

Note: Supporting Documents follow Agenda

CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

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

AGENDA

COUNCIL CHAMBERS

April 27, 2009

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Clark
ROLL CALL
MINUTES – April 13, 2009
COURTESIES
PROCLAMATIONS

- Silver Star Banner Day, May 1, 2009
- Building Safety Week, May 3-9, 2009
- National Women’s Health Week, May 10-16, 2009
- National Crime Victims’ Rights Week, April 26-May 2, 2009

ADMINISTRATOR REPORTS – Tina Volek

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

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

CONSENT AGENDA:

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

	Name	Board/Commission	Term	
			Begins	Ends

1.	Emelie Eaton	Yellowstone Conservation District Board	4/27/09	06/30/11
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*Unexpired term of Gay Easton

B. Bid Awards:

(1) Purchase of new landfill loader for the Solid Waste Division. (Opened 4/14/09). Recommend Torgerson's LLC; \$95,285.

(2) W.O. 08-01 – Water and Sewer Replacement Projects. (Opened 4/14/09).

Schedule 1: Recommend COP Construction; \$715,188.00

Schedule 2: Recommend Western Municipal; \$1,816,487.00

Schedule 3: Recommend COP Construction; \$4,038,141.00

Schedule 4: Recommend Western Municipal; \$1,249,698.50

(3) W.O. 08-11 – Waste Water Treatment Plant Administration Building Air Conditioner Replacement. (Opened 4/14/09). Recommend Norpac Sheet Metal, Inc.; \$61,473.

C. Consulting Contract with GeoComm for a joint project between the State of Montana Interoperability Montana Project and the City of Billings for assessment of the current 800 MHz System radio communications used between public safety agencies, \$71,695. State of Montana contribution - \$45,000; City of Billings contribution - \$26,695.

D. Approval and Acceptance of Grant from the Montana Department of Transportation, Highway Traffic Safety Division, for the purchase of four radar units for the Motorcycle Traffic Enforcement Program, \$5,456.

E. Approval of 5-year Airport Business Park Building and Ground Lease with the State of Montana Department of Environmental Quality, November 1, 2008, through October 31, 2013; \$59,178.36 first year revenue; subsequent years adjusted according to the CPI-U.

F. Compensation Agreement for Private Contract No. 599 – Emmanuel Baptist Church Sanitary Sewer Extension; Emmanuel Baptist Church, \$67,522.22.

G. Final Addendum to Settlement Agreement with Rimrock Foundation for construction of public gravel alley; cost to City of Billings – approximately \$7,000 to \$8,000; Rimrock

H. Approval to send two police officers to Anchorage, AK to attend the Western Identification Network Board of Directors' meeting, May 21-22, 2009.

I. Approval of State Revolving Fund Backed Loan Application for W.O. 04-26, Zone 4 Reservoir, \$8,387,000.

J. Approval of grant application and acceptance of the 2009 Justice Assistance Recovery Grant (JAG Recovery) for various supplies and equipment; \$222,508 total award with \$174,866 to Billings Police Department, and \$47,642 to Yellowstone County Sheriff's Office.

K. Street Closures:

(1) Central Heights PTA Community Fun Run, May 30, 2009, 8:30 a.m. to 10:30 a.m., commencing at 120 Lexington Drive, proceeding west on Eldorado Drive, south on Pueblo Drive, east on Alamo Drive, north on Lexington Drive, east on Eldorado Drive, north on S. Santa Fe Drive, east on Concord Drive, south on Birchwood Drive, west on Beloit Drive, northwest on Fair Park Drive, southeast on S. Santa Fe Drive, south on Berthoud Drive, west on Pueblo Drive, north on Pueblo Drive, east on Beloit Drive, northwest on Lexington Drive, west on Dallas Drive, north on Pueblo Drive, east on Eldorado Drive, and south on Lexington Drive.

(2) Cinco de Mayo, May 1, 2009, 3 p.m. to 10 p.m., 100 block of North 26th Street.

L. Resolution of Intent to construct W. O. 08-30, Poly Drive Sidewalk Improvements – Billings, Federal Aid No. STPE 1099(61) and set a public hearing for May 26, 2009.

M. Second/final reading ordinance authorizing closure of hazardous fire areas and updating references to the Fire Code: providing authority to the Billings Fire Department to close hazardous fire areas, and updating the Billings City Code with appropriate language to provide the enforcement mechanism to manage hazardous fire areas.

