments to create Tourism BIDs (TBID). The law goes into effect on October 1, 2007, therefore all Council actions that are taken at this time must have a delayed, specific effective date. The procedures that are required by the law and the schedule are as follows:

- July 5 Petitions submitted to City Clerk
- July 23 Resolution of Intent to create TBID
- July 26 First notice of intent to create, protest period starts, and advertised the public hearing.

- August 2 Advertise for board of trustees applications
- August 2 Second notice
- August 10 Deadline for written protests
- August 27 Public hearing and Resolution creating BID – delay effective date to Oct. 1, 2007

- August 27 Resolution appointing Board of Trustees
- Sept 24 Work Plan and Budget
- Oct. 1 BID effective date

BACKGROUND

The Billings Area Chamber of Commerce approached the City Council in the fall, 2006 and asked that the City support its effort to have the 2007 Legislature authorize TBIDs. The proposal was to expand the present BID statute to allow local governments to create this new type of BID. The BID law had to be amended so that TBID properties could be non-contiguous and could be assessed a flat fee rather than by square feet or value. The City Council agreed to support the proposal when it adopted its 2007 Legislative Priorities. Representative Ernie Dutton sponsored HB 235, it passed the Legislature and became law with an effective date of October 1, 2007.

The TBID law allows property owners to petition for district creation. If at least 60% of the property owners sign the petition, the Council may create a TBID. TBIDs allow property owners to assess themselves and produce revenue that will be used to promote tourism, conventions and other events that help to support hotels, restaurants and other tourist services. The State of Montana presently collects a 7% accommodation tax that produces nearly \$26 million statewide,

\$3 million in Yellowstone County and returns only \$200,000 to Billings for tourism promotion. The proposed TBID, which would collect \$.75/occupied room night, could produce up to \$700,000/year that would be used for marketing, attracting and supporting conventions and other tourism promotions.

After HB 235 was approved, the Chamber of Commerce approached City staff and started the dialogue on how and when to create the Billings TBID. The Chamber and the Yellowstone County Lodging Association collected petition signatures to create the district from owners of hotel properties that represent 62% of the number of hotels and 71% of the land area of all hotels. Those petitions were submitted to the City Clerk on July 5. The Council adopted a Resolution of Intent to create the district on July 23 and set a public hearing for August 27. Staff advertised the notice of public hearing and mailed notices to all hotels on July 26. The notice triggered a protest period that ended August 10. As of that date, the City received no written protests and one telephone protest. That protestor wants the threshold number of rooms increased to at least 12 so that her small hotel will not be assessed. A valid protest must be in writing and represent more than 50% of the number of properties, more than 50% of the total taxable value of all properties or more than 50% of the assessments to be made on behalf of the district. After the public hearing, the Council may create the district, appoint a board of trustees, approve a work plan and budget and order the assessments. The new law has an October 1 effective date, so the resolution that creates the district and appoints the board of trustees must have a delayed effective date to match the state law's effective date. The assessments are reviewed annually and the district has a 10 year sunset. The first assessment is expected to be made in April, 2008 and will be a partial year assessment due to this being mid-year for tax collections. After the initial collection, the assessments will be collected semi-annually like all other taxes and assessments.

STAKEHOLDERS

The Chamber of Commerce/Convention and Visitors Bureau and the Lodging Association are the TBID's primary supporters. The law requires that the owners of at least 60% of the affected property petition to create the district, so these petitioners could be considered supporters. The formal protest period ended August 10 without any written protests and one telephonic protest. While the Yellowstone County Lodging Association supports the TBID, there are a few hotels/motels that may not support the TBID because they do not believe that tourism promotion benefits them.

RECOMMENDATION

Staff recommends that Council conduct the public hearing, consider any written or verbal protests and adopt the resolutions creating the Billings TBID and appointing the Board of Trustees.

ATTACHMENTS

- A: Resolution creating the Billings TBID
- B: Resolution appointing the Billings TBID Board of Trustees

ATTACHMENT A

RESOLUTION NO. 07- _____

A RESOLUTION CREATING A TOURISM BUSINESS IMPROVEMENT DISTRICT FOR
THE PURPOSE OF PROMOTING TOURISM, CONVENTIONS, TRADE SHOWS AND
TRAVEL TO THE CITY OF BILLINGS, MONTANA

WHEREAS, the 2007 Montana Legislature and the Governor approved legislation that allows local governments to create Tourism Business Improvement Districts, effective October 1, 2007; and

WHEREAS, a Tourism Business Improvement District will increase tourist trips and promote and benefit the tourism and lodging industry in Billings; and

WHEREAS, a Tourism Business Improvement District will provide funding that will promote the health, safety, prosperity, security, and general welfare and will convey a special benefit to the properties within the boundaries of the Tourism Business Improvement District;

BE IT RESOLVED by the City Council of the City of Billings (the "City"), Montana, as follows:

Section 1. Creation of Tourism Business Improvement District (T.B.I.D.); In accordance with its stated intention contained in Billings Resolution No. 07-_____ the City Council hereby creates a Tourism Business Improvement District (TBID) for the purpose of promoting and marketing Billings and creating special benefit for the lodging businesses in the city. The assessments collected shall be used for the purposes set forth in Business Improvement District Law, Montana Code Annotated Section 7-12-1101 through 7-12-1144 as amended and as specified in the Billings Tourism Business Improvement District budget.

Section 2. Number of District. The District shall be known and designated as the Tourism Business Improvement District No. 0002 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are the limits and boundaries of the City of Billings as may be amended from time to time, which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District to be assessed, as of this date, is shown on Exhibit "A," attached hereto.

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 are hereby declared to be the Tourism Business Improvement District and the territory which will benefit from the assessments that are collected from within the District. The hotels or lodging facilities, as defined in Section 8, are specially benefited by the activities and operations of the District.

Section 5. General Character of the Services to be Performed. The services to be performed shall be all uses and projects for tourism promotion within Billings as specified in the Billings Tourism Business Improvement District budget. It includes, but is not limited to, marketing convention and trade shows that benefit local tourism and lodging businesses in Billings; marketing Billings to the travel industry in order to benefit local tourism and the lodging businesses located within the Billings Tourism Business Improvement District; and marketing Billings to recruit major sporting events in order to promote local tourism and to benefit the lodging businesses within the Billings Tourism Business Improvement District.

Section 6. Appointment of Board of Trustees. Upon adoption of this Resolution, the Mayor, with the approval of the City Council, shall appoint not less than 5 or more than 7 owners of property or their assignees within the T.B.I.D. to comprise the Board of Trustees of the District. The members of the Board shall be appointed in compliance with Section 7-12-1121, M.C.A.

Section 7. Powers and Duties of Trustees. The appointed Trustees shall have the powers and duties set out in Sections 7-12-1121 through 7-12-1133, M.C.A. and any other applicable laws, ordinances or regulations. At a time determined by the City Council, the Board of Trustees shall submit to the City Council for approval a work plan and budget for the ensuing fiscal year. The City Council may modify the work plan and budget as it considers necessary and appropriate.

Section 8. Property To Be Assessed. All hotels, defined as any structure, or any portion of any structure, which are occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and including any hotel, inn, motel, or other similar structure or portion thereof, with six (6) or more rooms that are within the District are to be assessed for the costs of operating the Tourism Business Improvement District.

Section 9. Assessments. All hotels, as defined in Section 8, that are within the District will be assessed for their proportionate share of the costs of maintaining the activities of the Tourism Business Improvement District as prescribed in Section 7-12-1133 subsection (c), M.C.A. The assessments to fund the work plan for the first fiscal year are to be collected from all hotels with 6 or more rooms within the boundaries of the district and all such hotels shall be subject to an assessment of seventy five cents (\$0.75) per occupied room night. The assessments may be modified annually by adoption of a resolution or adoption of the City's budget.

Section 10. Payment of Assessments. The assessments for the costs of maintaining the services provided by the Tourism Business Improvement District shall be payable, as prescribed in Section 7-12-1133 subsection (c), M.C.A.

Section 11. Duration of District. The duration of the Tourism Improvement District shall be for a period of 10 years as prescribed in Section 7-12-1141, M.C.A. Upon receipt of a petition signed by the owners of more than 50% of the area of the property included in the district, the governing body shall terminate the district at the end of any fiscal year.

Section 12: Effective Date. The effective date for this resolution and the date upon which the District is created shall be October 1, 2007.

APPROVED by the City Council of the City of Billings, Montana this 27th day of August, 2007.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

EXHIBIT A

**HOTELS TO BE ASSESSED FOR THE BILLINGS
TOURISM BUSINESS IMPROVEMENT DISTRICT (2007-2008)**

Best Western Clock Tower Inn	Rimrock Inn
Best Western Kelly Inn	Rimview Inn*
Big 5 Motel	Riverstone Billings Inn
Billings Hotel and Conv. Ctr.	Sleep Inn Motel Billings
Boothill Inn & Suites	SpringHill Suites by Marriott
C'Mon Inn	Super 8 Lodge
Carlin Hotel	Town House Motel
Cherry Tree Inn	Travel West Inn
Clubhouse Inn and Suites	Twin Cubs Motel
Comfort Inn of Billings	Vegas Motel
Country Inn & Suites	War Bonnet Inn
Crowne Plaza Billings	Western Executive Inn
Days Inn	Wingate
Dude Rancher Lodge	
Extended Stay America	
Fairfield Inn	
Hampton Inn	
Heights Inn Motel	
Hilltop Inn	
Hilton Garden Inn*	
Holiday Inn Grand Montana	
Juniper Inn	
Kelly Inn	
LaQuinta	
Lazy KT Motel	
Lewis & Clark Inn	
Mariott Residence Inn	
Motel 6	
Overpass Motel	
Parkway Motel	
Picture Court Motel	
Quality Inn Homestead	
Ramada Limited Hotel	
Red Roof Inn	

ATTACHMENT B

RESOLUTION 07-_____

A RESOLUTION CREATING A BOARD OF TRUSTEES FOR BILLINGS TOURISM BUSINESS IMPROVEMENT DISTRICT NO.0002, APPOINTING THE INITIAL TRUSTEES AND SPECIFYING THE POWERS AND DUTIES OF THE BOARD

WHEREAS, the Billings City Council created Business Improvement District No. 0002 on August 27, 2007 by approving Resolution No. 07- _____, and

WHEREAS, according to Montana State Code 7-12-1121 MCA, a Board of Trustees must be created to govern the District and five (5) to seven (7) Trustees must be appointed to govern any Business Improvement District, and

WHEREAS, the Yellowstone County Lodging Association submitted names of seven (7) proposed Trustees for appointment to the Board of Trustees, all of whom are property owners, or their assignees, within the District, and

WHEREAS, Mayor Ron Tussing recommends that the Billings City Council create the Board of Trustees and confirm the appointment of seven (7) Trustees named below.

BE IT RESOLVED by the City Council of the City of Billings (the "City"), Montana, as follows:

Section 1. Business improvement District No. 0002 Board of Trustees: The Business Improvement District No. 0002 Board of Trustees is hereby created. There shall be seven (7) Trustees.

Section 2. Board Appointments: The initial Board of Trustees for Business Improvement District No. 0002 shall be as follows and their terms shall be as shown. All terms begin September 1, 2007. After the initial term, all subsequent Trustees shall be appointed to four (4) year terms, except that a vacancy occurring during a term will be filled for the unexpired term. The unexpired term shall be filled in the same manner as other vacancies. The initial Board Chair shall be _____, who shall serve a one (1) year term. Subsequent Chair persons shall serve one (1) year terms and shall be selected by the Board.

<u>Trustee Name</u>	<u>Initial Term</u>
	1 Year
	2 Years
	2 Years
	3 Years
	3 years
	4 Years

4 Years

Section 3. Powers and Duties of Trustees: The appointed Trustees shall have the powers and duties set out in Sections 7-12-1121 through 7-12-1133, M.C.A. and any other applicable laws, ordinances or regulations. The Board of Trustees shall submit to the City Council for approval, a work plan and budget for the ensuing fiscal year, no later than the 1st day of May preceding the beginning of the fiscal year for which the work plan and budget apply. The City Council may modify the work plan and budget as it considers necessary and appropriate.

APPROVED by the City Council of the City of Billings, Montana this 27th day of August, 2007.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
City Clerk

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2006

SUBJECT: Awarding Sale of Bonds Relating to \$168,000 Pooled Special Improvement District Series 2007

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City Council has previously approved the authorization for the sale of bonds relating to Pooled Special Improvement District Series 2007. This staff memo recommends award of the sale of bonds totaling \$168,000 for the financing of construction for SID 1375 and 1377.

BACKGROUND INFORMATION: Bids on \$168,000 in bonds will be received August 27, 2007 and a report will be made at the Council meeting.

RECOMMENDATION

Staff recommends award of the bond bid to _____ at _____% true interest rate.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A –Resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO \$168,000 POOLED SPECIAL IMPROVEMENT DISTRICT BONDS (SPECIAL IMPROVEMENT DISTRICT NOS. 1375 AND 1377); AWARDED THE SALE THEREOF AND APPROVING CERTAIN MATTERS WITH RESPECT THERETO" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on August 27, 2007, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____
_____; voted against the same:
_____; abstained from voting thereon:
_____; or were absent: _____
_____.

WITNESS my hand and seal officially this _____ day of August, 2007.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO \$168,000 POOLED SPECIAL IMPROVEMENT DISTRICT BONDS (SPECIAL IMPROVEMENT DISTRICT NOS. 1375 AND 1377); AWARDING THE SALE THEREOF AND APPROVING CERTAIN MATTERS WITH RESPECT THERETO

BE IT RESOLVED by the City Council (the "Council") of the City of Billings, Montana (the "City"), as follows:

1. This Council on August 13, 2007 adopted Resolution No. _____ providing for the public sale of \$168,000 Pooled Special Improvement District Bonds (the "Bonds") to finance the costs of certain local improvements to be undertaken in or for the benefit of Special Improvement District Nos. 1375 and 1377. Notice of the sale has been duly published in accordance with Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106. Pursuant to the notice of sale, _____ (____) bids for the purchase of the Bonds were received at or before the time specified for receipt of bids. The bids have been opened or accessed and publicly read and considered, and the purchase price, interest rates and net interest cost under the terms of each bid have been determined.

2. The bid of _____ of _____, _____ (the "Purchaser"), attached as Exhibit A, to purchase the Bonds of the City, is hereby determined to comply with the notice of sale, and to be the lowest, most reasonable bid for the purchase of the Bonds. The bid of the Purchaser is hereby accepted by the Council and the sale of the Bonds is hereby awarded to the Purchaser. The bid security of the Purchaser shall be retained pending delivery of the payment for the Bonds and the bid security of all other bidders shall be promptly returned.

3. The Mayor and City Clerk are hereby authorized and directed to execute a purchase contract with the Purchaser with respect to the Bonds.

4. This Council shall prescribe the form and security for the Bonds in a subsequent resolution.

PASSED AND APPROVED by the City Council of the City of Billings, Montana, this 27th day of August, 2007.

Mayor

Attest: _____
City Clerk

EXHIBIT A
[Copy of Signed Winning Bid]

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Award of Change Order #1 to Contract for the New Baseball and Multi-Use Stadium at Athletic Park

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: The contract to build a new Billings Baseball and Multi-Use Stadium at Athletic Park has been awarded to Langlas and Associates, Inc. for \$11,459,800. The Council has directed the Steering Committee to review a list of Value Engineering suggestions (generated by CTA Architects Engineers and Langlas and Associates) and the list of alternates in the bid documents and make recommendations of what items are deemed essential for user-friendly function and aesthetics of the new stadium. The Steering Committee recommendation is noted in Change Order #1 (Attachment A).

FINANCIAL IMPACT: The financial impact will be a net *increase/decrease* to the project of \$_____.

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

Funding Sources: Increases will come from donations and General Fund.

ALTERNATIVES ANALYZED:

- Accept the Steering Committee's recommendation of value engineering and alternate items, or
- Reject all recommendations, or
- Modify the Steering Committee's recommendation by adding and or deleting value engineering and alternate items.

RECOMMENDATION:

Staff recommends accepting the Steering Committee's recommendation of value engineering and alternate items.

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

Attachment A: Change Order #1

CHANGE ORDER

No. One(1)

PROJECT: **Billings Baseball And Multi-Use Stadium** **DATE OF ISSUANCE: August 27, 2007**

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

CONTRACTOR: **Langlas and Associates, Inc.** **ARCHITECT:** HNTB Montana
 2270 Grant Road
 Billings, MT 59102 **ARCHITECT'S PROJECT NO.** _____

CONTRACT FOR: Construction of a new baseball and multi-use stadium at Athletic Park

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

Purpose of Change Order: To identify items accepted and or deleted from the Value Engineering suggestions (generated by CTA Architects Engineers and Langlas and Associates) and the list of alternates in the bid documents and their cost impact.

Attachments: Attachment A: Approved list of Value Engineering suggestions and Alternates and their associated costs.

CHANGE IN CONTRACT PRICE:

Original Contract Price
 \$ 11,459,800.00

Previous Change Orders No. No.
 Orders
 \$ 0.00

Contract Price prior to this Change Order
 Order
 \$ 11,459,800.00

Net Increase (decrease) of this Change

CHANGE IN CONTRACT TIME:

Original Contract Time
June 30, 2008
 days or date

Net Change from previous Change
None
 days

Contract Time prior to this Change
June 30, 2008
 days or date

Net Increase (decrease) of this Change

\$ _____

Contract Price with approved Change Order
Order

\$ _____

None
_____ days

Contract Time with approved Change

June 30, 2008
_____ days or date

RECOMMENDED:

By _____
Architect

APPROVED:

By _____
Owner

APPROVED:

By _____
Contractor

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Zone Change #813 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential 9600 (R-96) to Planned Development (PD). The property is located on the southeast corner of the intersection of Rimrock Road and Avalon Road and contains the Yellowstone Racquet Club. The PD would be for single-family residential, triplexes and 4-plexes to be developed as condominiums for individual ownership. A minor preliminary plat to aggregate Lots 1-9, Block 1, Swartz McGeorge Subdivision and Certificate of Survey 46, was approved by the City Council on July 23, 2007. The owner is TenFish Company and the representative is Engineering, Inc. The Zoning Commission conducted a public hearing on August 7, 2007, and forwarded a recommendation of approval on 5-0 vote.

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: Upon development, the proposed zone change should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #813 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Site Photographs (available in City Clerk's Office)
- B: Site Plan
- C: Draft PD Agreement
- D: Ordinance

INTRODUCTION

The applicant is requesting a zone change from Residential 9600 (R-96) to Planned Development (PD). The property is located on the southeast corner of the intersection of Rimrock Road and Avalon Road and contains the Yellowstone Racquet Club. The PD would be for single-family residential, triplexes and 4-plexes to be developed as condominiums for individual ownership.

PROCEDURAL HISTORY

- On April 26, 2007, a pre-application meeting was conducted for proposed subsequent minor plat.
- On June 1, 2007, the preliminary rezone application was submitted to the Planning Department.
- On June 15, 2007, an application for a preliminary minor subdivision was submitted to the Planning Department.
- On July 11, 2007, the Planning Department conducted a neighborhood meeting regarding the proposed zone change to PD.
- On July 23, 2007, the minor preliminary plat was approved by the City Council.
- On August 7, 2007, the City Zoning Commission conducted a public hearing for the proposed zone change and forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On August 27, 2007, the City Council will conduct a public hearing and 1st reading to approve or deny the zone change.
- On September 10, 2007, if approved on the 1st reading, the City Council will conduct the 2nd reading of the proposed zone change.