N. Second/final reading for Social Host ordinance: amending Chapter 18 of the Billings City Code adding Article 12, holding a person accountable for organizing a party or event in which underage consumption of alcohol takes place.

O. Second/final reading ordinance authorizing a Municipal Treatment Court Administrative Fee: authorizing a \$25.00 court fee to help defray administrative costs incurred by Municipal Court for processing misdemeanor criminal offenses in Billings Adult Misdemeanor Drug Court, Billings Adult Misdemeanor DUI Court, and Billings Adult Misdemeanor Mental Health Court.

P. Preliminary Minor Plat of Lenhardt Square Subdivision, 1st Filing, a 33.8 acre tract described as Tract 1A of C/S 2063, Amended, located in Section 10, T1S, R25E; generally located north of King Avenue West, across from the

Montana Sapphire Subdivision; **approval of two variance requests:** (1) allowing a 56 foot right-of-way dedication along 44th Street West and Monad Road adjacent to the subdivision; (2) allowing a total 8.5 foot right-of-way for boulevard and sidewalk along 44th Street West and Monad Road; and adoption of the Findings of Fact. M & K Blue One, LLC, applicant; Sanderson Stewart, engineer.

Q. Bills and Payroll

- (1) March 27, 2009
- (2) April 3, 2009

R. Joint Use Right-of-Way Easement for Northwestern Energy, Montana Dakota Utilities, Qwest, and Bresnan Communications in Ann Ross Park, Blocks 1 and 4, The Village Subdivision as part of the Shiloh Road Construction Project. **(Item added to consent agenda at beginning of the meeting.)**

S. Acceptance of \$750,000 of Water and \$750,000 of Wastewater State Revolving Funds under the American Recovery and Reinvestment Act of 2009. **(Item added to consent agenda at beginning of the meeting.)**

REGULAR AGENDA:

- 2. **PUBLIC HEARING AND RESOLUTION APPROVING AND ADOPTING THIRD QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2008/2009.** Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)
- 3. **PUBLIC HEARING AND RESOLUTION AUTHORIZING THE APPLICATION AND ACCEPTANCE OF A FEDERAL TRANSIT ADMINISTRATION SECTION 5307 GRANT THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT.** A resolution that authorizes the application and acceptance of \$1,884,898 in grant funds to be utilized by MET Transit to continue the fleet replacement program, renovation of the bus wash, purchase and installation of CCTV surveillance cameras for the bus fleet, and replacement of mobile radios. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)
- 4. **PUBLIC HEARINGS FOR COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP PROGRAMS AND THE FY2009-2010 ANNUAL ACTION PLAN.** Council action is scheduled for May 11, 2009.
- 5. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #09-02:** .74 acres of Lot 26, Block 19, Lillis Heights Subdivision, generally located at

4739 Rimrock Road, on the northwest corner of Rimrock Road and Rim Point Drive, MCS Properties, LLC, petitioner. Staff recommends approval with conditions. (**Action:** approval or disapproval of staff recommendation.)

6. **DEVELOPMENT (REIMBURSEMENT) AGREEMENT WITH FIRST INTERSTATE BANK.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
7. **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

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

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, APRIL 27, 2009

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

PROBLEM/ISSUE STATEMENT: Confirmation of appointment for a Board and Commission position that is vacant.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointment:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Emelie Eaton	Yellowstone Conservation District Board	4/27/09	06/30/11

*Unexpired term of Gay Easton

Approved By: City Administrator ____ City Attorney ____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Approval of Award to Purchase Landfill Loader
DEPARTMENT: Public Works/Solid Waste Division
PRESENTED BY: David Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Replacement of the existing Unit #0209, 1996 Case 721BXT Loader, was approved in the FY 2009 Budget under the guidelines of the Equipment Replacement Plan. Specifications were developed by Solid Waste Division staff and distributed to six vendors that have requested to be on our bid list. A Call for Sealed bids was published April 2nd and 9th, with bids opened April 14, 2009.

FINANCIAL IMPACT: The Solid Waste Division’s FY 2009 budget includes adequate funds to replace the current landfill loader. Seven bids were submitted by five vendors. The bids are summarized as follows:

<u>Bidder</u>	<u>Model Bid</u>	<u>Base Bid</u>	<u>Trade Credit</u>	<u>Net Bid</u>
Torgerson’s LLC \$95,285.00	New Holland W170BTC	\$135,285.00	(40,000)	
RDO Equipment \$102,700.00	John Deere 544K	\$131,600.00	(28,900)	
Titan Machinery \$112,670.08	Case 721EXT	\$139,750.08	(27,080)	
Tri-State Equipment \$146,000.00	Volvo L90F	\$162,600.00	(16,000)	
Tri-State Equipment \$124,958.00	Volvo L70F	\$140,958.00	(16,000)	
Tractor & Equipment \$143,550.00	CAT 938H	\$164,050.00	(20,500)	
Tractor & Equipment \$126,098.00	CAT 930H	\$146,598.00	(20,500)	

RECOMMENDATION

Staff recommends that Council award the contract for purchase of a new landfill loader for the Solid Waste Division to Torgerson's LLC in the amount of \$95,285.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: W.O. 08-01 Water and Sewer Replacement Projects, Contract Award
 DEPARTMENT: Public Works - Engineering
 PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Sewer main, water main, and related improvements will be replaced by this project. Work will occur under four (4) separate schedules in various geographical locations within the City as identified by Public Works Department staff. Sanitary sewer main replacement will be done under Schedule 1, Schedule 2, and a portion of Schedule 3. Water main replacement will occur under Schedule 4 and the remaining portion of Schedule 3. Sewer replacement areas are the 1st Ave. S./Minnesota Ave. area of downtown, the Parkview Dr. area west of 24th St. W., the Central Ave./24th St. W. area, and in E. and W. MacDonald Dr. Water main will be replaced in the Central Ave./24th St. W. area, in Santa Fe Dr. and Fair Park Dr., in Orchard Ln. between King Ave. E. and State Ave., and in E. and W. MacDonald Dr.

FINANCIAL IMPACT: Bids were opened on April 14, 2009 for W.O. 08-01 with the results listed below:

SCHEDULE 1 – Sanitary Sewer Replacement

	Engineer's Estimate	Williams Civil	Western Municipal	COP Construction	Depatco, Inc.
	\$774,186.54	No Bid	\$796,643.80	\$715,188.00	No Bid

SCHEDULE 2 – Sanitary Sewer Replacement

	Open Cut Alternate				
	Engineer's Estimate	Williams Civil	Western Municipal	COP Construction	Depatco, Inc.
Zone A	\$1,341,427.64	No Bid	\$817,361.50	\$1,068,172.00	No Bid
Zone B	\$1,642,624.86	No Bid	\$1,016,536.50	\$1,225,031.00	No Bid
	Trenchless Alternate				

Zone A	\$1,133,570.40	No Bid	\$819,325.00	\$894,739.00	No Bid
Zone B	\$1,574,621.58	No Bid	\$999,125.50	\$1,165,802.00	No Bid
Total	\$2,708,191.98	No Bid	\$1,816,487.00	\$2,060,541.00	No Bid

SCHEDULE 3 – Water and Sanitary Sewer Replacement

	Engineer’s Estimate	Williams Civil	Western Municipal	COP Construction	Depatco, Inc.
Zone C	\$1,751,835.00	No Bid	No Bid	\$1,471,147.00	No Bid
Zone D	\$1,065,765.00	No Bid	No Bid	\$751,427.00	No Bid
Zone E (open cut alt.)	\$1,828,663.00	No Bid	No Bid	\$1,316,964.00	No Bid
Zone E (trenchless alt.)	\$1,570,003.00	No Bid	No Bid	\$1,175,209.00	No Bid
Zone F	\$825,760.00			\$640,358.00	
Total	\$5,213,363.00	No Bid	No Bid	\$4,038,141.00	No Bid

SCHEDULE 4 – Water Replacement

	Engineer’s Estimate	Williams Civil	Western Municipal	COP Construction	Depatco, Inc.
	\$1,960,580.00	\$1,377,273.00	\$1,249,698.50	\$1,377,918.00	\$1,330,087.00

Successful bidder values for the project total approximately \$3.64M for sanitary sewer replacement and \$4.18M for water replacement. A State Revolving Fund (SRF) loan will be used to pay for all of the sanitary sewer work and up to \$3.5M of the water work. An amount (unknown at present time) of the project funding for water and sewer will also be available from the American Recovery and Reinvestment Act of 2009. Finally, a Corps of Engineer’s grant will be utilized to pay for \$170,000 of the water main replacement work. The balance of project funding will be from City water and sanitary sewer funds.