BACKGROUND

This is a zone change request from R-96 to PD for Trailside Condominiums. The applicant intends to develop the property with primarily single-family residences located from the center of Scout Trail to the southern portion of the subject property. Triplexes and 4-plexes will be located along the northern portion of the site adjacent to Rimrock Road, which is classified as a Principle Arterial. A total of approximately 31 units are proposed. The southern residential units are to be all one level catered more toward retirees. The northern condominiums, the triplexes and 4-plexes, will be more than one level.

Access to the proposed subdivision will be via two private dead end cul-de sacs off of Avalon Road to the west of the subdivision. The streets will be constructed to city standards; however no sidewalks are required on private internal streets. The subdivider will construct 5-foot wide boulevard sidewalks along Avalon Road adjacent to the subdivision. There will be no additional accesses or private driveways off of Avalon Road or Rimrock Road. The subdivision will trigger improvements on the southern portion of Rimrock Road fronting the subdivision, which includes curb, gutter, and boulevard sidewalk. Since the improvements to Rimrock Road have not been determined by the city at this time, the Engineering Division is requesting a cash contribution for these improvements. Furthermore, with the subdivision proposal, the applicant is required to

provide parkland dedication, which will be interspersed through the site as open space for the residents of the proposed condominiums.

The Zoning Commission is forwarding a recommendation of approval for this application and has based this recommendation on the 12 criteria for zone changes discussed below. The subject property already contains a recreational use, which is considered a commercial use. Additionally, the proposal of single-family residences located within the central and southern portions of the subject property is characteristic of the surrounding single-family residences to the north, south, and west. The property has been reviewed in depth for traffic generation, as well as impacts to surrounding properties with the subdivision review.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The following are the Zoning Commission's determinations.

1. *Is the new zoning designed in accordance with the Growth Policy?*
 - a. *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)*

The proposed zoning is consistent with the surrounding condominiums and single-family residences.

- b. *New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element Goal, Page 6)*

The subject property is compatible with the surrounding single-family residences and condominiums.

- c. *Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)*

The property is located within an urbanized portion of the city and is considered infill development.

2. *Is the new zoning designed to lessen congestion in the streets?*

Access to the development will be via two private dead end cul-de sacs off of Avalon Road adjacent to the west of the subdivision. The streets will be constructed to city standards; however no sidewalks are required on private internal streets. The subdivider will construct 5-foot wide boulevard sidewalks along Avalon Road adjacent to the subdivision. There will be no additional accesses or private driveways off of Avalon Road or Rimrock Road. According to the 2005 Transportation Plan Update, Rimrock

Road is classified as a principal arterial at this location. This subdivision will trigger improvements on the southern portion of Rimrock Road fronting the proposed subdivision, which includes curb, gutter, and boulevard sidewalk. Since the improvements to Rimrock Road have not been determined by the city at this time, the Engineering Division is requesting a cash contribution for these improvements. A Traffic Accessibility Study (TAS) was not triggered by this development, as it contains less than 50 residential units, however traffic counts were completed by Engineering, Inc. within the last month and indicated that the traffic will not be substantially increased at this intersection based on the proposed development.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

This property was reviewed by the Police and Fire Divisions during the subdivision review and they found access to be sufficient.

4. *Will the new zoning promote health and general welfare?*

The proposed zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks for structures to allow for adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The standards set forth within the PD agreement are those of the Residential Multi-Family Restricted (RMF-R). The setbacks, lot coverages, and heights specified within the agreement, as well as a limit on the maximum number of units permitted on the site; a total of 31 units. These restrictions will prevent overcrowding of the land.

7. *Will the new zoning avoid undue concentration of population?*

The applicants are proposing to construct single-family residences, triplexes, and 4-plexes. If the racquet club were to be removed, the applicant would be permitted to construct approximately 18 single-family residences, by right, on the property. The addition of 13 units will not further cause an undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

- Transportation:* Access to the development will be via two private dead end cul-de-sacs off of Avalon Road adjacent to the west of the subdivision. The streets will be constructed to city standards
- Water and Sewerage:* Water and sewer to the subject property will be extended from existing 8-inch mains within Avalon Road. The water and sewer services will be private from the intersection of Avalon with Scout Trail and Settlers Trail.
- Schools and Parks:* The subdivision was circulated for review to the affected schools. The subdivision is located within School District #2. Arrowhead Elementary, Will James Middle School and West High School will serve the children on this property. A response was received from West High School indicating that the school is currently over capacity; however the subdivision is on a bus route. West High School will continue to accommodate new students. Responses from the other schools were not received at the time this report was written.
- Fire and Police:* The property is served by existing services and there should be no effect on these services from the proposed zoning.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning is alike in character to the surrounding single-family residences and condominiums.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is located in an area suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The proposed zoning is not expected to appreciably alter the value of buildings in the area.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning will allow for up to 31 residential units in this area, which is an appropriate land use for this portion of the city.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The draft Planned Development Agreement was reviewed at a neighborhood meeting on July 11, 2007. Surrounding property owners were invited to this neighborhood meeting to review the agreement and comment on any changes. Nine surrounding property owners attended the meeting and expressed concerns regarding traffic on Avalon Road becoming more congested as a result of the condominium development and stormwater drainage onto adjacent properties to the south. A Traffic Accessibility Study (TAS) was not triggered by this development, as it contains less than 50 residential units, however traffic counts were completed by Engineering, Inc. within the last month and indicated that the traffic will not be substantially increased at this intersection based on the proposed development. In regard to questions about the slope of Avalon Road, the project engineer stated that it would be very difficult to regrade the road and would likely require widening on both Avalon Road and Rimrock Road. In response to questions regarding stormwater, staff clarified that this development is required to retain all stormwater runoff onsite once constructed, as required by the subdivision review and site development process. Onsite storm drainage shall also comply with the criteria set forth by the City of Billings Stormwater Management Manual and will be subject to review and approval by the Engineering Division.

The Zoning Commission conducted a public hearing on August 7, 2007, and forwarded a recommendation of approval to the City Council on a 5-0. There was one adjacent property owner present who had concerns regarding the steepness of Avalon Road at its intersection with Rimrock Road and questioned why Avalon Road would not be extended south to Poly Drive. In response, the applicant's representative stated that preliminary traffic counts were performed at this intersection and determined that the proposed 31 residential units would not significantly impact street traffic on Rimrock Road. The extension of Avalon Road south to Poly Drive was discussed when the surrounding areas were being developed within subdivisions and the adjacent property owners were opposed to the extension. Based on this opposition, as well as no real need to create a through street at this intersection, the Engineering Division has stated that Avalon Road will remain a dead end. There was no further discussion at the Zoning Commission.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #813 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

ATTACHMENTS:

- A: Site Photographs (available in City Clerk's Office)
- B: Site Plan
- C: Draft PD Agreement
- D: Ordinance

Attachment B
Site Plan



Attachment C
Proposed Planned Development Agreement

PLANNED UNIT DEVELOPMENT AGREEMENT

TRAILSHEAD TOWNHOMES

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, by and between **TRAILSHEAD TOWNHOMES, LLC**, whose address for the purpose of this agreement is P. O. Box 81369, Billings, Montana 59108, hereinafter referred to as the "Owners," and the **CITY OF BILLINGS, MONTANA**, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS, the undersigned are all of the Owners of Trailshhead Townhomes, a Planned Unit Development, as outlined with the City of Billings Zoning Ordinance; and

WHEREAS, the Owners desire to place building and use restrictions on the above-described premises.

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to approval of the final plat.

NOW THEREFORE, in consideration of the premises, the undersigned hereby establish and declare the following building restrictions which shall be applicable to all of the above described real estate.

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

- A.** All persons, corporations, or other entities who shall hereafter acquire any interest in and to the above-described real estate shall be taken and held to agree, to conform to and observe the following building restrictions, and

stipulations as to the use thereof, and as to the construction of improvements thereon.

II. BUILDING AND USE RESTRICTIONS

A. LAND USE RESTRICTIONS

1. Planned Unit Development: Lots 1-9, McGeorge Subdivision and Certificate of Survey No. 46.
 - a) Permitted Dwelling Uses: Single Family, Two-Family, and Multi-Family Housing up to 4 units per building
2. Private Parks and Open Space as generally shown on the Planned Unit Development Site Plan (No Lot Numbers).

B. SUPPLEMENTAL AREA, YARD AND HEIGHT REQUIREMENTS

	Area PUD
Minimum Setback Requirements:	
Front	15 feet
Side	5 feet
Side Adjacent to Street	10 feet
Rear	15 feet
Minimum Distance from Private Park Areas	10 feet
Maximum Height Buildings	40 feet
Maximum Lot Coverage Percent	55 percent
Minimum Distance between Dwelling Units	10 feet
Maximum Number of Dwelling Units	31
Maximum Heights all fences:	
Front	6 feet
Rear	6 feet

C. DEVELOPMENT SCHEDULE

The development of the necessary infrastructure improvements, residential units, and common park areas will take place prior to June 1, 2008.

D. OTHER SPECIAL AGREEMENTS

1. Building Location and Site Plan: The building locations and site plan, as submitted, are not to be used to determine the exact size or location of buildings. The location and size shall be determined upon application for building permit based on all the standards outlined above and within the City of Billings Zoning Ordinance.
2. Private Parks and Landscaping: The development of the common park areas shall be completed with the development of each phase and in accordance with the landscaping plan, as submitted.

III. PLANNED UNIT DEVELOPMENT AGREEMENT AMENDMENTS

Except for minor changes to building footprints or locations, amendments or changes in the Planned Development Agreement or other documents shall be deemed a major change and considered the same as a new petition and a reapplication shall be made in accordance with the procedures for a new application under Article 27-1300 of the Billings City Code. Changes in the building footprints on locations shall be deemed minor changes in the development which may be approved by the zoning coordinator.

IV. RIGHT TO ENFORCE

The provisions of this Planned Development Agreement shall be enforced as provided for in Article 27-1300 of the Billings City Code.

ORDINANCE NO. 06-
AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lots 1-9, Block 1, Swartz McGeorge Subdivision and
Certificate of Survey 46, Containing approximately 4.01 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 1-9, Block 1, Swartz McGeorge Subdivision and Certificate of Survey 46 Containing approximately 4.01 acres and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9600** to **Planned Unit Development** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Planned Unit Development** 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 August 27, 2007.

PASSED, ADOPTED AND APPROVED on second reading September 10, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

City Clerk

ZC #813

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Zone Change #816 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential-7000 (R-70) to Neighborhood Commercial (NC) on a lot at 848 Wicks Lane. The property is located on the south side of Wicks Lane, east of Bench Blvd. and contains a single-family home on 1.14 acres. The owner is Colleen Baker. The Zoning Commission conducted a public hearing on August 7, 2007, and forwarded a recommendation of approval on a 5-0 vote.

ALTERNATIVES ANALYZED: State law, 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 would facilitate the redevelopment of the property which would increase the City's tax revenue on the parcel.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #816 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

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

ATTACHMENTS:

- A: Site Photographs (available in the City Clerk's Office)
B: Site Plan
C: Ordinance

INTRODUCTION

The applicant is requesting a zone change from R-70 to NC on a 49,658 square feet property at 848 Wicks Lane. The property is located on the south side of Wicks Lane, east of Bench Blvd. and contains a single-family home. Future redevelopment plans for the property are uncertain at this time.

PROCEDURAL HISTORY

- On July 2, 2007, the application for zone change was submitted for review.
- On July 26, 2007, the applicant conducted a neighborhood meeting regarding the proposed zone change.
- On August 7, 2007, the City Zoning Commission conducted a public hearing for the proposed zone change and forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On August 27, 2007, the City Council will conduct a public hearing and 1st reading to approve or deny the zone change.
- On September 10, 2007, if approved on the 1st reading, the City Council will conduct the 2nd reading of the proposed zone change.

BACKGROUND

This is a zone change request from R-70 to NC on a 1.14 parcel of land. The property is on the south side of Wicks Ln. approximately 460 feet east of the intersection of Bench and Wicks. There is a single family home on the front portion of the property, and the back of the lot is an unused field. NC zoning is located adjacent to the west, and RMF-R zoning is to the south. These zoning districts have been in place since 2004, as approved by Zone Change #750. Some of the RMF-R lot development is under way; however, there has not been any construction activity on the NC lots. The rest of the neighborhood to the north and east is zoned R-70 and developed as residential, with the exception of the church immediately to the east of the subject property.

The subject property's proximity to the intersection of two arterial streets, Wicks Ln. and Bench Blvd., has created a changing environment for this property and others near it. The applicant states that increased traffic on Wicks has made the property undesirable for her single-family residence, and feels it could better be used for a small business office or neighborhood service provider.

The 2006 Billings Heights Neighborhood Plan identifies a "Light Retail" node at this southeast quadrant of the Wicks/Bench intersection. Although it is not completely clear what the contemplated size of the retail area node was to be, the subject property is currently sandwiched between a NC zone to the west and a quasi-commercial use of the church on its east. This situation of the property makes it difficult to sustain a single family residential use. Redevelopment of the site in a light retail or office use, therefore, may be appropriate.

The Zoning Commission is forwarding a recommendation of approval for this application and has based this recommendation on the 12 criteria for zone changes discussed below.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The following are the Zoning Commission's determinations.

1. *Is the new zoning designed in accordance with the Growth Policy?*

The Growth Policy specifies that there is a desire for more housing and business choices within neighborhoods. Staff finds that the proposed zoning will further provide the surrounding residential and commercial neighborhoods with commercial amenities within a close walking distance.

Additionally, the new zoning district would allow for infill development that helps to control urban sprawl. The primary utility services and street system are in place, therefore the property will utilize existing infrastructure which reduces the public cost of new developments.

2. *Is the new zoning designed to lessen congestion in the streets?*

The subject property is on the south side of Wicks Ln., approximately 460 feet from its intersection with Bench Blvd. Staff finds that these streets are sufficient to accommodate the proposed neighborhood commercial uses. Furthermore, a Traffic Accessibility Study identifying specific traffic generation for the site may be required upon further development of this property.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

At this time, no new structures are proposed for the site, however upon submittal of any redevelopment building plans, the Fire, Police, and Building Departments will review the proposed development for compliance with applicable codes.

4. *Will the new zoning promote health and general welfare?*

The proposed NC zone could offer a business location or small neighborhood convenience retail store for the benefit of the surrounding residences.

5. *Will the new zoning provide adequate light and air?*

Sufficient setbacks are required within the proposed zoning that will allow for adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, provide restrictions on the maximum percentage of lot area that can be covered with structures. Furthermore, landscaping and buffering requirements in place are intended to mitigate any incompatibility with surrounding land uses. The above restrictions will help to prevent crowding within the proposed zoning.

7. *Will the new zoning avoid undue concentration of population?*

Staff finds that the potential resulting uses of the property should not create an undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

All of the public requirements will be provided as necessary, as the site develops.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will give reasonable consideration to the character of the district by providing a transition zone between the multi-family residential uses to the south of the property, the commercial uses to the west, and the church use on the east.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

Staff finds that the subject property is suitable for the requested zoning district. Given its proximity to the intersection of Wicks and Bench, a single family use is somewhat less desirable.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

Staff finds that the proposed zoning will not alter the value of existing structures within the immediate vicinity of the subject property, as the property is bordered on the west by commercial development, on the east by a church and on the north by older single family homes.

Due to an increase in traffic volume on Wicks Lane by over 60% within the last 10 years, there has been some depreciation in value of the existing single-family residences along this section of Wicks Lane. However, as a principle arterial, the land use along Wicks

Lane is anticipated to be a mix of commercial and residential uses. The proposed zone change is intended to provide neighborhood services for the existing and developing subdivisions within this area. Such services may include, but not be limited to office uses, a convenience store, or a restaurant that does not provide alcohol or gaming.

The proposed zone change should not further depreciate the value of the existing single-family uses within the area.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

Staff finds that the proposed zoning for the subject property, which will permit limited commercial development, will promote the most appropriate use for the subject property.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The applicant hand delivered invitations to the surrounding property owners to a neighborhood meeting to review the proposed zone change. During that time, she spoke to several of them personally. The neighborhood meeting was held on July 26, 2007 and the only attendees were City Council Member Larry Brewster, and City Planner Juliet Spalding. Planning staff fielded two calls from immediate neighbors who were seeking information about the proposal. They seemed satisfied after receiving answers to their questions.

The Zoning Commission conducted a public hearing on August 7, 2007, and forwarded a recommendation of approval to the City Council on a 5-0. There were no members of the public who spoke at the meeting.

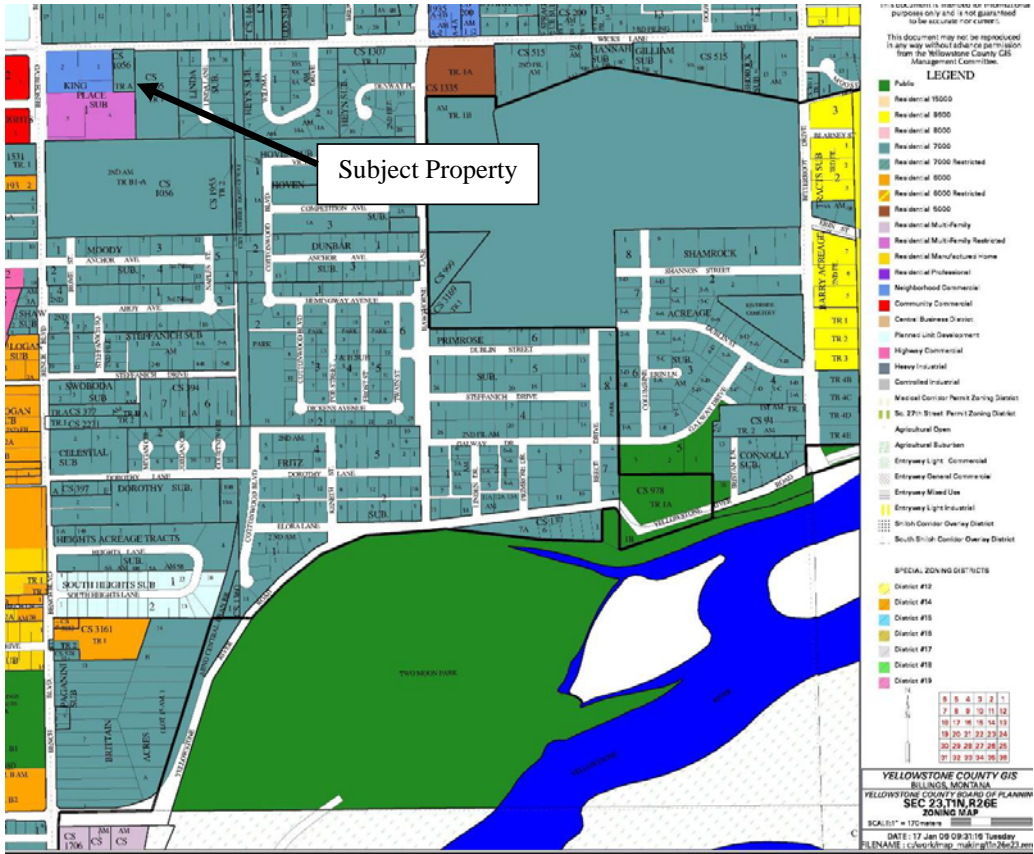
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #816 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

ATTACHMENTS:

- A: Site Photographs (available in the City Clerk's Office)
- B: Zoning Map
- C: Ordinance

Attachment B Zoning Map



ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Tract A, Certificate of Survey 1056, containing approximately 1.14 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 A, Certificate of Survey 1056, containing approximately 1.14 acres and is presently zoned Residential 7000 and is shown on the official zoning maps within this zone.

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

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

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

PASSED by the City Council on first reading August 27, 2007.