RECOMMENDATION

Staff recommends that Council award a construction contract for Schedule 1 of W.O. 08-01 to COP Construction LLC in the amount of \$715,188.00. Staff recommends that Schedule 2 be awarded to Western Municipal Construction, Inc. in the amount of \$1,816,487.00. Staff recommends that Schedule 3 be awarded to COP in the amount of \$4,038,141.00 and that Schedule 4 be awarded to Western in the amount of \$1,249,698.50.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: WO 08-11 Waste Water Treatment Plant Administration Building
Air Conditioner Replacement

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 08-11, WWTP Administration Building Air Conditioner Replacement, on April 14, 2009. This project consists of replacing the aging liquid cooled condensing unit with a roof mounted air cooled condensing unit at the Waste Water Treatment Plant.

ALTERNATIVES ANALYZED:

1. Award the contract for W.O. 08-11 to Norpac Sheet Metal, Inc. in the amount of \$61,473.00; or
2. Reject all bids and do not award contract for W.O. 08-11

FINANCIAL IMPACT: Funding for this project will be out of the 2009 Wastewater Revenues. We received two bids for this project as follows:

<u>Bidder</u>	<u>Bid Amount</u>
Engineer's Estimate	\$ 59,000.00
Norpac Sheet Metal, Inc.	\$ 61,473.00
Ductmasters, Inc.	(Bid Deemed Nonresponsive)

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

<u>Work Order 08-11 WWTP Administration Building Air Conditioner Replacement</u>	
2009 Wastewater Revenue	\$ 62,000.45
<u>Contract Amount (This Memo)</u>	<u>\$(61,473.00)</u>
Remaining Funds	\$ 527.45

RECOMMENDATION

Staff recommends that Council award Norpac Sheet Metal, Inc.'s bid for Work Order 08-11, WWTP Administration Building Air Conditioner Replacement in the amount of \$61,473.00.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Contract Award – Billings Radio Assessment & Proposal for Consulting Evaluation
DEPARTMENT: Fire
PRESENTED BY: Paul A. Dextras, Fire Chief & Anne Kindness, 9-1-1 Center Director

PROBLEM/ISSUE STATEMENT: The City of Billings is at a critical juncture and faces a number of decisions related to the improvement or replacement of its municipal radio system. The current City of Billings communications system was established in 1997. The system is now 12 years old, and with questions unanswered about the longevity of the current 800 MHz system, unknown issues with re-banding and coverage/penetration concerns of VHF signals in large buildings, the City and IM (Interoperability Montana) leadership are teaming together to analyze options and assist City leadership in making decisions regarding the future of public safety and City-wide municipal radio communications.

As a joint project in cooperation with the State of Montana, Interoperability Montana Project, proposals were solicited for consulting services from experts in the radio communications field. Four proposals were received. Firms responding were Federal Engineering \$75,000; GeoComm \$71,695; Kimball \$73,555; Northrup Grumman \$140,493.60.

ALTERNATIVES ANALYZED: To approve or not approve the contact.

FINANCIAL IMPACT: The State of Montana has offered \$45,000 in funding towards existing radio system assessment project. The remaining \$26,695 will be funded out of the City’s 800 MHz budget.

RECOMMENDATION

Staff recommendation is to award the consulting contract to GeoComm in the amount of \$71,695.

Approved By: City Administrator ____ City Attorney ____



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Approval and Acceptance of Montana Dept of Transportation,
 Highway Traffic Safety Law Enforcement Equipment Contract
 #2009-08-08-01 in the amount of \$5,456 for 4 Radar Units

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: The State of Montana, Highway Traffic Safety Division, has awarded the City a law enforcement equipment grant in the amount of \$5,456 to purchase 4 radar units for the Motorcycle Traffic Enforcement Program. City Council is being asked for the approval and acceptance of this grant.

FINANCIAL IMPACT: There is no City match required. A budget adjustment will be required and will be requested after approval of this agenda item.

RECOMMENDATION

Staff recommends that Council approve and accept the Billings law enforcement grant from the Highway Traffic Safety Division of the State of Montana in the amount of \$5,456.00.