PASSED, ADOPTED AND APPROVED on second reading September 10, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

City Clerk

ZC #816

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Zone Change #817 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Public (P) to Residential 8,000 (R-80) on 48,799 square feet of property north and south of the Lake Hills Golf Club's clubhouse. The property is located on the east side of Clubhouse Way, north of Lake Hills Drive. The owner is the Lake Hills Golf Club, and the representing agent is Patrick Ludden with KW Commercial Builders. The Zoning Commission conducted a public hearing on August 7, 2007, and forwarded a recommendation of approval on a 4-1 vote.

ALTERNATIVES ANALYZED: State law, 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 would facilitate the development of the property which would increase the City's tax revenue on the parcel.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #817 and adoption of the 12 Zoning Commission Determinations on a 4-1 vote.

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

ATTACHMENTS:

- A: Site Photographs (available in the City Clerk's Office)
- B: Zoning Map
- C: Draft Preliminary Plat
- D: Letter of opposition
- E: Ordinance

INTRODUCTION

The applicant is requesting a zone change from P to R-80 on a two parcels totaling 48,799 square feet north and south of the Lake Hills Golf Course Clubhouse. The property is located on the east side of Clubhouse Way, north of its intersection with Lake Hills Drive and is currently dry field area not within the programmed space of the golf course. If the zone change is granted, the applicant would subdivide the parcels into 4 lots and develop a duplex house on each lot.

PROCEDURAL HISTORY

- On June 25, 2007, the applicant conducted a neighborhood meeting regarding the proposed zone change.
- On July 2, 2007, the application for zone change was submitted for review.
- On August 7, 2007, the City Zoning Commission conducted a public hearing for the proposed zone change and forwarded a recommendation of approval to the City Council on a 4-1 vote.
- On August 27, 2007, the City Council will conduct a public hearing and 1st reading to approve or deny the zone change.
- On September 10, 2007, if approved on the 1st reading, the City Council will conduct the 2nd reading of the proposed zone change.

BACKGROUND

This is a zone change request from P to R-80 on two parcels of land owned by the Lake Hills Golf Club. The parcels are just north and south of the Lake Hills Clubhouse on the east side of Clubhouse Way.

The applicants' agent states that the intention of the zone change is to provide for the creation of 4 duplex lots. He further explains that the original intent was to apply for a zone change to Residential Multi-Family Restricted (RMF-R). But after holding a community meeting on June 25th, the applicants changed the request to R-80 to address concerns expressed by neighborhood residents. Some of those concerns included congestion on the Clubhouse Way from on-street parking, and blocking of views to the golf course. R-80 limits land uses to one duplex unit per 10,000 square feet of lot area, and limits height to 34 feet.

The Zoning Commission is forwarding a recommendation of approval for this application and has based this recommendation on the 12 criteria for zone changes discussed below.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The following are the Zoning Commission's determinations.

1. *Is the new zoning designed in accordance with the Growth Policy?*
The new zoning may support the land use goals and objectives of the Growth Policy. The proposed zoning will allow the land to be redeveloped in a way that is consistent with the

surrounding neighborhood, will discourage urban sprawl by supporting infill residential development, and offer more housing choices in this neighborhood.

2. *Is the new zoning designed to lessen congestion in the streets?*
Simply rezoning the site to R-80 will not increase street congestion; development will. As with any development of the property, traffic to and from the site will increase and the possibility for additional on-street parking exists. The traffic from 4 duplex units could generate 80 average daily trips (ADT's). However, the proposed units are within one block of Lake Hills Drive, which is classified as a Principal Arterial designed to handle traffic flow. Also, each duplex unit will be required to provide a minimum of 4 off-street parking spaces.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
The nearest fire station is located nearby at 1601 St. Andrew's Drive. The property will also be served by City water and sewer services when development occurs. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*
The new zoning will allow the redevelopment of the property which will hopefully promote the health and welfare of the surrounding community.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning would allow the development of up to 4 duplex units on the subject properties. At the time of development, setbacks, lot coverage, height, and other requirements will help to prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*
Up to 8 dwelling units would be allowed on the subject properties. Given its proximity to the open space of the adjacent golf course, the zoning should not provide for undue concentrations of people.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*
All of the public requirements will be provided as necessary, as the site develops.
9. *Does the new zoning give reasonable consideration to the character of the district?*
The adjacent properties to the north and south of the subject parcels are zoned for multi-family development and have a variety of building types from 8-plexes down to duplexes.

These properties were developed approximately 30 years ago in the late 1970's. New duplex units would certainly not be a detriment to the neighborhood character on the north and south. However, one concerned neighbor to the west in the Deep Powder Subdivision indicated that his neighborhood was strictly single family residences, and he was concerned of his view to the east of the golf course would be blocked.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*
The R-80 zoning district allows single family and duplex residences on relatively large lots. This use seems suitable for the property.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*
Development of new structures in this aging neighborhood (area to north and south) will not have a detriment on property values.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
Taking this property out of open golf course use and changing it to residences may or may not be the most appropriate use of the land. However, the Lake Hill Golf Club Association feels that it is appropriate and presumably has a master plan for their property holdings.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The applicants held a neighborhood meeting on June 25, 2007, prior to submitting their application for review. Apparently, there were a number of neighbors in attendance who expressed concerns with the initial proposal to change the zoning from P to RMF-R. In response to the neighbors concerns, the applicants changed their proposal from RMF-R to R-80, which limits the allowable land use to single family and duplex housing only.

The Zoning Commission conducted a public hearing on August 7, 2007. Three community members (2 adjacent neighbors and State Senator Kim Gillan) spoke in opposition to the proposal. They stated that the traffic and on-street parking on Clubhouse Way would be increased from the new proposed duplexes. They also pointed out that the subject property, though not paved, is often used for "over flow" parking for the golf course on league nights. The applicant rebutted by explaining that the new parking lot for the golf course put in a couple of years ago, provides ample parking spaces as required by the City. He stated that the Clubhouse manager told him that often members with larger vehicles (trucks, SUV's, etc.) will park outside the parking lot on these grassy lots, even though there are spaces available in the paved parking area. He also stated that the proposed duplex units would provide the required off-street parking.

The Zoning Commission considered the testimony and generally concluded that the vacant parcels could enhance the immediate neighborhood if developed. The Zoning Commission voted 4-1 to forward a recommendation of approval to the City Council.

On August 13, 2007, the Planning Division received a letter of opposition to the proposed zone change from an adjacent land owner, George Schneider. This can be found in Attachment D.

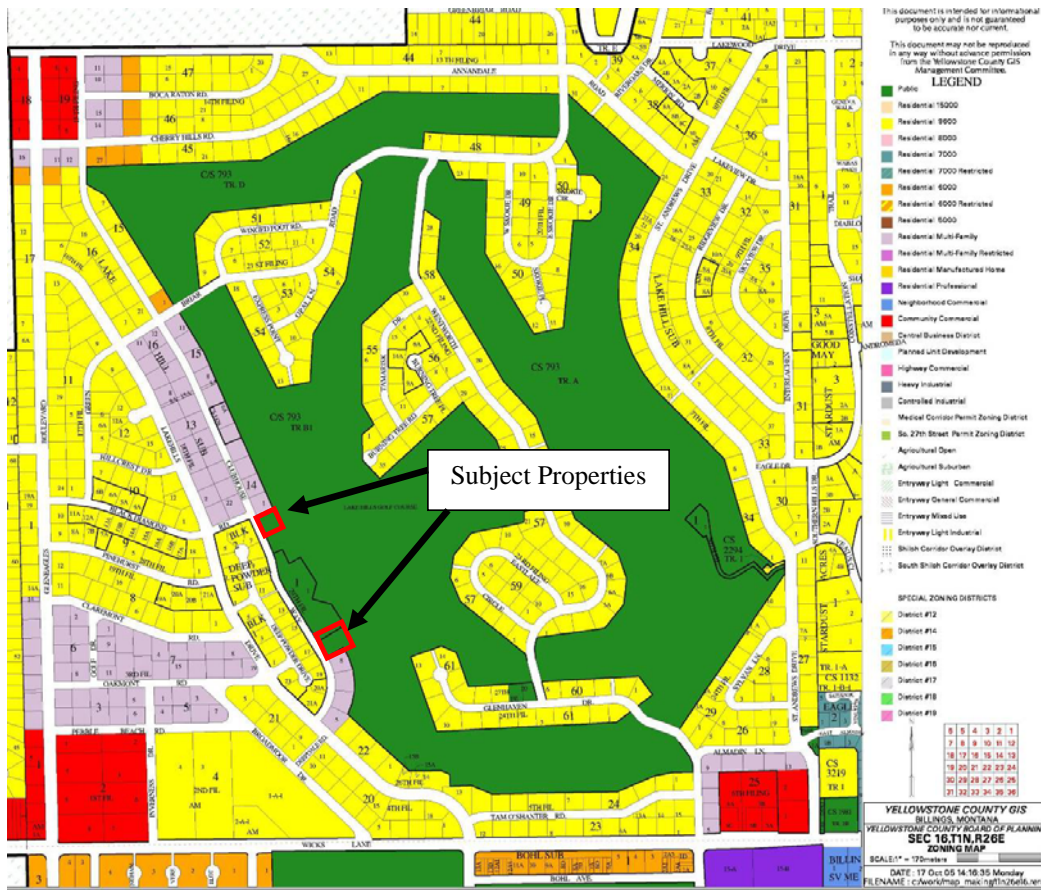
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #817 and adoption of the 12 Zoning Commission Determinations on a 4-1 vote.

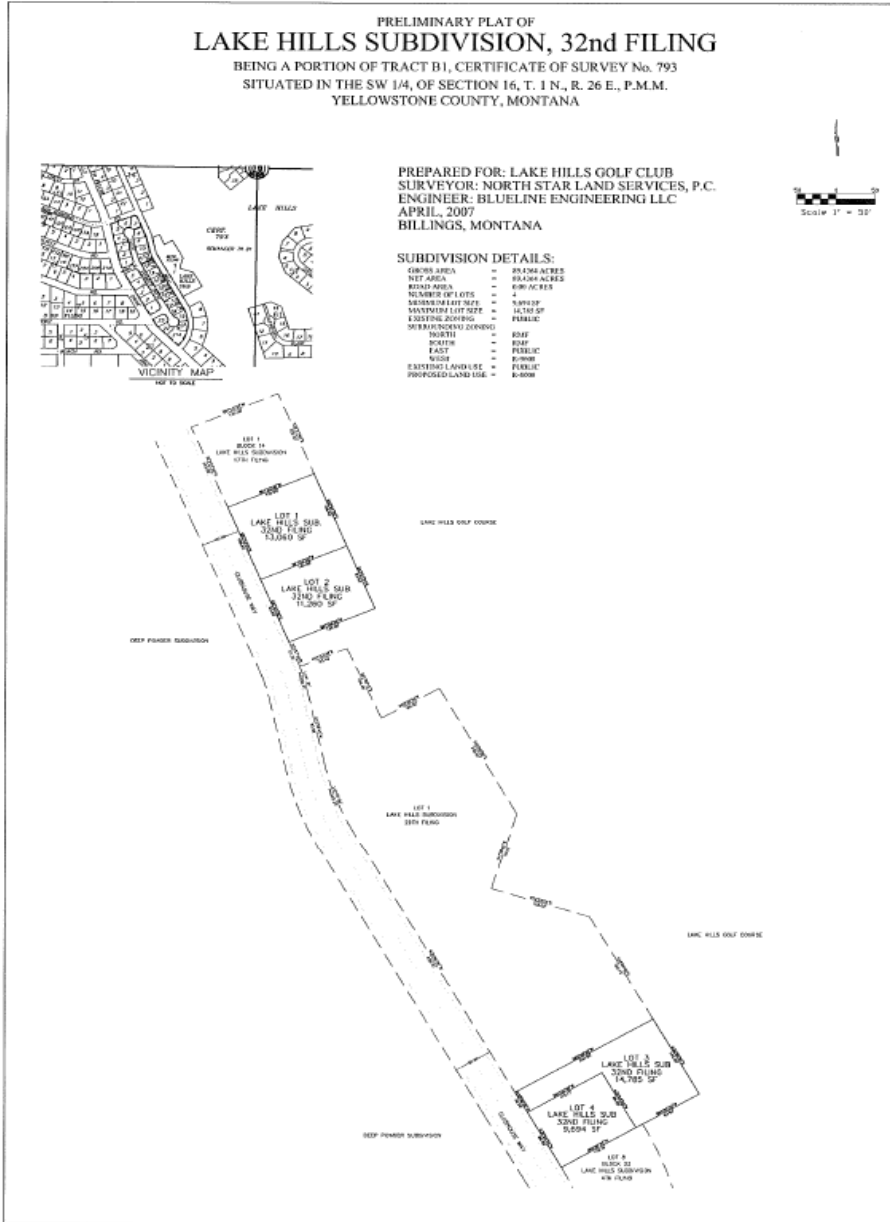
ATTACHMENTS:

- A: Site Photographs (available in the City Clerk's Office)
- B: Zoning Map
- C: Draft Preliminary Plat
- D: Letter of opposition
- E: Ordinance

Attachment B Zoning Map



Attachment C
Draft Preliminary Plat



08/11/2007 16:39 FAX

Attachment D

001



Schneiter Enterprises, LLC
8858 South 1240 East
Sandy, Utah 84094
Tel 801-255-8679



August 3, 2007

Re: City Zone Change #817
Project Number: 07-581

Planning & Community Services Department
510 North Broadway, 4th Floor
Billings, MT 59101

As the developers of Lake Hills Golf Club and Subdivision, my late father and I placed the present restrictions on the club house area. I hold a mortgage on the club house property as of this date and I own other properties in the vicinity. We strongly object to any zone change at this time.

Sincerely,

Schneiter Enterprises, Ltd.

George M. Schneiter, Partner

ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR a portion of Tract B1, Certificate of Survey 793,
containing approximately 48,799 square feet.

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

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

2. DESCRIPTION. A tract of land known as a portion of Tract B1, Certificate of Survey 793, containing approximately 48,799 square feet and is presently zoned Public 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 **Public** to **Residential 8000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 8000** 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 August 27, 2007.

PASSED, ADOPTED AND APPROVED on second reading September 10, 2007.

CITY OF BILLINGS:

BY: _____

Ron Tussing, Mayor

ATTEST:
BY: City Clerk
ZC #817

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Zone Change #818 Public Hearing and 1st Reading of Ordinance –Text Amendment to Section 27-623 Zoning Compliance Permits Required

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Director

PROBLEM/ISSUE STATEMENT: The Planning Division has received a transfer of funds from the Building Division from 1998 until the new budget year began July 1, 2008. This transfer was in part, to pay for the plan review services provided by the Planning Division and recently to contribute to the Director’s salary. State statutes require building permit fees to be used for the enforcement of building code only (50-60-106 (g) and (i), MCA). Because the transferred funds are used to provide zoning compliance review services and administration, the transfer of funds violates state statutes. The proposed zoning compliance fees will pay for the review services that were provided at no cost, but for which it is now necessary to charge to help maintain the Planning Division’s funding in light of the loss of Building Division transfers. Assessing a zoning compliance fee when a Building Permit is granted will require amending City Code Section 27-623. Zoning Compliance Permits Required.

The revenue generated by the zoning compliance fee is estimated at \$33,000 for fiscal year 2008. This amount was approved as a Supplemental Budget Request by the City Administrator and City Council approved it as part of the FY2008 budget.

ALTERNATIVES ANALYZED: The City Zoning Commission is forwarding a recommendation of approval on a 4-1 vote. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendment.

FINANCIAL IMPACT: The proposed fees are \$41.00 for residential permits and \$16.00 for commercial permits. The new revenue source will not increase the Planning Divisions’ overall revenue. The new fee will help offset the loss of revenue resulting from a reduction of Building Division transfers.

RECOMMENDATION

The Zoning Commission on a 4-1 vote recommends that the City Council approve Zone Change #818 amending Section 27-623 Zoning Compliance Permits Required.

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

ATTACHMENTS:

- A: Cost Analysis Table
- B: Ordinance

INTRODUCTION

The Planning Division provides review of City Building Permits for compliance with the Unified Zoning Regulations, Article 27 of the Billings, Montana City Code. For residential building permits, this includes the review of zoning to ensure the use is allowed in the given zoning jurisdiction, review of setbacks, lot coverage, height limitations, clear vision areas, and the proportional relationship between principal and accessory building as applicable under Section 27-310, BMCC. For commercial building permits, this includes the review of zoning to ensure the use is allowed in the given zoning jurisdiction, review of setbacks, lot coverage, height limitations, clear vision areas, and landscaping requirements as specified in Section 27-1100, BMCC. Each building permit follows a similar procedure when reviewed by Planning Division staff. The procedural steps are listed as follows:

1. Building permits are picked up from the Building Division by Planning staff.
2. Planning staff sorts the permits for residential and commercial review.
3. Planning staff distributes the commercial permits to the Commercial Code Enforcement Officer.

Residential Reviews

1. Planning staff reviews residential permits for zoning compliance
2. If the permit meets zoning regulations, staff completes the written approval of the permit, signs off the permit through the City's HTE project tracking and management system, and files the hard copy of the permit in the Planning Division's filing system.
3. If the permit does not meet zoning regulations, staff completes a correction notice, outlining the permit's deficiencies, and sends the notice to the applicant. Staff also provides copies of the correction notice to the Building Division staff. The rejection of the permit is logged in HTE and the hard copy of the permit is filed in the corrections section of the Planning Division filing system. Resubmitted, corrected permits are processed through the Building Division and Planning staff re-checks the permit for compliance. Updates are made in HTE and in the hard copy files.

Commercial Reviews

1. Code Enforcement staff review commercial permits for compliance with zoning. Note: Planning staff with expertise in the landscaping requirements of the zoning regulations often assist with these reviews.
2. If the permit meets zoning regulations, staff completes the written approval of the permit, signs off the permit through the City's HTE project tracking and management system, and files the hard copy of the permit in the Planning Division filing system for commercial permits.
3. If the permit does not meet zoning regulations, staff completes a correction notice, outlining the permit's deficiencies, and sends the notice to the applicant. Staff also provides copies of the correction notice to the Building Division staff. There are detailed landscaping requirements that commercial permits must meet. Often, corrections that involve landscaping deficiencies are complex to prepare and review with the applicant. The rejection of the permit is logged in HTE and the hard copy of the permit is filed in

the corrections section of the Planning Division's filing system. Resubmitted, corrected permits are processed through the Building Division and code enforcement staff re-checks the permit for compliance. Updates are made in HTE and in the hard copy files.

The Planning Division is recommending a fee for service of \$41 be added to all residential building permits and a fee of \$16 be added to all commercial building permits reviewed by the Planning Division. The basis for this amount is outlined below and shown in Table 1 (See Attachment).

About 900 building permits were reviewed by the Planning Division in 2006. About 750 were residential permits and 150 were commercial permits, according to data provided by the Building Division. About 545 hours were logged by Planning Division staff in 2006 reviewing building permits, based on data collected from the Division's HTE project tracking and management system, and interviews with Planning Division staff that review the permits. This estimate also includes an additional five percent hourly time allotment for management support from Planning Division supervisors. When the total number of permits and total staff hours are divided, the average amount of staff time per residential and commercial permit is about 1.5 hours.

Three staff members in the Planning Division consistently provide building permit review services – the Planning Assistant, Planner I, and Commercial Code Enforcement Officer. These three staff members are supervised by the Planning Division Manager and Code Enforcement Supervisor. While the Planning Assistant, Planner I, and Commercial Code Enforcement Officer have the authorization and responsibility to approve or deny building permits, the Planning Division Manager and Code Enforcement Supervisor provide support in the permit review process when questions or issues arise on permits. To properly account for the costs associated with review of building permits, both the Planning Division staff and supervisor's time must be included in the estimate. Attachment B provides a detailed accounting of the staff costs associated with providing zoning compliance review of building permits.