Approved By: City Administrator _____ City Attorney _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Airport Business Park Building and Ground Lease with the State of Montana Department of Environmental Quality

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The State of Montana Department of Environmental Quality (DEQ) currently rents all of the office space on the first and second floors in the west wing of IP-9, the City owned office building located in the Airport Business Park. The DEQ also rents storage space in the basement of IP-9, as well as some ground space for vehicle storage and a garage/shop area attached to IP-9. The leased premises include 8,540.65 square feet of building space and 22,680 square feet of ground space. This State of Montana agency desires to renew the Lease for this space for another five (5) year term. This Lease also includes 1,244.11 square feet of additional, recently remodeled office space.

FINANCIAL IMPACT: This Lease will generate \$59,178.36 in the first year with subsequent years adjusted by the Consumer Price Index for All Urban Consumers (CPI-U) for the previous twelve-month period.

RECOMMENDATION

Staff recommends that Council approve a new five (5) year Airport Business Park Building and Ground Lease with the State of Montana Department of Environmental Quality for the term beginning November 1, 2008, and terminating on October 31, 2013.

Approved By: City Administrator ____ City Attorney ____



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Compensation Agreement for Private Contract No. 599--
 Emmanuel Baptist Church Sanitary Sewer Extension

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: In order to obtain city sanitary sewer service, Emmanuel Baptist Church extended a 24-inch sanitary sewer main approximately 1000 feet west in Monad Road across Shiloh Road. This sanitary sewer extension was not a scheduled City Capital Improvements Project, so the church paid the entire cost of the project. Since it is City policy to pay for the entire cost of constructing water and sewer mains over 12 inches in size (local mains), the church was compensated for the actual project construction cost of \$326,800.00 through a Compensation Agreement approved by City Council on December 8, 2008.

Subsequent to the Compensation Agreement being approved, the church has requested \$67,522.22 in compensation for professional engineering services associated with the construction. The developer is requesting compensation based on an understanding gained from preliminary discussions with City staff that such costs would be eligible for compensation. While the City has not typically compensated for engineering costs in the past, there is precedence for it on more than one previous private contract. The City's Legal Department has determined that the City can compensate for engineering costs under State law.

FINANCIAL IMPACT: Based on review of the final Kadrmas, Lee, and Jackson engineering invoice received for P-599, the PWD has determined that the \$67,522.22 in engineering costs for the private contract is eligible to be recovered by the Developer. Wastewater funding is available and will be utilized to pay for this compensation.

RECOMMENDATION

Staff recommends that Council authorize payment of \$67,522.22 to Emmanuel Baptist Church as compensation for engineering costs directly attributable to constructing the City sewer main.

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

ATTACHMENT

Attachment A--Kadmas, Lee, & Jackson, Inc. invoice (1 p.)

Cucancic Construction

Project: [2608103]

**Emmanuel Baptist Church Sewer Extension
Billings, MT**

Billing Group: 1

Invoice	Type	Inv Date	Amount	Balance
88430	Invoice	2/22/2008	4,443.37	0.00
88684	Invoice	3/12/2008	2,104.75	0.00
89323	Invoice	4/18/2008	1,392.68	0.00
91145	Invoice	6/26/2008	178.50	0.00
92046	Invoice	7/22/2008	110.93	0.00
92900	Invoice	8/21/2008	178.50	0.00
93980	Invoice	9/29/2008	1,520.74	0.00
94819	Invoice	10/28/2008	177.97	0.00
BillGrp 1 Totals:			\$10,107.44	\$0.00

Payments Received (and Credit Memos)			
Date	Amount	Check#	Type
4/21/2008	4,443.37	10968	Pay
4/21/2008	2,104.75	10968	Pay
5/21/2008	1,392.68	11086	Pay
8/21/2008	178.50	11471	Pay
8/21/2008	110.93	11471	Pay
10/24/2008	178.50	11690	Pay
11/21/2008	1,520.74	11828	Pay
12/22/2008	177.97	11922	Pay
Totals:			\$10,107.44

Billing Group: 2

Invoice	Type	Inv Date	Amount	Balance
88685	Invoice	3/12/2008	8,625.90	0.00
89324	Invoice	4/18/2008	1,434.61	0.00
90044	Invoice	5/15/2008	615.67	0.00
91146	Invoice	6/26/2008	1,893.92	0.00
92047	Invoice	7/22/2008	3,871.25	0.00
92902	Invoice	8/21/2008	1,427.18	0.00
93981	Invoice	9/29/2008	3,878.08	0.00
94820	Invoice	10/28/2008	3,148.13	0.00
95435	Invoice	11/20/2008	2,645.86	0.00
BillGrp 2 Totals:			\$27,540.60	\$0.00