PROCEDURAL HISTORY

- At the budget hearing held on May 30, 2007, the Planning Division presented to Council the options of spending down limited reserves or implementing a Zoning Compliance Fee.
- On June 25, 2007, the City Council approved FY2008 budget, including the supplemental budget request for increased Planning Division revenues from a Zoning Compliance Fee. This action initiated the process to amend the code to authorize this fee.
- On August 7, 2007, the City Zoning Commission conducted a public hearing for this proposed text amendment.
- On August 27, 2007, the City Council is expected to conduct a public hearing and consider action on this proposed text amendment on first reading.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of the amendment to the city code.

STAKEHOLDERS

The Zoning Commission held a public hearing on August 7, 2007, on the proposed amendments to Section 27-623 Zoning Compliance Permits Required. No members of the public spoke at the public hearing. The Zoning Commission had some discussion on the proposed amendment. After staff presented the amendment and the background information, several Commission members expressed concern that the amount of money that the new fee was expected to generate would not cover the overall deficit that had been created when the Building Division had to significantly reduce its internal transfer to the Planning Division. Zoning Commission Chairman Angela Cimmino said the estimated \$33,000 did not seem to be enough based on what the Planning Division had received previously from Building. Staff explained that the basis for the new fee was supported by the costs of reviewing building permits by the Planning Division and there did not appear to be other justification for making the fee higher. Staff also stated that a portion of the internal transfer went to the Planning Director's salary and this was not part of the zoning compliance fee estimate.

Zoning Commission Member Michael Larson said he was familiar with the change in the State Law regarding use of building permit fees and understood the reasoning behind the proposed fees. He said it made sense that the fee was based on what it cost to complete the review. Zoning Commission Member Thomas Grimm asked if the fee included some sort of future projection or was based on the current cost of completing the reviews. Staff explained that, like other fees, this was based on the current cost of providing the service and as costs rose in the future, the fee might have to be adjusted.

Zoning Commission Member Edward Workman asked staff what would happen if the new fee was not approved. Staff explained that there were no other known sources of revenue to specifically fund the review for zoning compliance of building permits and that the Division would have to see what other options were available, including looking at all of its services to determine whether it could continue to provide all the services at the same level it does currently.

Cimmino said she could not vote for the amendment because it did not seem to provide a total fix to the financial issue between the Building and Planning divisions.

RECOMMENDATION

The Zoning Commission on a 4-1 vote recommends that the City Council approve Zone Change #818 amending Section 27-623 Zoning Compliance Permits Required.

ATTACHMENTS:

- A: Cost Analysis Table
- B: Ordinance

ATTACHMENT A

Table 1. Cost Analysis for Zoning Compliance Fees for Residential and Commercial Building Permits

RESIDENTIAL	Salary	Benefits	Total	COMMERCIAL	Salary	Benefits	Total
Planning Assistant	\$ 16.62	\$ 4.99	\$ 21.61	Planner I	\$ 19.18	\$ 5.75	\$ 24.93
Planner I	\$ 19.18	\$ 5.75	\$ 24.93	Planner II	\$ 23.17	\$ 6.95	\$ 30.12
Planner II	\$ 23.17	\$ 6.95	\$ 30.12	Total Hourly	\$ 42.35	\$ 12.71	\$ 55.06
TOTAL Hourly	\$ 58.97	\$ 17.69	\$ 76.66	Average hourly	\$ 21.18	\$ 6.35	\$ 27.53
Average hourly	\$ 19.66	\$ 5.90	\$ 25.55				
1.5 hours/review			\$ 38.33	.5 hours/review			\$ 13.76
				Code Enforcement performs approx. 1.0 hours of review			
Supervisory Average hourly							
	\$ 25.00	\$ 7.50	\$ 32.50				
5% of 1.5 hours/review			\$ 2.44				
RESIDENTIAL PERMITS				COMMERCIAL PERMITS			
Planner + Supervisor costs			\$ 40.77	Planner + Supervisor			\$ 16.20
ANTICIPATED REVENUES							
Commercial			\$ 2,430.19				
Residential			\$30,576.00				
			\$33,006.19				

ORDINANCE NO. 07-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-623; COUNTY ZONING COMPLIANCE PERMITS, ADOPT THE REVISIONS AS AN AMENDMENT TO THE CITY CODE AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

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

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

Section 3. *That the Billings, Montana City Code be amended by revising Section 27-623 to authorize the assessment of a fee for zoning compliance review of building permits:*

Sec 27-623. Zoning Compliance Permits Required

(a) *Permits Required.* ~~A Zoning Compliance Permit is only~~ required for properties that are located outside the limits of the City of Billings but within the Unincorporated Jurisdictional Area. A Building Permit is required for properties located inside the limits of the City of Billings.

(b) County Zoning Compliance Permit

(1) No change of land use may be made; or no building or other structure shall be erected, moved, enlarged, rebuilt, added to, or structurally altered without first having received a Zoning Compliance Permit issued by the Zoning Coordinator or his/her designee, who shall determine that the permit is issued in compliance with the regulations set forth in this Resolution/Ordinance. The review of a Zoning Compliance Permit application shall be limited only to a review of the applicable zoning regulations and shall not constitute a review of compliance with any

applicable building codes. A separate sign permit is required prior to the erection of any sign.

- (2) Each application for a Zoning Compliance Permit shall be accompanied by a site plan, building elevations and any other information requested by the Zoning Coordinator to adequately review the proposed project. Additionally, commercial projects require submittal of a landscaping plan and a site plan showing off-street parking, loading, etc. The Board of County Commissioners may set an application fee by Resolution for review of a Zoning Compliance Permit. The Zoning Coordinator or his/her designee may waive the submittal requirements for some of the above-mentioned plans. Zoning Compliance Permits are valid for a period of six-(6) months from the date of approval and may be extended for an additional six-(6) months with written approval from the Zoning Coordinator.”

(c) City Building Permit

- (1) Any building permit application submitted to the City Building Division for the purpose of erecting, moving, enlarging, rebuilding, adding to, or structurally altering a structure must be reviewed and approved by the Zoning Coordinator or his/her designee for compliance with the applicable zoning regulations.
- (2) Each building permit application shall be accompanied by a zoning compliance review fee established by Council Resolution. This fee shall be in addition to the building permit fee required under Sec. 6-202, BMCC. The fee shall be established by Council Resolution.

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

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

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

PASSED by the City Council on first reading August 27, 2007.

PASSED, ADOPTED AND APPROVED on second reading September 10, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

ZC#818 – Amending Section 27-623, **Zoning Compliance Permits Required**

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Zone Change #819 Public Hearing and 1st Reading of Ordinance –Text Amendment to Section 27-1429 and map Amendment to Section 27-1430, Extension of Shiloh Corridor Overlay District

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On June 11, 2007 the City Council approved an initiative directing staff to extend the Shiloh Corridor Overlay District (SCOD) along the centerline of King Avenue West and 500 feet to the south from the intersection of Shiloh Road and King Avenue West to the intersection of King Avenue West and 32nd Street West.

The City Zoning Commission held a public hearing on the proposed extension of the South SCOD on August 7, 2007, and voted 5-0 to recommend approval to the City Council of the extension and text amendment.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed South SCOD extension on August 7, 2007. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed extension.

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

RECOMMENDATION

The Zoning Commission on a 5-0 vote recommends that the City Council approve Zone Change #819 extending the South SCOD along the south side of King Avenue West between Shiloh Road and 32nd Street West and amending Section 27-1429 and the map in Section 27-1430 of Billings, Montana City Code.

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

ATTACHMENTS:

- A: Zoning map
- B: Site Pictures (available in the City Clerk's Office)
- C: Ordinance

INTRODUCTION

On June 11, 2007 the City Council approved an initiative directing staff to extend the SCOD along the south side of King Avenue West between Shiloh Road and 32nd Street West.

PROCEDURAL HISTORY

- On June 11, 2007, the City Council initiated the process to extend the SCOD along King Avenue West between Shiloh Road and 32nd Street West.
- On June 20, 2007, the Planning Division held a neighborhood meeting with surrounding community members to get input and answer questions about extending the SCOD.
- On June 25, 2007, the Planning Division recommended to the City Council, based on discussion with surrounding neighborhood members, that the SCOD be extended only on the south side of King Avenue West. City Council approved the recommendation.
- On August 7, 2007, City Zoning Commission conducted the public hearing for the extension of the South SCOD along the south side of King Avenue West.
- The City Council will hold a public hearing and 1st reading of the ordinance on August 27, 2007, and make a decision on the extension of the South SCOD along the south side of King Avenue West.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on September 10, 2007.

BACKGROUND

On June 11, 2007 the City Council approved an initiative to extend the SCOD, Councilmember Shoots Veis proposed the initiative. Veis said he had been in contact with concerned citizens that live on the north side of King Avenue West between the intersection of Shiloh Road and King Avenue West and the intersection of King Avenue West and 32nd Street West. The neighbors expressed concerns regarding the impact new development will have on the neighborhood along King Avenue West. The neighborhood would like to see developments that are aesthetically pleasing along King Avenue West that would be a positive addition to the area. The neighborhood members felt that extending the SCOD would help ensure that new developments along King Avenue West will be a positive addition to the neighborhood.

The SCOD has more stringent commercial site development requirements than standard city code to help ensure commercial developments are more aesthetically pleasing along the Shiloh Road Corridor. The Planning Division held a public meeting on June 20, 2007, inviting members of the surrounding neighborhood, to discuss their concerns and the possible effect of extending the SCOD along King Avenue West. Several members of the surrounding community attended the meeting on June 20th. The meeting gave community members a chance to voice concerns and receive answers to their questions about the extension of the SCOD along King Avenue West. A business owner at the meeting expressed concerns about the effect the SCOD would have on his property and other commercial properties already developed.

There are two parts to the existing SCOD, a North SCOD and a South SCOD. The centerline of King Avenue West, at the intersection of King Avenue West and Shiloh road, is where the two

different overlays connect. This proposed extension along the south side of King Avenue West is an extension of the South SCOD.

This extension would make the properties on the south side of King Avenue West, within the 500 foot distance from the centerline of the road, subject to the South SCOD Section 27-1429 through Section 27-1433 of the Billings Municipal City Code (BMCC). Some of the requirements of the SCOD that are more stringent are building mass and form, lighting, signage, and landscape requirements. If the underlying zoning is more restrictive than the SCOD the more restrictive code applies.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of extending the South SCOD along the south side of King Avenue West between Shiloh Road and 32nd Street West and amending Section 27-1429 and the map in Section 27-1430 of Billings, Montana City Code.

STAKEHOLDERS

The Zoning Commission held a public hearing on August 7, 2007, on the proposed extension of the South SCOD along King Avenue West. Patty Waddell spoke in favor of the South SCOD extension along the south side of King Avenue West because she feels it is a quality of life issue and wants the commercial developments on the south side of King to be aesthetically pleasing and a positive addition to the neighborhood.

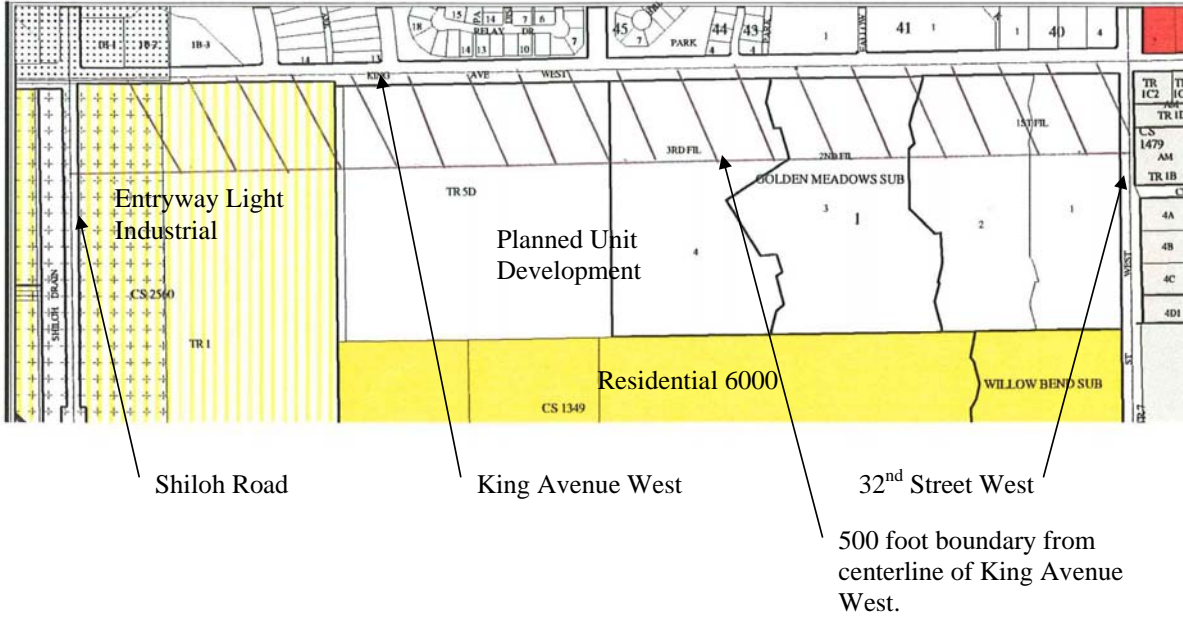
RECOMMENDATION

The Zoning Commission on a 5-0 vote recommends that the City Council extending the south SCOD along the south side of King Avenue West between Shiloh Road and 32nd Street West and amending Section 27-1429 and the map in Section 27-1430 of Billings, Montana City Code.

ATTACHMENTS:

- A: Zoning map
- B: Site Pictures (available in the City Clerk's Office)
- C: Ordinance

ATTACHMENT A
Zoning Map and Proposed South SCOD Extension



ATTACHMENT C

ORDINANCE NO. 07-

AN ORDINANCE OF THE CITY OF BILLINGS, EXTENDING THE SOUTH SHILOH CORRIDOR OVERLAY DISTRICT FROM THE CENTERLINE OF KING AVENUE WEST, EXTENDING 500 FEET TO THE SOUTH, BETWEEN THE INTERSECTION OF SHILOH ROAD AND KING AVENUE WEST AND THE INTERSECTION OF KING AVENUE WEST AND 32ND STREET WEST. AMENDING SECTION 27-1429 AND THE MAP IN SECTION 27-1430 OF THE BILLINGS, MONTANA CITY CODE.

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

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

Section 2. DESCRIPTION. The zoning regulation shall apply to all property from the centerline of King Avenue West for 500 feet to the south from the intersection of Shiloh Road and King Avenue West to the intersection of King Avenue West and 32nd Street West in the City of Billings.

Section 3. That the Billings, Montana City Code be amended by revising Section 27-1429 to add new language to read as follows and modify the map in Section 27-1430:

SEC. 27-1429. DISTRICT BOUNDARIES.

The boundaries of the South Shiloh corridor overlay district shall be that displayed on the map at the end of section 27-1430. In no case shall the boundaries of the district exceed a depth of five hundred (500) feet from the centerline of the right-of-way of Shiloh Road from King Avenue south to Interstate 90 and Zoo Drive from Interstate 90 to the intersection of Shiloh Road, and from the centerline of King Avenue West, extending five hundred (500) feet to the south, between the intersection of Shiloh Road and King Avenue West and the intersection of King Avenue West and 32nd Street West. If only a portion of the property falls within the boundaries of the district, the entire property will be subject to the regulations in section 27-1500.

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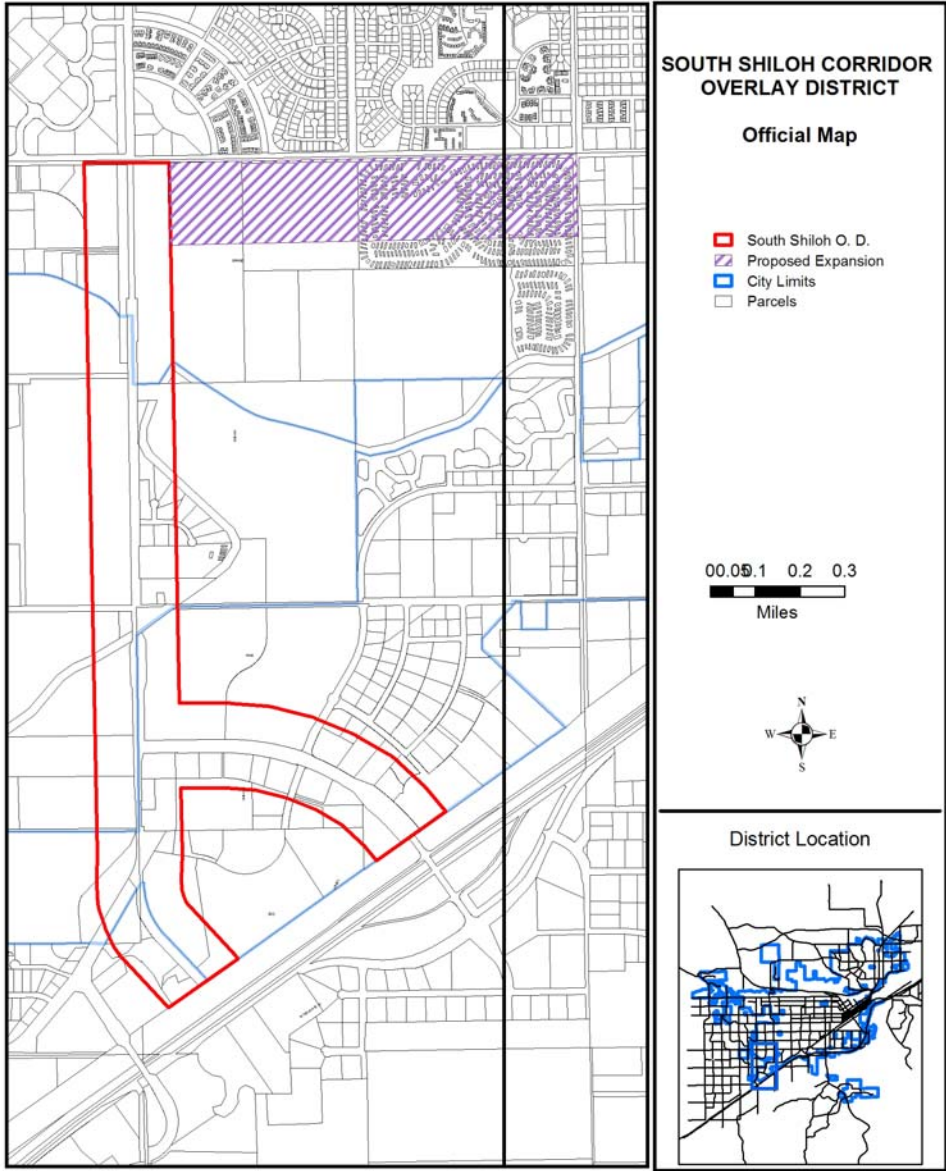
SEC. 27-1430. REVIEW CRITERIA.

(a) *Generally.* The South Shiloh corridor overlay district review process is a review of development proposals against a set of absolute and relative criteria. Site and development plans are evaluated to determine whether the proposed development meets the identified criteria. If the criteria are met, the development may proceed.

New developments and existing development in which the gross floor area (GFA) or the number of parking stalls is increased by twenty-five (25) percent must comply with these regulations.

(b) *Absolute criteria.* A developer must meet all absolute criteria to obtain planning and community services department approval. The absolute criteria are defined in sections 27-1506 through 27-1508. Absolute criteria also include all other applicable codes, ordinances, and statutes, including, but not necessarily limited to, minimum engineering and building standards, public service and utility requirements, and environmental regulations.