Payments Received (and Credit Memos)			
Date	Amount	Check#	Type
4/21/2008	8,625.90	10968	Pay
5/21/2008	1,434.61	11086	Pay
6/23/2008	615.67	11224	Pay
8/21/2008	1,893.92	11471	Pay
8/21/2008	3,871.25	11471	Pay
10/24/2008	1,427.18	11690	Pay
11/21/2008	3,878.08	11828	Pay
12/22/2008	3,148.13	11922	Pay
12/22/2008	2,645.86	11922	Pay
Totals:			\$27,540.60

Billing Group: 3

Invoice	Type	Inv Date	Amount	Balance
94821	Invoice	10/28/2008	3,574.90	0.00
95436	Invoice	11/20/2008	16,982.16	0.00
96703	Invoice	12/29/2008	1,894.93	0.00
97242	Invoice	1/20/2009	1,065.61	0.00
97864	Invoice	2/17/2009	2,982.01	2,982.01
98634	Invoice	3/23/2009	574.57	574.57
BillGrp 3 Totals:			\$27,074.18	\$3,556.58

Payments Received (and Credit Memos)			
Date	Amount	Check#	Type
12/22/2008	3,574.90	11922	Pay
12/22/2008	10,081.16	11922	Pay
1/22/2009	6,901.00	12032	Pay
2/20/2009	1,894.93	12140	Pay
2/20/2009	1,065.61	12140	Pay
Totals:			\$23,517.60

Billing Group: 4

Invoice	Type	Inv Date	Amount	Balance
89325	Invoice	4/18/2008	2,800.00	0.00
BillGrp 4 Totals:			\$2,800.00	\$0.00

Payments Received (and Credit Memos)			
Date	Amount	Check#	Type
5/21/2008	2,800.00	11086	Pay
Totals:			\$2,800.00

Project 2608103 Totals:	\$67,522.22	\$3,556.58
Client CUCCON Totals:	\$67,522.22	\$3,556.58
Report Totals:	\$67,522.22	\$3,556.58

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Amendment to Settlement Agreement Between City and Rimrock Foundation Clarifying Section 2(d)-Public Alley Construction

DEPARTMENT: City Administrator and City Attorney

PRESENTED BY: Brent Brooks, City Attorney

PROBLEM/ISSUE STATEMENT: The Mayor and City Council have previously approved a settlement agreement concluding land use litigation between the City and Rimrock Foundation. After settlement of the case, a portion of the settlement agreement under Section 2 (d) concerning the various responsibilities for constructing a public graveled alley has been interpreted differently by the City and Rimrock Foundation. After several attempts to resolve these differences, attorneys for the City and Rimrock Foundation have jointly drafted the attached proposed amendments to Section 2(d). This new document is entitled “Amendment to Settlement Agreement”. This amended document supplements the original settlement agreement. The original settlement agreement dated June 30, 2008, is also attached for the City Council’s reference.

ALTERNATIVES ANALYZED:

1. Approve the Amendments to the original settlement agreement clarifying respective responsibilities concerning the public alley construction.
2. Disapprove the Amendments clarifying the respective responsibilities.

FINANCIAL IMPACT: The total cost to construct the gravel alley has been estimated to be approximately \$24,000 by City Public Works staff. Under Section 3 of the proposed Amended Settlement Agreement, Rimrock Foundation has agreed to contribute up to a total of \$18,000 for the alley construction depending on the actual gravel costs. Therefore the financial impact to the City will depend upon the actual total construction costs which cannot be precisely determined at this time; however, the City’s share of the total costs is currently estimated to be approximately \$7,000-\$8,000.

RECOMMENDATION

Staff recommends that Council approve the attached Amendment to Settlement Agreement.

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

ATTACHMENTS

Attachment A: Amendment to Settlement Agreement

Attachment B: Original Settlement Agreement

AMENDMENT TO SETTLEMENT AGREEMENT

This Amendment to Settlement Agreement (“Amendment”) is made and entered into this ____ day of April, 2009, by and between the **CITY OF BILLINGS**, a municipality, City Hall, 210 North 27 th Street, Billings, Montana 59101 (hereinafter “the City”) and **RIMROCK FOUNDATION**, a nonprofit corporation, 1231 North 29th Street, Billings, Montana 59101.