(c) *Relative criteria.* Relative criteria are the "points" of the review process. Each development must obtain a specified minimum number of points based on the relative criteria identified in section 27-1509. The development plans are evaluated against the relative criteria and scored on a point chart.



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

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

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

PASSED by the City Council on first reading August 27, 2007.

PASSED, ADOPTED AND APPROVED on second reading September 10, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Cari Martin, City Clerk

ZC#819 – Extending the South Shiloh Corridor Overlay District along the south side of King Avenue West from the centerline of the road between Shiloh Road and 32nd Street West and amending Section 27-1429 and the map in Section 27-1430 of Billings, Montana City Code

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 27, 2007

TITLE: Public Hearing for Special Review #848
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a special review request to add an outdoor patio lounge to a location with an existing on-premise all beverage liquor license on a 41,755 square foot parcel of land in a Community Commercial (CC) zone, on Lots 1 through 6, Block 1 Houser Subdivision. CNJ Distributing is the owner and Tom Williams is the agent. The property is addressed as 1425 Broadwater and is known as Doc & Eddy's Plaza. The Zoning Commission held a public hearing on this request on July 3, 2007, and voted to allow a 30-day delay so the applicant could re-design the site plan to meet city staff concerns. A second public hearing was held on August 7, 2007, and the Zoning Commission is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #848 on a 5-0 vote.

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

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs (available in City Clerk's Office)
- C. Site Plan
- D. Overflow Parking Agreement

INTRODUCTION

This is a request for a special review to add an outdoor patio lounge to a location with an existing on-premise all beverage liquor license on a 41,755 square foot parcel of land in a Community Commercial (CC) zone, for Doc & Eddy's Plaza at 1425 Broadwater Avenue. The applicant would like to offer outdoor seating to existing patrons of the Doc & Eddy's venues. Section 27-613(a) 2. of the BMCC requires a special review approval when a location that has on-premise alcohol service adds an outdoor patio lounge. The original site plan submitted with the application on May 9, 2007, proposed a patio that would encompass the east 80 feet of the existing building façade along Broadwater Avenue and extend south approximately 20 feet from the existing building to the public sidewalk. A revised site plan submitted July 18, 2007, shows the same location and dimension of the patio but with several modifications of the interior space. The new site plan shows the existing raised planter will be removed and table style seating. In addition, a six-foot block wall is proposed to provide safety for patrons and pedestrians on the public sidewalk. The previous site plan showed public access to the outdoor seating from one point on the east and through two points on the west. The new site plan shows access only through a building entrance and two exit-only gates from the patio. Accessibility is provided by the installation of a ramp and the patio will be raised about 11 inches above existing sidewalk grade.

PROCEDURAL HISTORY

- A special review application to add an outdoor patio lounge was received on May 9, 2007.
- The City Zoning Commission held a public hearing on July 3, 2007, and continued the public hearing for 30 days to allow the applicant to revise the proposed site plan.
- The City Zoning Commission held a second public hearing on August 7, 2007, and is forwarding a recommendation of conditional approval on a 5-0 vote.
- The City Council will conduct a public hearing and consider this application on August 27, 2007.

BACKGROUND

This property is surrounded by a mix of commercial and residential uses. There are no churches, schools or public parks with playfields or playground equipment within 600 feet of the proposed patio location. Broadwater Avenue is used by school children to walk to and from school but the schools are located further than 600 feet from Broadwater Avenue. Lewis and Clark Middle School is two blocks north and Miles Avenue Elementary is two block south and west.

The Planning Division reviewed the revised site plan with other city departments and recommended conditional approval. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so

far that it is within one of the zoning districts where an outdoor patio lounge with on premise alcohol service is allowed by special review approval. The form of the application is correct and the new site plan indicates conformance with building codes for safe access and exits, site development standards for required parking spaces and public safety issues related to traffic on Broadwater Avenue and clear vision areas at drive approaches.

The application conforms to the second and third criteria. The zoning regulations adopted by the City Council have the purpose of promoting health, safety and general welfare. During the staff review of this project, the Police Department commented that the installation of the solid block wall would ameliorate concern with an outdoor seating area placed directly adjacent to a busy arterial street. The Building Division stated that aisles, exits from the existing building and other life safety issues pertaining to this addition have been addressed through the revised site plan. The Engineering Division stated that an additional seating area of 1,600 square feet would require a parking analysis of the site to determine if off-street parking standards are met. The applicant has provided the parking analysis and a signed overflow parking agreement with a property owner adjacent to the location. The parking provided along with the overflow parking area meets the requirements of the city's site development code. The proposed conditions of approval should mitigate any potential for adverse impacts from the outdoor patio lounge.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The proposed location of the outdoor patio lounge at this location is appropriate and conditions of approval are recommended.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;

4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #848 on a 5-0 vote.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lots 1 through 6, Houser Subdivision as shown on the site plan dated July 18, 2007.
2. This special review approval is for an outdoor patio lounge and no other use or expansion of this use is approved or implied with this authorization.
3. Development of the site shall be in substantial conformance with the site plan dated July 18, 2007. Deviations from the approved site plan that change the location of structures, parking lot access or parking areas will require additional special review approval.
4. Any expansion of the gross floor area of the patio or number of parking stalls greater than 10 percent will require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.
5. The owner shall provide a block wall of at least 6 feet in height around the outdoor patio lounge. The block wall shall have at least one exit-only gate to provide an emergency exit. Access to the outdoor patio lounge area shall be through the main indoor area of the business.
6. The owner is allowed to have background music and un-amplified live outdoor entertainment on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge.
7. There shall be no outdoor public address system or outside announcement system of any kind.
8. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
9. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
10. Failure to comply with these conditions of approval of the special review use shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.
11. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City regulations that apply.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes
Page 59 of 306

will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

The first public hearing was held on July 3, 2007, before the City Zoning Commission. Staff had forwarded a recommendation of denial based on the site plan submitted on May 9, 2007. Tom Williams, agent for CNJ Distributing, appeared before the Zoning Commission and requested a 30-day delay to allow for a revision of the site plan based on staff concerns. No one testified in favor or in opposition to the application. Linda Cetrone Levy of TLC Lingerie at 1400 Broadwater Avenue submitted a letter dated June 19, 2007, in support of the outdoor patio lounge.

A second public hearing was conducted on August 7, 2007, based on a revised site plan dated July 18, 2007. Mr. Tom Williams, agent for CNJ Distributing, attended the public hearing to testify in favor of the application. No other persons testified in favor or in opposition to the application.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. The Zoning Commission moved to recommend conditional approval of the special review request and voted 5-0 to forward this recommendation to the City Council.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- The project does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

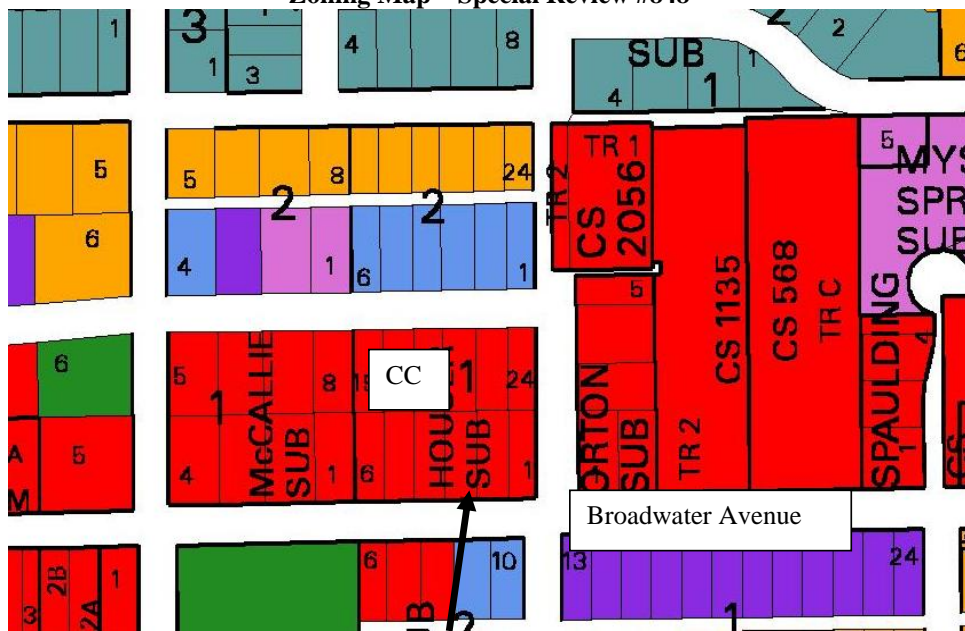
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #848 on a 5-0 vote.

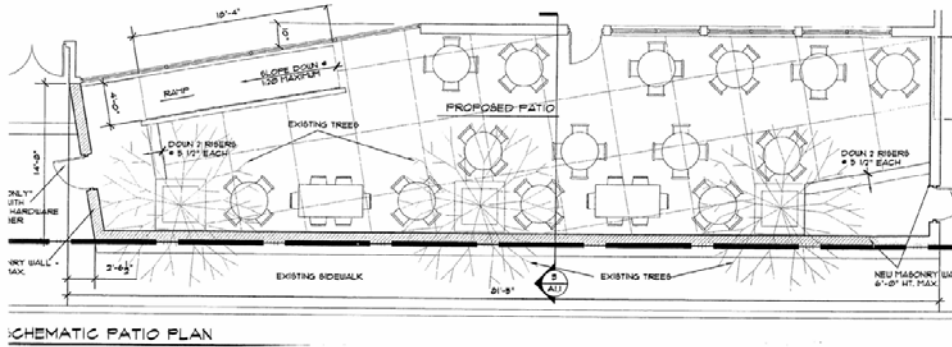
ATTACHMENTS

- A. Zoning Map
- B. Site Photographs (available in the City Clerk's Office)
- C. Site Plan
- D. Overflow Parking Agreement

ATTACHMENT A
Zoning Map – Special Review #848

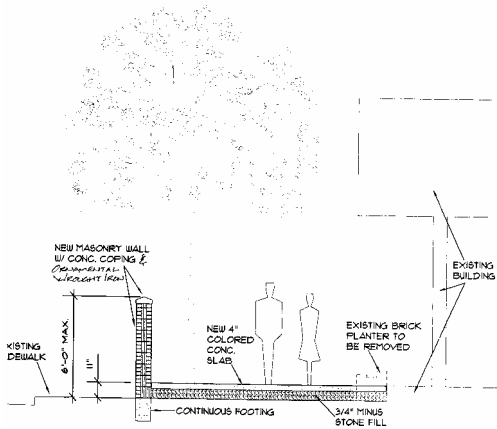


ATTACHMENT C
Site Plan July 18, 2007 – Special Review #848



SCHEMATIC PATIO PLAN

2 SCHEMATIC PATIO PLAN
 ALL SCALE: 3/16" = 1'-0"



3 SCHEMATIC PATIO SECTION
 ALL SCALE: 1/4" = 1'-0"

ATTACHMENT D
Overflow Parking Agreement – Special Review #848

JUL-03-2007 13:34 From:SIMULCAST

4062488746

To:406 245 5072

P.3/3

OVERFLOW PARKING AGREEMENT

This agreement is made and executed on this 2nd day of October, 2006, by and between CNJ Distributing Corp., and/ or Assigns, P.O. Box 20878, Billings, MT 59104, a Montana Corporation hereinafter called "Seller" and Michael D. Stock, 1135 Bluegrass Drive, Billings, MT 59106, hereinafter called "Buyer".

WITNESSETH:

That Seller has agreed to sell and Buyer has agreed to buy from Seller vacant land located at the corner of Wyoming Avenue and 14th Street West with a legal description of Lots 1, 2, 3, Block 2 of Houser Subdivision in the City of Billings. Said agreement to sell and purchase such vacant land was agreed to by the parties on August 30, 2006.

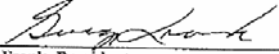
Buyer agrees to let Seller use his parking lot on any new development he builds for overflow parking for business customers only of Doc & Eddy's Plaza. Any use of the parking area shall be only after normal business hours, from 7:00 a.m. to 7:00 p.m. of all businesses occupying the new development. Business customers of Doc & Eddy's Plaza shall not be allowed to park on the described real estate during the normal business hours of any business occupying the new development. No employees of Doc & Eddy's Plaza shall be allowed to park on the described real estate listed above.

Seller agrees to police and keep the lot clean of any trash or debris from use of buyer's parking lot on evenings or weekends. If for any reason the lot is not being cleaned or maintained in a proper manner, then buyer shall have the right to revoke this overflow parking agreement. Also, if buyer ever decides to sell this property, then this agreement shall terminate and become null and void, and seller will have to negotiate a new parking arrangement with the new owner of the described real estate.

For purposes of this parking agreement, it is understood that Doc & Eddy's Plaza is located upon Lots 1, 2, 3, 4, Block 1 of McCallie Subdivision, in the City of Billings, which is directly south of the described vacant land herein, across Wyoming Avenue.

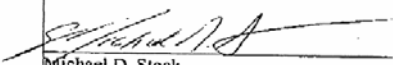
IN WITNESS WHEREOF, the parties have executed this agreement as of the date first hereinabove written.

SELLER
CNJ Distributing Corp.


George Frank, President

Date: 10-2-06

BUYER


Michael D. Stock

Date: 10-2-06

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, AUGUST 27, 2007

TITLE: Public Hearing for Special Review #850
DEPARTMENT: Planning & Community Services
PRESENTED BY: Lora Mattox, AICP, Planner II

PROBLEM/ISSUE STATEMENT: This is a special review request to expand a location with an existing on-premise all beverage liquor license on a 2.5 acre parcel of land in a Controlled Industrial (CI) zone, on Lot 2A (to be amended), Sugar Subdivision, 4900 Laurel Road and known as the Muzzleloader Café and Powderhorn Lounge. The owner is Marlon Engberg and Rick Steinmetz and the representing agent is Jerry Jones. The Zoning Commission conducted a public hearing on August 7, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a special review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review could have some financial impact on the City if the property is redeveloped as proposed.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #850 on a 5-0 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Zoning/Location Map

B: Site Plan

C: Pictures of the Site (available in the City Clerk's Office)

INTRODUCTION

This is a special review request to expand a location with an existing on-premise all beverage liquor license on a 2.5 acre parcel of land in a Controlled Industrial (CI) zone, on Lot 2A (to be amended), Sugar Subdivision, 4900 Laurel Road.

PROCEDURAL HISTORY

- On July 2, 2007, the special review application was submitted to the Planning Division.
- On August 7, 2007, the Zoning Commission conducted a public hearing on this request and forwarded a recommendation of Conditional Approval to the City Council on a 5-0 vote.
- On August 27, 2007, the City Council will vote to approve, conditionally approve, or deny the special review.

BACKGROUND

This is a special review request to expand a location with an existing on-premise all beverage liquor license with gaming for the Muzzleloader Café & Powderhorn Lounge. The subject property is located at 4900 Laurel Road and is legally described at Lot 2A (to be amended), Sugar Subdivision. The property is zoned Controlled Industrial (CI). The existing facility has been in existence at its present location for more than fifty years. The owners intend to construct a new facility on the property and demolish the existing building. The new construction will increase the square footage of the building by 25%. Any previously approved special review use that expands greater than 10% is required to obtain an additional special review. This expansion will include additional parking spaces and landscaping. The property surrounding this site has developed with commercial and light industrial uses.

There are no other all beverage licenses within the immediate area. There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all special reviews shall comply with the following three (3) criteria: 1) The application complies with all parts of the Unified Zoning Regulations, 2) The application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) The application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

This application conforms to the first criteria in so far that it is within a Controlled Industrial zoning district where on premise consumption of alcoholic beverages may be allowed by special review approval. The form of the application is correct, the property is an existing bar and restaurant

currently serving all beverage liquor with gaming.

The application also conforms to the second and third criteria. The zoning regulations adopted by the City Council have designated several zoning districts where on premise consumption of alcoholic beverages may be allowed. There are no existing residential developments immediately adjacent to this property. The CI zone is intended *“to accommodate a variety of business, warehouse and light industrial uses related to wholesale plus other business and light industries not compatible with other commercial zones, but which need not be restricted in industrial or general commercial zones, and to provide location directly accessible to arterial and other transportation systems where they can conveniently serve the business and industrial centers of the city and county.”*

The existing use has been at this location for many years with the original special review granted in 1994. The proposal is consistent with goals of the 2003 Growth Policy, specifically the goal of encouraging uses that are compatible with the character of the adjacent land use patterns. The CI zoning district in this area is intended for concentration of commercial and service-oriented businesses.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

9. Street and road capacity;
10. Ingress and egress to adjoining streets;
11. Off-street parking;
12. Fencing, screening and landscaping;
13. Building bulk and location;
14. Usable open space;
15. Signs and lighting; and/or
16. Noise, vibration, air pollution and similar environmental influences.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 2A (to be amended), Sugar Subdivision located at 4900 Laurel Road.
2. Development of the site shall be in substantial conformance with the site plan dated June 26, 2007. Deviations from the approved site plan that change the location of buildings, parking lot access or parking areas will require additional special review approval.
3. The owner is allowed to have background music on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge. Also the owner is allowed live music, non-amplified, not audible beyond the outdoor patio lounge.
4. The owner shall provide a fence of at least 4 feet in height around the outdoor patio lounge. The fence shall have at least one exit-only gate to provide an emergency exit. Access to the outdoor patio lounge area shall be through the main indoor area of the business.

5. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. No chain link or wire fencing will be used for sight-obscuring enclosure.
6. Landscaping shall be provided as shown on the site plan and as required by Section 27-1100 of the Unified Zoning Regulations.
7. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
8. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

The City Zoning Commission conducted a public hearing on August 7, 2007. Michael Burke, the representing agent, was present at the hearing to answer any questions from the Zoning Commission. There were no surrounding property owners present; and no letters in favor or opposed to the application were received by the Planning Division.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the following goal of the 2003 City of Billings/Yellowstone County Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)
- Coordinate economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of special review #850 on a 5-0 vote.

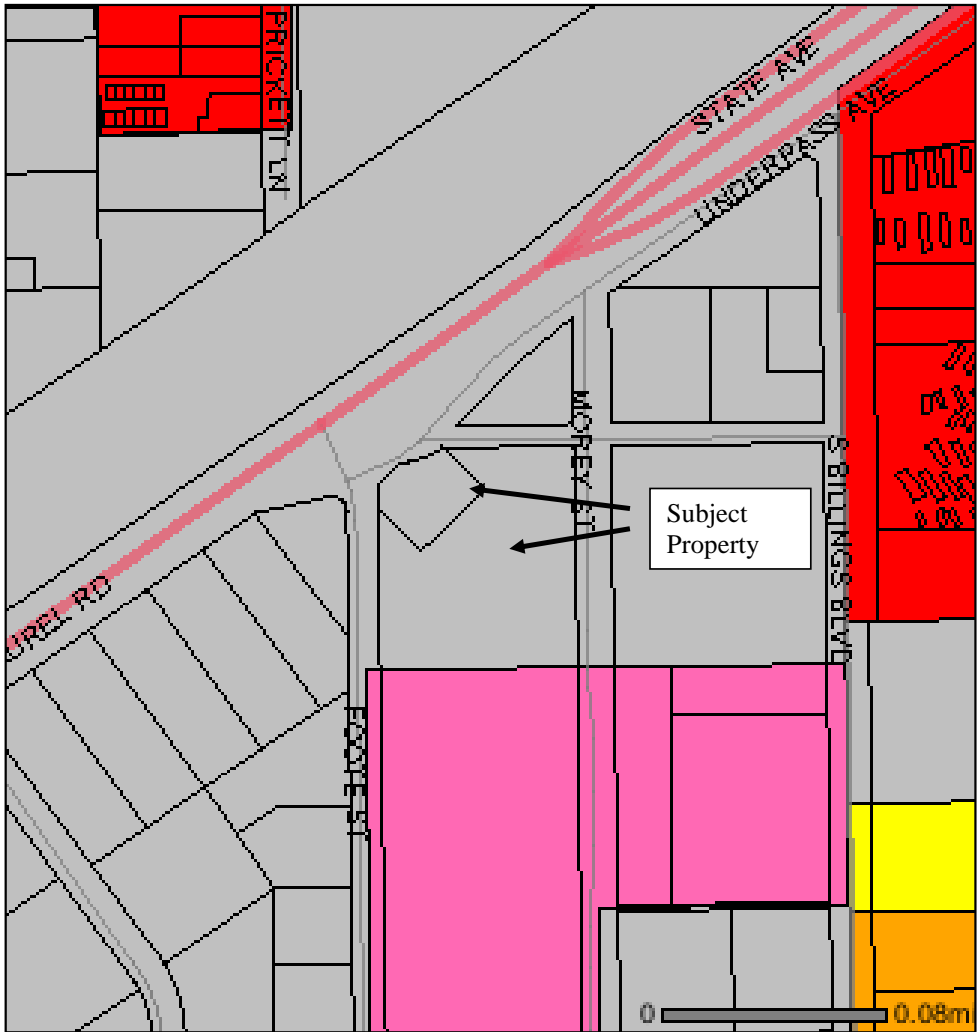
ATTACHMENTS

A: Zoning/Location Map

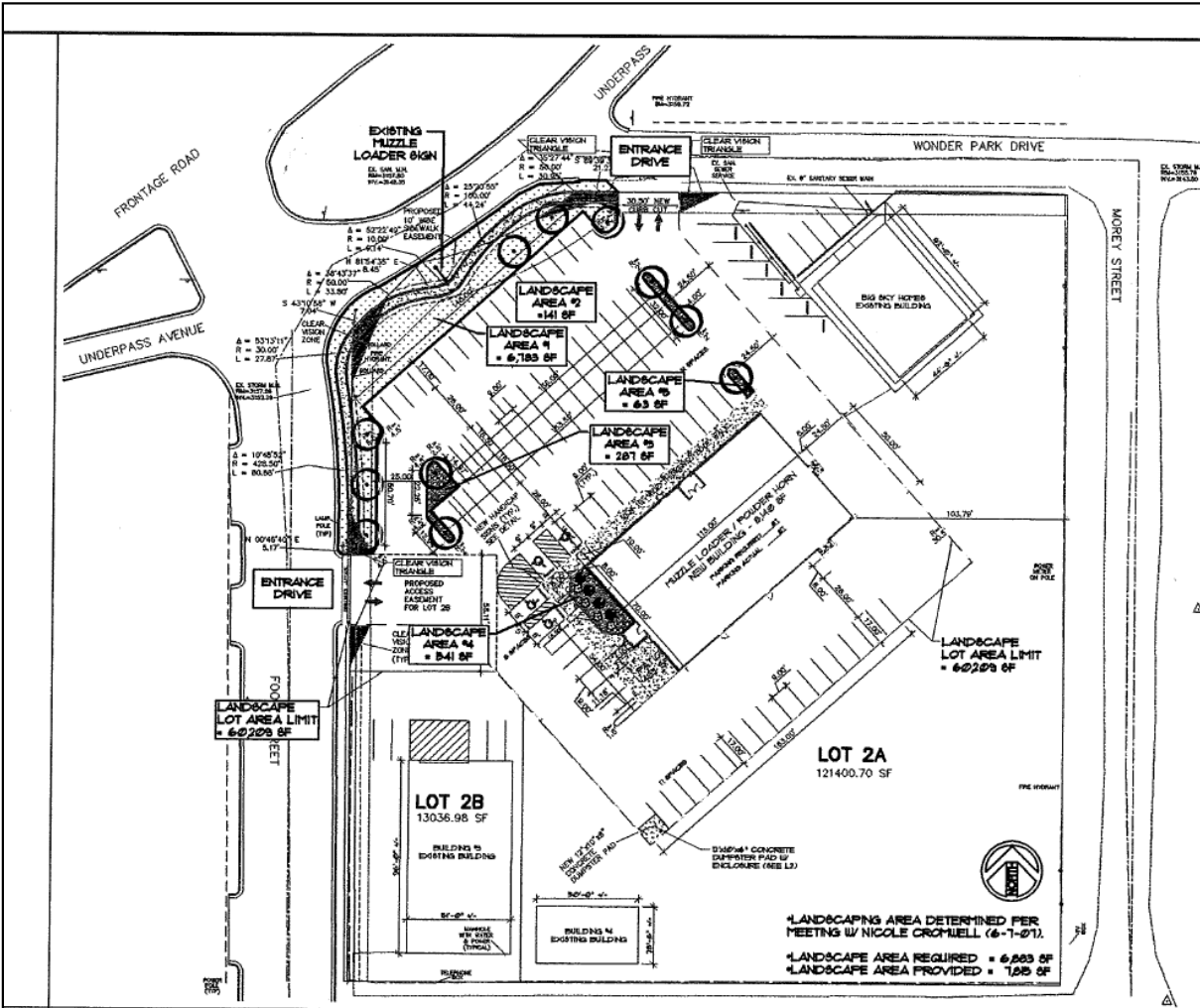
B: Site Plan

C: Pictures of the Site (available in the City Clerk's Office)

Attachment A
Zoning Map – Special Review #850



Attachment B
Site Plan – Special Review #850



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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, AUGUST 27, 2007

TITLE: Public Hearing for Special Review #851, 328 Shiloh Road
DEPARTMENT: Planning & Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: This is a request for a special review for an expansion of a church facility on a 20 acre parcel of land in a Residential 9,600 (R-96) zone. The subject property is legally description as Tracts 5A-1 and 5A-2 of Certificate of Survey (COS) 1648. The property is generally located at 328 South Shiloh Road. It is also in the Shiloh Corridor Overlay District (SCOD). The owner is Emmanuel Baptist Church and the representing agents are Durward K. Sobek, AIA, Space Planning for People; and Ray Cucancic, Cucancic Construction. The Zoning Commission conducted a public hearing on August 7, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote. Ed Workman recused himself from voting on this special review because he is a member of Emmanuel Baptist Church.

ALTERNATIVES ANALYZED: Before taking any action on an application for a special review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, will have minimum effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #851 on a 4-0 vote.

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

ATTACHMENTS

- A: Zoning Map
- B: Site photos (available in City Clerk's Office)
- C: Site Plan
- D: Applicant Letter

INTRODUCTION

This is a special review to allow the expansion of an existing use for Emmanuel Baptist Church on a residentially zoned property described as Tracts 5A-1 and 5A-2 of COS 1648, addressed as 328 South Shiloh Road zoned R-96.

PROCEDURAL HISTORY

- On July 2, 2007, the special review application was submitted to the Planning Division.
- On August 7, 2007, the Zoning Commission conducted a public hearing on this request and forwarded a recommendation of Conditional Approval to the City Council on a 4-0 vote.
- On August 27, 2007, the City Council will vote to approve, conditionally approve, or deny the special review.

BACKGROUND

This is a request for a special review to allow the expansion of an existing church, Emmanuel Baptist Church, at 328 South Shiloh Road. The property is zoned Residential 9600 and is generally located on the northwest corner of Shiloh Road and Monad. The property on the east is residential property, Shiloh Village Subdivision; the land to the north is in the county and is a residential neighborhood. The land to the south and west is currently used for agricultural production.

On June 11, 2007, the Planning Division received building plans for review of the expansion of Emmanuel Baptist Church. Upon reviewing the plans there was not a landscape plan with the drawings to review compliance with the SCOD. A letter was sent out on June 19, 2007, requesting that the additional documents be submitted for review to ensure they meet the requirements set forth by Section 27-1404 through 27-1426, BMCC. Upon further review and research, the Planning Division could not find a record of a special review for the initial building that was constructed in 1984. At the time of the initial construction the property was in the County. The property was annexed into the City in 2004. An additional letter was sent on June 25, 2007, informing Emmanuel Baptist Church and its agents that before a building permit could be issued, it would have to go through the special review process. Section 27-613, BMCC, requires churches to go through a special review if the building addition is more than a 10% increase, if the occupancy increases by more than 10%, or the parking lot increases by more than 10%. The proposed expansion is larger than 10% in all three categories.

The existing church is 19,200 square feet on the main level; the proposed addition is 31,363 square feet on the main level. With the building addition, a new parking lot is also being proposed to accommodate the proposed larger building. The new parking lot has approximately 250 parking stalls. The building addition is being constructed where the existing parking lot is located and there is a proposed parking lot with 40 stalls behind the existing building to accommodate parking during construction of the building addition.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all special reviews shall comply with the following three (3) criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria, in so far, that it meets required setbacks and does not exceed maximum lot coverage. Also churches are an allowed use in Residential 9600 zoning provided the organization has gone through the special review process and obtained approval for the use.

The application also conforms to the second and third criteria. The submitted drawing with this application appears to meet all zoning requirements for setbacks, lot coverage and landscaping. This is the current location of the Emmanuel Baptist Church and it is proposing to stay in the neighborhood, build a new building with site improvements and a well laid out landscape on the property that will enhance the appearance of the area instead of moving to a new location leaving behind an empty building for the neighborhood. The property has been in use as a church in the neighborhood since 1984 and does not pose a change in use that would be detrimental to the neighborhood. The proposed expansion of Emmanuel Baptist Church building is consistent with goals of the 2003 Growth Policy specifically the goal of “Visually appealing communities”.

The Zoning Commission is recommending conditions for this special review based on the approval criteria for special review uses. The Zoning Commission has recommended conditions below to address light, safety, traffic flows and the aesthetics of the property.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

17. Street and road capacity;
18. Ingress and egress to adjoining streets;
19. Off-street parking;
20. Fencing, screening and landscaping;
21. Building bulk and location;
22. Usable open space;
23. Signs and lighting; and/or
24. Noise, vibration, air pollution and similar environmental influences.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Tracts 5A-1 and 5A-2 of Certificate of Survey (COS) 1648, 23.6 acres (gross) on the west side of Shiloh Road north of Monad Road, see attachment C.
2. Any expansion of the proposed building, building occupancy or parking lot greater than 10 percent of what is shown on attachment D will require an additional special review approval as per BMCC 27-613(c).

3. The development of Tracts 5A-1 and 5A-2 of COS 1648 shall be in complete accordance with all provisions of Section 27-1400 Shiloh Corridor Overlay District and all provisions of Section 27-309 building height and setbacks.
4. Dumpsters shall be enclosed in a three sided sight obscuring enclosure with sight obscuring gates, Section 27-1107 BMCC.
5. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
6. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

The City Zoning Commission conducted a public hearing on August 7, 2007 for this application.

Durwood Sobeck from Space Planning for People spoke in favor of the special review stating that the church had always planned on expanding forward and they have grown to the point that they are now ready for the expansion.

Al Littler spoke in favor of the special review expressing that churches, synagogues, temples and mosques are always positive influences on neighborhoods and add value to the surrounding neighborhood.

Ed Workman was in favor of the special review stating he believes the church fits in well with the West Billings Plan and the Shiloh Corridor District.

Judy Hughes spoke in favor of the special review and also explained the use of the two mobile homes on the site. One is used for a parsonage and the other for missionary housing.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the following goal of the 2003 City of Billings/Yellowstone County Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)

- Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, page 6)
- Visually appealing communities. (Aesthetics Goal, page 7)

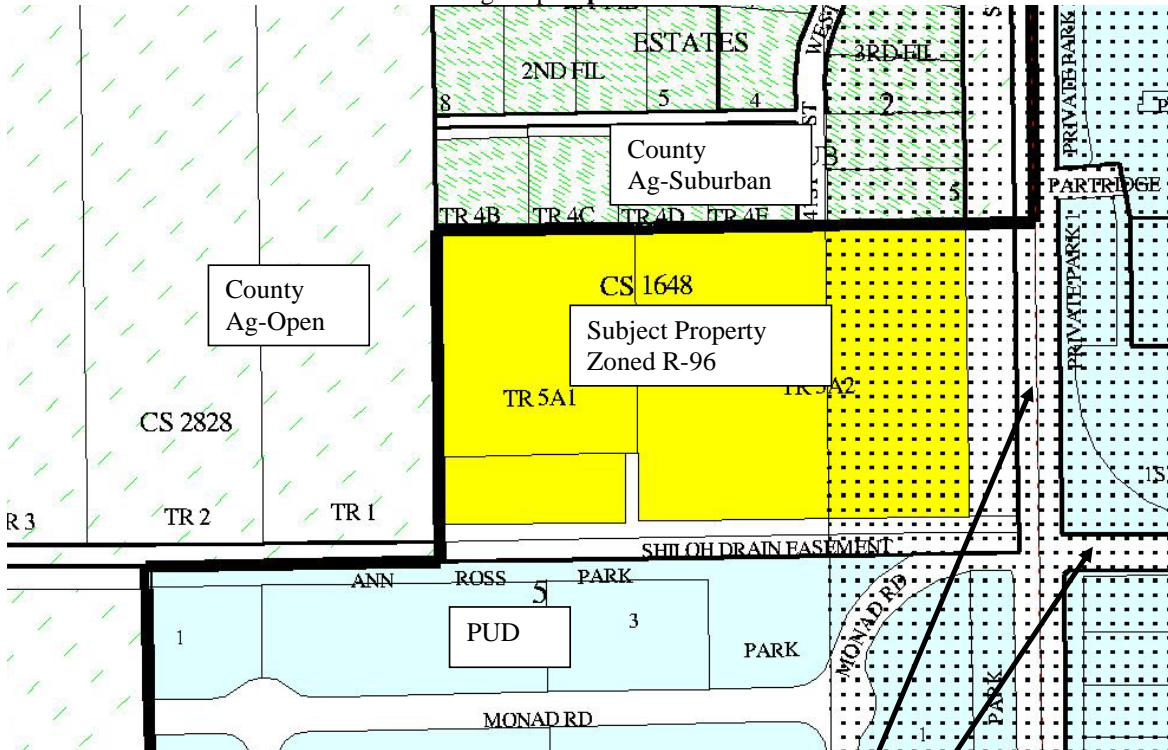
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of special review #851 on a 4-0 vote.

ATTACHMENTS

- A: Zoning Map
- B: Site photos (available in City Clerk's Office)
- C: Site Plan
- D: Applicant Letter

Attachment A
Zoning Map - Special Review #851

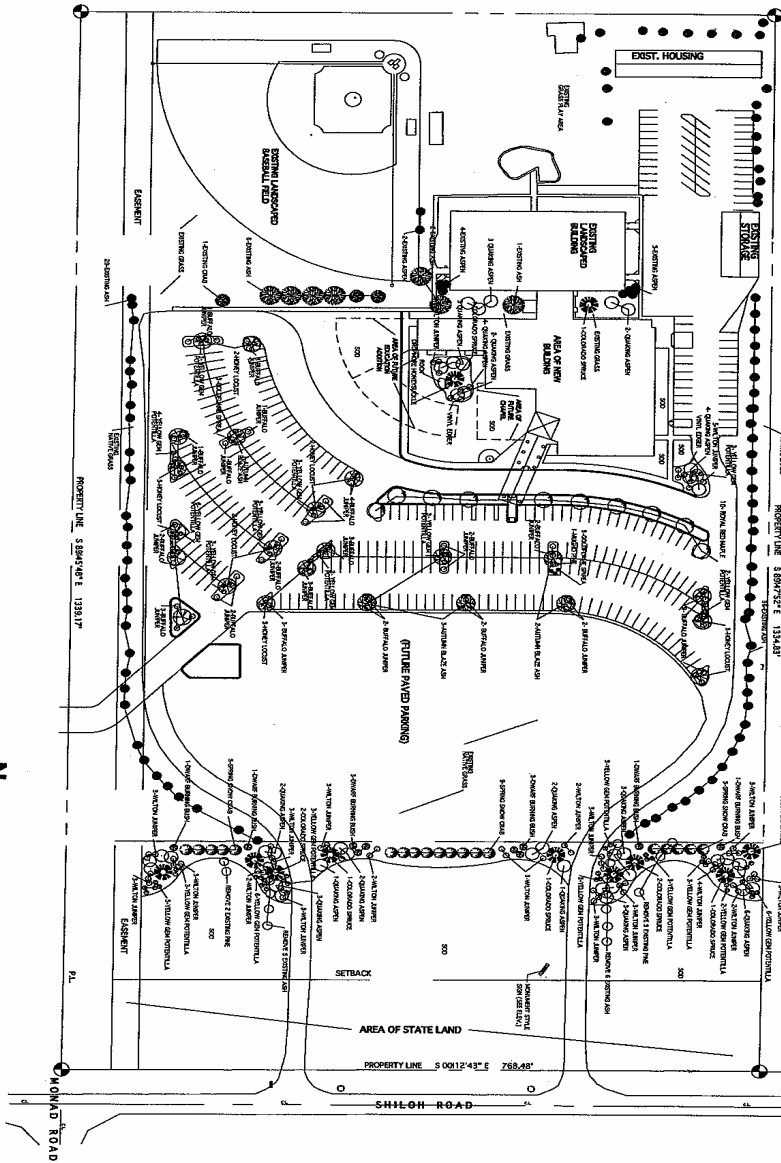
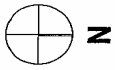