RECITALS

WHEREAS, on June 30, 2008, the parties entered into a Settlement Agreement and Release to settle the lawsuit, entitled *Rimrock Foundation, a Montana non-profit corporation v. City of Billings, Billings City Council, and Ron Tussing, as the Mayor of the City of Billings*, CV 06-162-BLG-CSO. A copy of the Settlement Agreement is attached hereto as Exhibit A.

WHEREAS, Paragraph 2.d. of the Settlement Agreement imposed certain obligations on the parties pertaining to the public alleyway adjacent to Tract A of Certificate of Survey No. 2237.

WHEREAS, subsequent to entering into the Settlement Agreement, it was discovered that the parties had different understandings of the parties’ obligations regarding the alleyway as set forth in Paragraph 2.d. of the Agreement.

WHEREAS, the parties desire to resolve their misunderstanding by amending the Settlement Agreement to clarify the parties’ obligations regarding the alleyway.

WHEREAS, each of the respective governing boards and councils to the respective parties have agreed to amend the Settlement Agreement by the terms and conditions set forth.

AGREEMENT

1. **Definition of Alley:** For purposes of this Amendment, the term “Alley” shall be defined as follows: The public alley right of way located north and south between Vuecrest Drive and 8th Avenue North and between N. 17th Street North and N. 18th Street North, in Billings, Montana (the “Alley”).
2. **The City’s Obligations:** The City will:
 - a. Remove all necessary encroachments from the area in which the Alley shall be constructed;
 - b. Retain a third-party contractor to construct a alleyway roadway consistent with the City of Billings’ standards so that it will be open to travel from Vuecrest Drive to 8th Avenue North;

-
- c. Request bids or quotes for construction of the alleyway roadway from third-party contractors for construction no later than June 30, 2009, and award the project no later than August 30, 2009; and
 - d. After completion of construction of the Alley, supply Rimrock Foundation with a detailed statement of costs associated with construction of the Alley.
3. **Rimrock's Obligations:** Rimrock will:
- a. Pay the City of Billings Eight Thousand Dollars (\$8,000.00) within twenty (20) days after execution of this Amendment for the purpose of offsetting the City's cost of constructing the Alley; and
 - b. Within twenty (20) days after the City of Billings supplies Rimrock with the detailed construction costs for the roadway required by Paragraph 2.c. (above), reimburse the City of Billings for the actual cost of the gravel (material and placement) required for the alley, not to exceed Ten Thousand Dollars (\$10,000.00).

Examples: If the actual cost of the gravel for the roadway is \$9,000.00, Rimrock will pay the City a total of \$17,000.00 (\$8,000.00 for the general alley construction cost, plus \$9,000.00 for gravel). If the gravel for the roadway costs \$11,000.00, Rimrock will not pay more than \$18,000.00 to the City (\$8,000.00 for construction cost, plus the \$10,000.00 limit for gravel).

4. **Mutual Release:** The City and Rimrock mutually release each other from all claims related to the obligations under 2d. of the Settlement Agreement.
5. **Remaining Obligations.** Other than amending paragraph 2.d. of the Agreement, this Amendment does not otherwise affect the terms of the Settlement Agreement or the parties' obligations thereunder. Both Rimrock and the City of Billings remain bound and committed to their obligations under the Settlement Agreement.
6. **Counterparts.** This Amendment may be executed in one or more counterparts by the parties. All counterparts shall be construed together and shall constitute one agreement.

DONE and DATED this _____ day of April, 2009.

RIMROCK FOUNDATION

By: _____
David Cunningham
Its: Chief Executive Officer

APPROVED IN FORM AND CONTENT:

Attorney for Rimrock Foundation

AMENDMENT TO AGREEMENT

PAGE 3

DONE and DATED this _____ day of April, 2009.

CITY OF BILLINGS

By: _____

Its: _____

APPROVED IN FORM AND CONTENT:

Attorney for City of Billings

AMENDMENT TO AGREEMENT

PAGE 4

AGREEMENT

This Agreement is made and entered into this 30th day of June, 2008 by and between the **CITY OF BILLINGS**, a municipality, City Hall, 210 North 27th Street, Billings, Montana 59101 (hereinafter "the City") and **RIMROCK FOUNDATION**, a nonprofit corporation, 1231 North 29th Street, Billings, Montana 59101.