Shiloh Road

Monad Road

Attachment C
Proposed Site – Special Review #851

LANDSCAPE & SIGNAGE PLAN
NOT TO SCALE



Attachment D
Applicant Letter – Special Review #851
SPECIAL REVIEW APPLICATION
FOR THE CITY OF BILLINGS
~~~~Attachment~~~~

Submitted by:

Emmanuel Baptist Church  
328 South Shiloh Road  
Billings, MT 59106  
406-652-3161

Judy Hughes, Construction Project Coordinator

Plan Review #07-944

The following is in answer to question #1, A-D of Application, page one:

To provide a little history, Emmanuel Baptist is a church, organized in 1952, whose first building was in downtown Billings. As the congregation grew, land was purchased at 14th Street West & Custer Avenue, and a new church was constructed. That location was held until the early 1980's when they outgrew the space needed to house the people and ministries of the church.

Our current property, located at 328 So. Shiloh Road, is a 20-acre parcel of land which we developed little-by-little as the need arose, but we have again outgrown the existing building that was constructed in 1984. It has been our intent since moving to this location to expand our facilities and accommodate the anticipated growth of the area. We did not submit a site plan of proposed future developments when the current church building was built because we were unaware that such a move was necessary in order to comply with codes. We were not within the city limits at that time.

The City of Billings continues to move westward, and we continue to reach out to the community in order to provide a place of worship. As we have developed our property, we have made every effort to keep it well-groomed and attractive. The new addition will only enhance this effort. Our architect has presented us with a plan to not only accommodate our needs, but to be very aesthetically-pleasing in light of the development of Shiloh Road. We will certainly comply with whatever requirements there are for the Shiloh Corridor Overlay District.

We are submitting this Application for Special Review because our plans call for greater than 10% in the areas mentioned in the notice from your department, namely, potential occupants, gross floor area, and new parking stalls, pursuant to BMCC 27-305.

**Legal Description of Property:**

Tract 5-A-1 and 5-A-2 of 3rd Amendment of Certificate of Survey No. 1648,  
located in the NE 1/4, Section 10, Township 1 South, Range 25 East, MPM,  
Yellowstone County, Billings, Montana.

**Buildings on Property:**

Main church building  
    Outside dimension: 190' x 100'  
    Total: 32,000 sq. feet  
Bus Barn  
    3,200 sq. feet  
Shop  
    816 sq. feet  
Two manufactured-home residences  
    28x56 and 28x60

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



## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 27, 2007**

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TITLE: Award of Salvage Items from the Existing Cobb Field  
 DEPARTMENT: Parks, Recreation, and Public Lands Department  
 PRESENTED BY: Mike Whitaker, Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** As Cobb Field nears its final season of service at Athletic Park, the Billings American Legion Baseball is requesting the City of Billings donate the eight (8) banks of field lights to their organization.

This agenda item was presented before Council at the August 13, 2007 City Council Meeting. Council delayed action on this item until the August 27, 2007 Council Meeting to allow for NorthWestern Energy to provide liability insurance and release of all claims forms.

At no cost to the City, Billings American Legion Baseball organization has made arrangements with NorthWestern Energy to remove and place on the ground all eight (8) light poles and then remove the banks of lights. The lights will be transferred to Pirtz Field at Stewart Park and installed on new light poles to provide lighting for that field. The Billings American Legion Baseball organization is prepared to accomplish the above described work during the week of September 17 to 20, 2007, which is the time set aside for approved organizations to remove designated items from the Cobb Field complex.

The Council appointed Steering Committee for the New Stadium unanimously recommended the Billings American Legion Baseball organization be granted their request to salvage the field lights.

**FINANCIAL IMPACT:** There will be no cost to the City for removal of the field lights. As a result of the Billings American Legion Baseball organization salvaging the field lights, there will be a cost savings to the New Stadium project of \$4,800.00. These savings will be realized by not exercising Alternates #1 and #2 in the Demolition of Existing Cobb Field Bid. Alternate #1 - Remove Field Lights would increase the demolition contract cost by \$6,000.00. Alternate #2 - Field Light fixture Salvage Value would decrease the contract cost \$1,200.00.

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

**Funding Sources:** None needed.

**ALTERNATIVES ANALYZED:**

- Award the salvage rights for the field lights to the Billings American Legion Baseball organization, or
- Accept the Bid Alternates #1 and #2 to have the demolition contractor remove the field lighting, or
- Secure another organization willing to remove the field lighting at no cost to the City.

**RECOMMENDATION:**

Staff recommends that Council grant the request of the Billings American Legion Baseball organization to salvage the field lights at Cobb Field.

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

Attachment A: Billings American Legion Baseball Letter of request (2 pages)

Attachment B: Billings American Legion Baseball Release of All Claims Form (2 pages)  
NorthWestern Energy Release of All Claims Form (2 pages)

Attachment C: NorthWestern Energy Certificate of Insurance (1 page)



June 19, 2007

Mike Whitaker  
Billings Parks and Recreation Department  
390 N. 23<sup>rd</sup> St.  
Billings, MT 59101

Dear Mike,

On behalf of the Billings American Legion Baseball Program, I am writing to request certain pieces of Cobb Field before the complete demolition this fall.

First, at no cost to the city we would request the lights that are currently on the wood poles. We would transfer the lights to Pirtz Field and install them. Work is currently underway for the installation of lights at Pirtz. Lights poles have already been donated and the locations of the poles have already been marked. Conduit has been put in place for the wiring. Northwestern Energy has already been contacted for transformer upgrades. Action Electric is prepared to do the wiring. Equipment for the removal and installation of the lights is ready to go.

Second, the dirt at Cobb Field is premium infield dirt and Pirtz is in great need for new infield dirt. At no cost to the city, we are prepared to remove the infield dirt and transport to Pirtz field for installation.

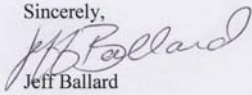
Third, if available we would take some of the existing sod from Cobb for use at Pirtz field. I do not know how much at this time, but we can discuss it at the appropriate time.

Fourth and final request, the current public address system at Cobb Field is in decent working order and ours at Pirtz is not. We would like to have the P.A. system for installation at Pirtz. The system would include speakers and amplifier.

Mike, as you are aware of, Legion Baseball has been putting a lot of money and donated upgrades into Pirtz Field. Our goal is to have a nice little stadium and the improvement that can be realized from the items currently at Cobb Field will go along way to helping our cause. We have a motivated work force of volunteers that are putting countless hours into the improvements of this facility and it is very important for the Legion program to have quality alternative to the new ballpark. We have four legion teams that need game and practice facilities and next year with the construction of the new ballpark more pressure will be put on Pirtz Field. I believe Legion baseball is a quality choice for the items requested above not only because of our strong baseball tradition in the community but because we are prepared to act quickly and cover the expenses of moving the items.

Thank you for your consideration in this matter.

Sincerely,



Jeff Ballard  
Chairman  
Billings American Legion Baseball

RELEASE OF ALL CLAIMS

IN CONSIDERATION of the City of Billings, Montana, a municipal corporation, donating to Billings American Legion Baseball, eight (8) banks of field light fixtures currently located on wooden poles at Cobb Field in Athletic Park, receipt of which is hereby acknowledged, Billings American Legion Baseball does hereby release the City of Billings and all of its agents, employees, representatives, insurance companies, and all other persons, corporations, firms, associations or partnership of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, including serious injury or death, and property damage and the consequences thereof resulting or to result from the use of these field light fixtures.

Billings American Legion Baseball, on behalf of itself, its agents, employees, representatives and insurance companies understands that these donated field light fixtures have been in service for many years, are not in new condition, and any manufacturer warranties have expired; that there are no guarantees, warranties or promises, written or implied by the City of Billings, Montana; that it is unknown if the field light fixtures will function properly; and, that Billings American Legion Baseball is solely responsible for contacting the manufacturer and determining whether these field light fixtures is fit for use prior to using same.

Billings American Legion Baseball acknowledges that it was not required to accept these donated field light fixtures and deliberately and knowingly assumes all costs, risks of injury and/or other damages, including but not limited to cost of medical treatment, permanent injury or death, and property damages resulting from use by them of the field light fixtures.

Billings American Legion Baseball agrees to indemnify, hold harmless, and defend the City of Billings, Montana, from any and all actions, costs, charges, claims, demands, judgments, losses, liabilities, payments, recoveries and suits of any kind by reason of the use, misuse or failure of these field light fixtures.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

DATED this 21<sup>st</sup> day of August, 2007

BILLINGS AMERICAN LEGION BASEBALL

BY: Jeffrey S. Ballard  
Chairman

STATE OF MONTANA)  
: ss.  
County of Yellowstone )

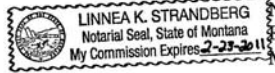
On this 21<sup>st</sup> day of August, 2007 before me a Notary Public for the State of Montana, personally appeared JEFFREY S. BALLARD, known to me to be the ~~CHAIRMAN~~ ~~JEFFREY S. BALLARD~~ of the Billings American Legion Baseball, and acknowledged to me that (s)he executed the foregoing instrument as its authorized agent.

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

*Linnea K. Strandberg* (Signature)

(NOTARIAL SEAL)

Linnea K. Strandberg (Printed Name)



Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: February 23, 2011

RELEASE OF ALL CLAIMS

IN CONSIDERATION of the City of Billings, Montana, a municipal corporation, donating to Billings American Legion Baseball, eight (8) banks of field light fixtures currently located on wooden poles at Cobb Field in Athletic Park. NorthWestern Energy a Montana corporation, intends to assist American Legion Baseball in the dismantling and removal of the field light fixtures NorthWestern Energy does hereby release the City of Billings and all of its agents, employees, representatives, insurance companies, and all other persons, corporations, firms, associations or partnership of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, including serious injury or death, and property damage and the consequences thereof resulting or to result from the work involved in the dismantling and removal of the field light fixtures.

NorthWestern Energy acknowledges that it was not required to assist the Billings American Legion Baseball and deliberately and knowingly assumes all costs, risks of injury and/or other damages, including but not limited to cost of medical treatment, permanent injury or death, and property damages resulting from the work necessary by them in the removal of the field light fixtures.

NorthWestern Energy further agrees to indemnify, hold harmless, and defend the City of Billings, Montana, from any and all actions, costs, including reasonable attorneys fees and litigation costs, charges, claims, demands, judgments, losses, liabilities, payments, recoveries and suits of any kind by reason of the dismantling of, or use, misuse or failure of these field light fixtures.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

DATED this 20<sup>th</sup> day of August, 2007

NORTHWESTERN ENERGY 

BY: Superintendent Substation  
(Title)

STATE OF MONTANA)  
: ss.  
County of Yellowstone )

On this 20<sup>th</sup> day of August, 2007 before me a Notary Public for the State of Montana, personally appeared William R. Endy, known to me to be the

Superintendent Substation of the North Western Energy, and acknowledged to me that (s)he executed the foregoing instrument as its authorized agent.

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

Linnea K. Strandberg (Signature)

(NOTARIAL SEAL)



Linnea K. Strandberg (Printed Name)

Notary Public for the State of Montana

Residing in Billings, Montana

My Commission Expires: February 23, 2011



| MARSH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                         | CERTIFICATE OF INSURANCE                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | CERTIFICATE NUMBER<br>CHI-001637009-05 |                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PRODUCER</b><br>Marsh USA Inc.<br>333 South 7th Street, Suite 1600<br>Minneapolis, MN 55402-2400                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                         | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                        |                                                                                                                                                                                                          |
| 023070-NW-GAWXO-06/07                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                         | <b>COMPANIES AFFORDING COVERAGE</b><br>COMPANY<br><b>A</b> OLD REPUBLIC INSURANCE COMPANY<br>COMPANY<br><b>B</b> AMERICAN INTERNATIONAL SPECIALTY LINES INS.<br>COMPANY<br><b>C</b> SELF-INSURED<br>COMPANY<br><b>D</b>                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                        |                                                                                                                                                                                                          |
| <b>INSURED</b><br>NORTHWESTERN CORPORATION<br>125 SOUTH DAKOTA AVENUE<br>SIOUX FALLS, SD 57104                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                        |                                                                                                                                                                                                          |
| <b>COVERAGES</b> This certificate supersedes and replaces any previously issued certificate for the policy period noted below. 1<br>THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. |                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                        |                                                                                                                                                                                                          |
| CO LTR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | TYPE OF INSURANCE                                                                                                                                                                                                                                       | POLICY NUMBER                                                                                                                                                                                                                                                  | POLICY EFFECTIVE DATE (MM/DD/YY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | POLICY EXPIRATION DATE (MM/DD/YY)      | LIMITS                                                                                                                                                                                                   |
| C                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>GENERAL LIABILITY</b><br><input type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR<br><input type="checkbox"/> OWNERS & CONTRACTOR'S PROT                                         | Self-Insured Retention                                                                                                                                                                                                                                         | 06/01/07                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 06/01/08                               | GENERAL AGGREGATE \$<br>PRODUCTS - COMP/OP AGG \$<br>PERSONAL & ADV INJURY \$<br>EACH OCCURRENCE \$ 1,000,000<br>FIRE DAMAGE (Any one fire) \$<br>MED EXP (Any one person) \$                            |
| A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS | MWVB 19887                                                                                                                                                                                                                                                     | 06/01/07                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 06/01/08                               | COMBINED SINGLE LIMIT \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE \$                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>GARAGE LIABILITY</b><br><input type="checkbox"/> ANY AUTO                                                                                                                                                                                            |                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                        | AUTO ONLY - EA ACCIDENT \$<br>OTHER THAN AUTO ONLY:<br>EACH ACCIDENT \$<br>AGGREGATE \$                                                                                                                  |
| B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>EXCESS LIABILITY</b><br><input type="checkbox"/> UMBRELLA FORM<br><input checked="" type="checkbox"/> OTHER THAN UMBRELLA FORM                                                                                                                       | 9834959<br>Claims Made                                                                                                                                                                                                                                         | 06/01/07                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 06/01/08                               | EACH OCCURRENCE \$ 5,000,000<br>AGGREGATE \$ 5,000,000                                                                                                                                                   |
| A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL                                                                                     | MWC115212 00                                                                                                                                                                                                                                                   | 06/01/07                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 06/01/08                               | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER<br>EL EACH ACCIDENT \$ 1,000,000<br>EL DISEASE-POLICY LIMIT \$ 1,000,000<br>EL DISEASE-EACH EMPLOYEE \$ 1,000,000 |
| A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>OTHER EXCESS WC EMPLOYERS LIABILITY</b>                                                                                                                                                                                                              | MWXS 801<br>Self-Insured Retention - \$1,000,000                                                                                                                                                                                                               | 06/01/07                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 06/01/08                               | STATUTORY XS OF \$1M SIR                                                                                                                                                                                 |
| <b>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS</b><br>Evidence of Insurance Only                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                        |                                                                                                                                                                                                          |
| <b>CERTIFICATE HOLDER</b><br>Northwestern Corporation<br>125 South Dakota Avenue<br>Sioux Falls, SD 57104                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                | <b>CANCELLATION</b><br>SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL ___ 30 ___ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.<br>MARSH USA INC.<br>BY: Jan D. Sutton <i>Jan D. Sutton</i><br>MM1(3/02) VALID AS OF: 08/17/07 |                                        |                                                                                                                                                                                                          |

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 27, 2007**

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TITLE: Award of Salvage Items from the Existing Cobb Field  
DEPARTMENT: Parks, Recreation, and Public Lands Department  
PRESENTED BY: Mike Whitaker, Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** As Cobb Field nears its final season of service at Athletic Park, Little League Baseball Montana District #1 and Billings American Legion Baseball are requesting the City of Billings donate the infield red dirt and the sod from Cobb Field to their organizations.

This agenda item was presented before Council at the August 13, 2007, City Council Meeting. Council delayed action on this item until the August 27, 2007, Council Meeting to allow for the organizations that will do the work to provide liability insurance and release of all claims forms.

The Little League Baseball Montana District #1 President, Rick DeVore will oversee the distribution of all red dirt and sod. Heights National Little League and Studer Construction Co., who represents Billings American Legion Baseball, will be the two organizations that will do the actual work to remove the red dirt and sod from Cobb Field.

At no cost to the City, the above named organizations will remove the infield red dirt and sod from Cobb Field and use it to upgrade little league fields in the community. These organizations are prepared to accomplish the above described work during the week of September 17 to 20, 2007, which is the time set aside for approved organizations to remove designated items from the Cobb Field complex.

Typically user groups such as Little Leagues and Legion Baseball organizations do the majority of field maintenance and game preparation for the baseball fields in City parks. For PRPL staff to salvage these items it would take significant resources including the cost of salaries, equipment, time away from routine operations, and significant material storage space. The above named organizations are willing to salvage the red dirt and sod at no cost to the City; and

these materials will most likely be used on baseball fields located in City parks, which would be an indirect benefit to the City.

The Council appointed Steering Committee for the New Stadium unanimously recommended the Little League Baseball Montana District #1 and Billings American Legion Baseball be granted their request to salvage the infield red dirt and the sod from Cobb Field.

**FINANCIAL IMPACT:** There will be no cost to the City for removal of the infield red dirt and sod. These organizations will provide all the equipment and labor necessary to accomplish this work.

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

**Funding Sources:** None needed.

**ALTERNATIVES ANALYZED:**

- Award the salvage rights for the infield red dirt and sod to the Little League Baseball Montana District #1 and Billings American Legion Baseball organizations, or
- Allow the infield red dirt and sod to be removed as part of the excavation work for the new stadium, or
- Secure another organization willing to remove the infield red dirt and sod at no cost to the City.

**RECOMMENDATION:**

Staff recommends that Council grant the request of the Little League Baseball Montana District #1 and Billings American Legion Baseball to salvage the infield red dirt and sod from Cobb Field.

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

Attachment A: Billings Heights National Little League Letter of Request (1 page)

Billings American Legion Baseball Letter of Request (2 pages)

Attachment B: Heights National Little League and Billings American Legion Baseball Release of All Claims Form (2 pages)

Studer Construction Company Release of all Claims (2 pages)

Attachment C: Heights National Little League Certificate of Insurance (1 page)

Studer Construction Company Certificate of Insurance (1 page)



Billings Heights National Little League  
P.O. Box 50535 Billings, MT 59105

July 10, 2007

Mr. Mike Whitaker, Director  
Billings Parks, Recreation, and Public Lands Department  
390 North 23<sup>rd</sup> Street  
Billings, Montana 59101

Dear Mr. Whitaker:

On behalf of Billings Heights National Little League (BHNLL), I would like to thank you for providing BHNLL an opportunity to voice and share its concerns and interests regarding the demolition of Cobb Field. It was exciting to hear and learn about the demolition plans of Cobb Field.

As I am sure it is true with all the Montana District 1 Little Leagues in the Billings Community, BHNLL believes it is great pleasure and pride to acquire some important part of the remains of Cobb Field. BHNLL is continually working hard to improve the aesthetics and playing conditions of its baseball and softball fields in the Heights community.

I am providing you this letter to formally request BHNLL be allowed to acquire the sod and infield dirt to be used at the baseball and softball fields utilized by BHNLL. We are currently improving and enhancing a 5-field complex that BHNLL currently utilizes. We see a great opportunity to sod all of the infields and some of the common areas between the fields with the sod from Cobb Field.

In addition to the sod, BHNLL would also like to request an opportunity to acquire some of the bleacher seating from Cobb Field. Bleacher seating is lacking at our 5-field complex and BHNLL believes by acquiring some of Cobb Field's bleacher material, this could help alleviate our problem with lack of bleacher seating at our fields.

Thank you for allowing us to submit our formal request to you in writing, to acquire some memorabilia from Cobb Field and have it placed and utilized at our Little League fields. If you have any questions or need to contact me, you can reach me at 406-256-8228 or email me at [tfelchlemt@bresnan.net](mailto:tfelchlemt@bresnan.net).

Respectfully,

A handwritten signature in black ink that reads "Tim H. Felchle". The signature is written in a cursive style with a large, prominent "T" and "F".

Tim H. Felchle, President  
Heights National Little League

Cc: Richard DeVore, District Administrator  
Montana Little League, District 1  
2614 Park Ridge Lane  
Billings, MT 59106

RELEASE OF ALL CLAIMS

IN CONSIDERATION of the City of Billings, Montana, a municipal corporation, donating to Billings Heights National Little League and Billings American Legion Baseball, all red infield dirt and field sod, receipt of which is hereby acknowledged, Billings Heights National Little League and Billings American Legion Baseball does hereby release the City of Billings and all of its agents, employees, representatives, insurance companies, and all other persons, corporations, firms, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, including serious injury or death, and property damage and the consequences thereof resulting or to result from the use of this red infield dirt and field sod.

Billings Heights National Little League and Billings American Legion Baseball, on behalf of themselves, their agents, employees, representatives and insurance companies understand and acknowledge that this donated red infield dirt and field sod has been in service for many years, is not in new condition, and has no warranties; that there are no guarantees, warranties or promises, written or implied by the City of Billings, Montana; that it is unknown if the red infield dirt and field sod will function properly in the location where they will be used; and, that Billings Heights National Little League and Billings American Legion Baseball are solely responsible for determining whether this red infield dirt and field sod is fit for use prior to using same.

Billings Heights National Little League and Billings American Legion Baseball, on behalf of themselves, their agents, employees, and representatives, acknowledge that they were not required to accept the red infield dirt and field sod, and deliberately and knowingly assume all costs, risks of injury and/or other damages, including but not limited to cost of medical treatment, permanent injury or death, and property damages resulting from use by them of the red infield dirt and field sod.

Billings Heights National Little League and Billings American Legion Baseball, each and all, on behalf of themselves, their agents, employees, and representatives, agree to indemnify, hold harmless, and defend the City of Billings, Montana, from any and all actions, costs, charges, claims, demands, judgments, losses, liabilities, payments, recoveries and suits of any kind by reason of the use, misuse or failure of this red infield dirt and/or field sod.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

DATED this 21<sup>st</sup> day of August, 2007

BILLINGS HEIGHTS NATIONAL LITTLE LEAGUE

BY: Jim H. Felchle  
President

BILLINGS AMERICAN LEGION BASEBALL

BY: Jeffrey S. Ballard  
Chairman

STATE OF MONTANA)  
: ss.  
County of Yellowstone )

On this 21<sup>st</sup> day of August, 2007 before me a Notary Public for the State of Montana, personally appeared TIM H. FELCHLE, known to me to be the ~~Tim H. Felchle~~ PRESIDENT of the Billings Heights National Little League, ~~JEFFREY S. BALLARD~~, known to me to be the CHAIRMAN ~~JEFFREY S. BALLARD~~ of the Billings American Legion Baseball, and acknowledged to me that they each have executed the foregoing instrument as the authorized agents of their respective organizations.

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

Linnea K. Strandberg (Signature)

(NOTARIAL SEAL)



Linnea K. Strandberg (Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: February 23, 2011

RELEASE OF ALL CLAIMS

IN CONSIDERATION of the City of Billings, Montana, a municipal corporation, donating to Billings American Legion Baseball, the infield red dirt currently located at Cobb Field in Athletic Park. Studer Construction Co. intends to assist American Legion Baseball in the excavating and removal of the infield red dirt. Studer Construction Co. does hereby release the City of Billings and all of its agents, employees, representatives, insurance companies, and all other persons, corporations, firms, associations or partnership of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, including serious injury or death, and property damage and the consequences thereof resulting or to result from the work involved in the excavating and removal of the infield red dirt.

Studer Construction Co. acknowledges that it was not required to assist the Billings American Legion Baseball and deliberately and knowingly assumes all costs, risks of injury and/or other damages, including but not limited to cost of medical treatment, permanent injury or death, and property damages resulting from the work necessary by them in the excavation and removal of the infield red dirt.

Studer Construction Co. agrees to indemnify, hold harmless, and defend the City of Billings, Montana, from any and all actions, costs, charges, claims, demands, judgments, losses, liabilities, payments, recoveries and suits of any kind by reason of the removal of the infield soil, or any other use or misuse of this soil.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

DATED this 16 day of August, 2007

STUDER CONSTRUCTION CO.

BY: Ralph P. Studer VP  
(Title)

STATE OF MONTANA)  
: ss.  
County of Yellowstone )

On this 16 day of Aug., 2007 before me a Notary Public for the State of Montana, personally appeared Ralph Studer, known to me to be the

owner of the Studer Construction Co. and acknowledged to me that (s)he executed the foregoing instrument as its authorized agent.

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

Brian Mollenbein (Signature)

(NOTARIAL SEAL)

Brian Mollenbein (Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: Sept 17, 07



RELEASE OF ALL CLAIMS

IN CONSIDERATION of the City of Billings, Montana, a municipal corporation, donating to Billings American Legion Baseball, the infield red dirt currently located at Cobb Field in Athletic Park. CMG Construction Inc. intends to assist American Legion Baseball in the excavating and removal of the infield red dirt. CMG Construction Inc. does hereby release the City of Billings and all of its agents, employees, representatives, insurance companies, and all other persons, corporations, firms, associations or partnership of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, including serious injury or death, and property damage and the consequences thereof resulting or to result from the work involved in the excavating and removal of the infield red dirt.

CMG Construction Inc. acknowledges that it was not required to assist the Billings American Legion Baseball and deliberately and knowingly assumes all costs, risks of injury and/or other damages, including but not limited to cost of medical treatment, permanent injury or death, and property damages resulting from the work necessary by them in the excavation and removal of the infield red dirt.

CMG Construction. agrees to indemnify, hold harmless, and defend the City of Billings, Montana, from any and all actions, costs, charges, claims, demands, judgments, losses, liabilities, payments, recoveries and suits of any kind by reason of the removal of the infield soil, or any other use or misuse of this soil.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

DATED this 20 day of August, 2007

CMG CONSTRUCTION INC.

BY:  \_\_\_\_\_

(Title)

STATE OF MONTANA)

: ss.

County of Yellowstone )

On this 20 day of August, 2007 before me a Notary Public for the State of Montana, personally appeared KEITH MCGOVERN, known to me to be the

representative of the **CMG Construction Inc.** and acknowledged to me that (s)he executed the foregoing instrument as its authorized agent.

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



J. Norby (Signature)  
J. Norby (Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: 11/22/2010

**J. NORBY**  
**Notary Public for the State of Montana**  
**Residing in Billings**  
**My Commission Expires 11/22/2010**

|                                                                                                                                              |  |                                                                                                                                                                                                                         |           |
|----------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>CERTIFICATE OF LIABILITY INSURANCE</b>                                                                                                    |  | DATE                                                                                                                                                                                                                    | 4/10/07   |
| Keystone Risk Managers, LLC<br>1995 Point Township Drive<br>Northumberland, PA 17867                                                         |  | CERTIFICATE #                                                                                                                                                                                                           | 4260117-2 |
| <small>ADDITIONAL NAMED INSURED:</small><br><br>BILLINGS HEIGHTS NATIONAL LL X#<br>TIM H FELCHLE<br>1171 TRENTON ST<br><br>BILLINGS MT 59105 |  | 4 26 01<br><br><b>INSURERS AFFORDING COVERAGE:</b><br><br>INSURER A: LEXINGTON INSURANCE COMPANY<br><br>INSURER B: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA<br><br>INSURER C: LANDMARK INSURANCE COMPANY |           |

**COVERAGES**

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

| ADDITIONAL INSURED | TYPE OF INSURANCE      | POLICY NUMBER                                  | POLICY EFFECTIVE DATE MM/DD/YYYY | POLICY EXPIRATION DATE MM/DD/YYYY | LIMITS                                            |                            |
|--------------------|------------------------|------------------------------------------------|----------------------------------|-----------------------------------|---------------------------------------------------|----------------------------|
| X                  | GENERAL LIABILITY      | 5098195-02                                     | 1/01/2007                        | 1/01/2008                         | EACH OCCURRENCE                                   | \$2,000,000                |
|                    | X OCCURRENCE           |                                                |                                  |                                   | GENERAL AGGREGATE                                 | \$2,000,000                |
|                    | X INCL. PARTICIPANTS   |                                                |                                  |                                   | PRODUCTS/COMP OPS AGGREGATE                       | \$2,000,000                |
|                    | X SEXUAL ABUSE         |                                                |                                  |                                   | SEXUAL ABUSE OCCURRENCE                           | \$2,000,000                |
|                    |                        |                                                |                                  |                                   | SEXUAL ABUSE AGGREGATE                            | \$2,000,000                |
| X                  | DIRECTORS & OFFICERS   | 162-1094                                       | 1/01/2007                        | 1/01/2008                         | EACH LOSS                                         | \$1,000,000                |
|                    |                        |                                                |                                  |                                   | AGGREGATE                                         | \$1,000,000                |
| X                  | CRIME COVERAGE         | 0009309 02                                     | 1/01/2007                        | 1/01/2008                         | EACH LOSS                                         | \$35,000                   |
|                    |                        | Crime Deductible: \$250 Property/\$1,000 Money |                                  |                                   | AGGREGATE                                         | NONE                       |
| X                  | SPORTS EXCESS ACCIDENT | SR69105434                                     | 1/01/2007                        | 1/01/2008                         | As in Master Policy Med. Max. \$100,000 Ded. \$50 | As in Master Policy Excess |

"X" INDICATES COVERAGE SELECTED FOR ADDITIONAL NAMED INSURED


**ADDITIONAL INSURED**

Who is an insured (SECTION II) of the General Liability policy is amended to include as an insured the person or organization shown in the schedule, but only with respect to liability arising out of the above named Little League's maintenance or use of ball fields, or other premises loaned, donated, or rented to that Little League by such person or organization and subject to the following additional exclusions:

- Structural alterations, new construction, maintenance, repair or demolition operations performed by or on behalf of the person or organization designated in the Schedule and/or performed by the above named Little League and
- That part of the ball field or other premises not being used by the above named Little League

NAME AND ADDRESS OF PERSON OR ORGANIZATION:

CITY OF BILLINGS 2. HOPE UNITED METHODIST CHURCH OF BILLINGS 3. DIOCESE OF GREAT FALLS/BILLINGS/SAINT BERNARD'S PARISH 4. YELLOWSTONE LUTHERAN BRETHREN CHURCH OF BILLINGS 5. BILLINGS HEIGHTS ALLIANCE CHURCH 6. SCHOOL DISTRICT #2 7. ROCKY MOUNTAIN COLLEGE 8. MONTANA STATE UNIVERSITY-BILLINGS 9. ATONEMENT LUTHERAN CHURCH OF BILLINGS 10. CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS 11. YELLOWSTONE COUNTY/METRA PARK

|                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| INSURED                                                                                                      | <b>CANCELLATION</b>                                                                                                                                                                                                                                                                                                                                                                                           |
| Little League Baseball Risk Purchasing Group, Inc.<br>39 U.S. RT. 15 HIGHWAY<br>South Williamsport, PA 17702 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES TO THE ABOVE NAMED LITTLE LEAGUE BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER OR THEIR REPRESENTATIVE WILL MAIL 30 DAYS WRITTEN NOTICE TO THE DESIGNATED PERSON OR ORGANIZATION AT THEIR LAST KNOWN ADDRESS TO US.<br><br><br>AUTHORIZED REPRESENTATIVE |

| ACORD CERTIFICATE OF LIABILITY INSURANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                  | DATE (MM/DD/YYYY)                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     |                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PRODUCER Rene C LeVeaux<br>HUB-BHJ Insurance, Inc.<br>2101 Overland Ave<br>P.O. Box 80310<br>Billings, MT 59102<br>406-652-9151 ... fax406-652-7838                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                  | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.<br>COMPANIES AFFORDING COVERAGE<br>COMPANY A Employers Mutual Casualty Company<br>COMPANY B Progressive Casualty Insurance Company<br>COMPANY C Montana State Fund<br>COMPANY D |                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     |                                                                                                                                                                                                                     |
| INSURED<br>Studer Construction Company<br>Inc.<br>P.O. Box 80725<br>Billings MT 59108                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     |                                                                                                                                                                                                                     |
| <b>COVERAGES</b><br>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. |                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     |                                                                                                                                                                                                                     |
| CO LTR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | TYPE OF INSURANCE                                                                                                                                                                                                                                | POLICY NUMBER                                                                                                                                                                                                                                                                                                                                                                               | POLICY EFFECTIVE DATE (MM/DD/YYYY)                                                                                                                                                                                                                                                                                                                                                                                          | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                              |
| A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | GENERAL LIABILITY<br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT                  | 3x5257308                                                                                                                                                                                                                                                                                                                                                                                   | 03/17/2007                                                                                                                                                                                                                                                                                                                                                                                                                  | 03/17/2008                          | GENERAL AGGREGATE € 2,000,000<br>PRODUCTS - COMP/OP AGG € 2,000,000<br>PERSONAL & ADV INJURY € 1,000,000<br>EACH OCCURRENCE € 1,000,000<br>FIRE DAMAGE (Any one fire) € 100,000<br>MED EXP (Any one person) € 5,000 |
| B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | AUTOMOBILE LIABILITY<br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS | 027072665                                                                                                                                                                                                                                                                                                                                                                                   | 06/17/2007                                                                                                                                                                                                                                                                                                                                                                                                                  | 12/17/2007                          | COMBINED SINGLE LIMIT € 1,000,000<br>BODILY INJURY (Per person) €<br>BODILY INJURY (Per accident) €<br>PROPERTY DAMAGE €                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | GARAGE LIABILITY<br><input type="checkbox"/> ANY AUTO                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     | AUTO ONLY - EA ACCIDENT €<br>OTHER THAN AUTO ONLY:<br>EACH ACCIDENT €<br>AGGREGATE €                                                                                                                                |
| A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | EXCESS LIABILITY<br><input type="checkbox"/> UMBRELLA FORM<br><input type="checkbox"/> OTHER THAN UMBRELLA FORM                                                                                                                                  | 3x5257308                                                                                                                                                                                                                                                                                                                                                                                   | 03/17/2007                                                                                                                                                                                                                                                                                                                                                                                                                  | 03/17/2008                          | EACH OCCURRENCE €1,000,000<br>AGGREGATE €1,000,000<br>€                                                                                                                                                             |
| C                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL                                                                                     | 031514417                                                                                                                                                                                                                                                                                                                                                                                   | 01/01/2007                                                                                                                                                                                                                                                                                                                                                                                                                  | 01/01/2008                          | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER<br>EL EACH ACCIDENT € 1,000,000<br>EL DISEASE - POLICY LIMIT € 1,000,000<br>EL DISEASE - EA EMPLOYEE € 1,000,000             |
| DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     |                                                                                                                                                                                                                     |
| CERTIFICATE HOLDER<br>City of Billings<br>Office of County Clerk<br>PO Box 1178<br>Billings, MT 59103                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                             | CANCELLATION<br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, 10 DAYS NOTICE FOR NON-PAYMENT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.<br>AUTHORIZED REPRESENTATIVE |                                     |                                                                                                                                                                                                                     |
| ACORD 25-S (1/95)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                  | © ACORD CORPORATION 1988                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     |                                                                                                                                                                                                                     |

@de#3798504

STUC01-BL


Client#: 63030

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|------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| <b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>                                                                             |                                                                                                                                                                                                             | DATE (MM/DD/YYYY)<br>08/02/2007 |
| <b>PRODUCER</b><br>Hoiness LaBar Insurance<br>A Member of Payne Financial Group<br>P.O. Box 30638<br>Billings, MT 59107-0638 | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. |                                 |
| <b>INSURED</b><br>CMG Construction Inc<br>PO Box 80252<br>Billings, MT 59108                                                 | <b>INSURERS AFFORDING COVERAGE</b>                                                                                                                                                                          |                                 |
|                                                                                                                              | INSURER A: <b>Cincinnati Insurance Company</b>                                                                                                                                                              |                                 |
|                                                                                                                              | INSURER B:                                                                                                                                                                                                  |                                 |
|                                                                                                                              | INSURER C:                                                                                                                                                                                                  |                                 |
|                                                                                                                              | INSURER D:                                                                                                                                                                                                  |                                 |
|                                                                                                                              |                                                                                                                                                                                                             | NAIC #                          |

**COVERAGES**

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

| INSR LTR                                                                                                                                                                                                                                                                                                                                                        | ADD'L LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                                                                                             | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A                                                                                                                                                                                                                                                                                                                                                               |           | <b>GENERAL LIABILITY</b><br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR<br><input checked="" type="checkbox"/> PD Ded:1,000<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC                    | CAP5816581    | 03/15/07                           | 03/15/08                            | EACH OCCURRENCE <b>\$1,000,000</b><br>DAMAGE TO RENTED PREMISES (EA occurrence) <b>\$500,000</b><br>MED EXP (Any one person) <b>\$10,000</b><br>PERSONAL & ADV INJURY <b>\$1,000,000</b><br>GENERAL AGGREGATE <b>\$2,000,000</b><br>PRODUCTS - COMP/OP AGG <b>\$2,000,000</b> |
| A                                                                                                                                                                                                                                                                                                                                                               |           | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> Hired AUTOS<br><input checked="" type="checkbox"/> NON-OWNED AUTOS<br><input checked="" type="checkbox"/> Drive Other Car<br>GARAGE LIABILITY<br><input type="checkbox"/> ANY AUTO | CAP5816581    | 03/15/07                           | 03/15/08                            | COMBINED SINGLE LIMIT (EA accident) <b>\$1,000,000</b><br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>AUTO ONLY - EA ACCIDENT \$<br>OTHER THAN AUTO ONLY: EA ACC \$<br>AGG \$                                    |
| A                                                                                                                                                                                                                                                                                                                                                               |           | <b>EXCESS/UMBRELLA LIABILITY</b><br><input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE<br>DEDUCTIBLE \$<br>RETENTION \$                                                                                                                                                                                                                                           | CAP5816581    | 03/15/07                           | 03/15/08                            | EACH OCCURRENCE <b>\$1,000,000</b><br>AGGREGATE <b>\$1,000,000</b><br>\$<br>\$<br>\$<br>WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/><br>E.L. EACH ACCIDENT \$<br>E.L. DISEASE - EA EMPLOYEE \$<br>E.L. DISEASE - POLICY LIMIT \$               |
|                                                                                                                                                                                                                                                                                                                                                                 |           | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?<br>If yes, describe under SPECIAL PROVISIONS below<br>OTHER                                                                                                                                                                                                                 |               |                                    |                                     |                                                                                                                                                                                                                                                                               |
| <b>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS</b><br>Billings Baseball & Multi-Use Stadium<br>Certificate holder to be listed as additional insured per policy forms and endorsements.<br>Ten (10) days notice of cancellation applies to non-payment of premium.<br>Per Project Aggregate Applies |           |                                                                                                                                                                                                                                                                                                                                                                                               |               |                                    |                                     |                                                                                                                                                                                                                                                                               |

|                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CERTIFICATE HOLDER</b>                                                      | <b>CANCELLATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Langlas & Associates, Inc.<br>2270 Grant Road<br>Suite C<br>Billings, MT 59102 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>45</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.<br>AUTHORIZED REPRESENTATIVE<br> |

Client#: 63030

|                                                                                                                              |  |                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>                                                                             |  | DATE (MM/DD/YYYY)<br>08/02/2007                                                                                                                                                                             |
| <b>PRODUCER</b><br>Hoiness LaBar Insurance<br>A Member of Payne Financial Group<br>P.O. Box 30638<br>Billings, MT 59107-0638 |  | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. |
| <b>INSURED</b><br>CMG Construction Inc<br>PO Box 80252<br>Billings, MT 59108                                                 |  | <b>INSURERS AFFORDING COVERAGE</b><br>INSURER A: <b>Montana State Fund</b><br>INSURER B:<br>INSURER C:<br>INSURER D:<br>INSURER E:                                                                          |
|                                                                                                                              |  | NAIC #                                                                                                                                                                                                      |

**COVERAGES**

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

| INSURER<br>LTR. INSRD | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                 | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       | <b>GENERAL LIABILITY</b><br><input type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO. SECT <input type="checkbox"/> LOC |               |                                    |                                     | EACH OCCURRENCE \$<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$<br>MED EXP (Any one person) \$<br>PERSONAL & ADV INJURY \$<br>GENERAL AGGREGATE \$<br>PRODUCTS - COM/PROP AGG \$                            |
|                       | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS                                                      |               |                                    |                                     | COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$                                                                |
|                       | <b>GARAGE LIABILITY</b><br><input type="checkbox"/> ANY AUTO                                                                                                                                                                                                                                      |               |                                    |                                     | AUTO ONLY - EA ACCIDENT \$<br>OTHER THAN EA ACC AGG \$                                                                                                                                                         |
|                       | <b>EXCESS/UMBRELLA LIABILITY</b><br><input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE<br>DEDUCTIBLE \$<br>RETENTION \$                                                                                                                                                          |               |                                    |                                     | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$<br>\$                                                                                                                                                                 |
| A                     | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?<br>If yes, describe under SPECIAL PROVISIONS below<br>OTHER                                                                                                                     | 032852030     | 03/15/07                           | 03/15/08                            | <input checked="" type="checkbox"/> WC STATU- TORY LIMITS<br><input type="checkbox"/> OTH- ER<br>E.L. EACH ACCIDENT \$500,000<br>E.L. DISEASE - EA EMPLOYEE \$500,000<br>E.L. DISEASE - POLICY LIMIT \$500,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
**Billings Baseball & Multi-Use Stadium**  
 Montana operations of the above named insured.

|                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CERTIFICATE HOLDER</b><br>Langlas & Associates, Inc.<br>2270 Grant Road<br>Suite C<br>Billings, MT 59102 | <b>CANCELLATION</b><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.<br>AUTHORIZED REPRESENTATIVE<br><i>Boff Road</i> |
|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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