RECITALS

WHEREAS, the parties have been involved in a lengthy and well publicized dispute related to Rimrock Foundation's submission of its application under Special Review #800 for real property located within the City of Billings. Special Review #800 was considered by the City Council during its meetings held on January 23, 2006 and again on February 14, 2006.

WHEREAS, this dispute has been litigated in several different forums including the following:

Rimrock Foundation, Charging Party vs. City of Billings City Council, Mayor Mark [sic] Tussing, Chair, Respondents, Before the Human Rights Department of Labor and Industry Human Rights Bureau, HRC Case No. 0065012011; EEOC No. 320-2006-03625.

Rimrock Foundation, Complainant vs. City of Billings City Council with Mayor Tussing, Chair, Respondents, U. S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Cause No. 08-06-0201-8.

Rimrock Foundation, a Montana non-profit corporation, Plaintiff vs. City of Billings, Billings City Council, and Ron Tussing, as the Mayor of the City of Billings, Defendants, United States District Court, District of Montana, Billings Division, Cause No. CV 06-162-BLG-CSO.

Rimrock Foundation, a Montana non-profit, public benefit corporation, Petitioner/Appellant vs. The City of Billings, and Billings City Council, by and through Peggy Gaghen, as a Billings City Council Member; Jim Ronquillo, as a Billings City Council Member; Vince Ruegamer, as a Billings City Council Member; Chris "Shoots" Veis, as a Billings City Council Member; Nancy Boyer, as a Billings City Council Member; Ed Ulledalen, as a Billings City Council Member; Donald W. Jones, as a Billings City Council Member; Richard "Dick" Clark, as a Billings City Council Member; Joy Stevens, as a Billings City Council Member; and Ron Tussing, as the Mayor of the City of Billings, Respondents/Appellees, Montana Thirteenth Judicial District Court, Yellowstone County, Cause No. DV 06-0284.

WHEREAS, the City of Billings and Rimrock Foundation desire to forego costly and protracted litigation of the issues and instead settle and resolve all disputes and all litigation of all issues involving Special Review #800 and the claims and issues contained in the litigation referenced herein.

WHEREAS, each of the respective governing boards and councils to the respective parties have agreed to resolve all disputes herein by the terms and conditions set forth.

AGREEMENT

In consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the City of Billings and Rimrock Foundation stipulate, consent and agree as follows:

1. **Payment:** The City will pay Rimrock Foundation the sum of Four Hundred Thousand and no/100th Dollars (\$400,000.00).
2. **Conditional Approval:** The City will permit the construction of a Community Residential Facility, as defined in BMCC 27-201 with the following conditions:
 - a. The use shall be limited to Tract A of Certificate of Survey 2237.
 - b. The approval is for one two-story "t-shaped" building (as shown on the site plan submitted to the City of Billings pursuant to Rimrock Foundation's Building Permit Application Number 07-105) to be used as a Community Residential Facility for no more than two (2) persons per bedroom (hereinafter "the structure") and no other use or expansion of this use is approved or implied with this authorization. The structure may provide common facilities for the residents of the property. The structure's primary access will come from North 17th Avenue, as indicated on the building permit application (No. 07-105) site plan.
 - c. Prior to occupation of the structure, a 6-foot tall sight obscuring fence or wall shall be installed along the west property line beginning at a point not more than 56 feet north of the property corner at the intersection of the alley and 8th Avenue North and ending at the northwest property corner. A continuous evergreen hedge may be substituted for the required fence if the evergreen trees or shrubs are at least 4 feet in height when planted, reach a mature height of at least 7 feet, a mature width of at least 6 feet and are planted no greater than 7 feet on center. Any sight obscuring fence must be constructed of wood, stone, vinyl, brick or block or other conventional fencing materials. No chainlink or wire fencing is allowed. This requirement shall not preclude Rimrock Foundation from installing an access or pass-through in the fence, wall, or shrub for the purpose of allowing the installation of a dumpster on Rimrock's property and providing the alley access to the dumpster for solid waste removal.
 - d. Rimrock shall gravel the alleyway adjacent to Tract A of Certificate of Survey 2237. The City will open the alley right of way and ensure it is sufficiently free of encroachments so that Rimrock can gravel it. Rimrock is not responsible for removing encroachments from the alley right of way.

-
- e. Other than the "t-shaped" building, Rimrock has no intention of developing the other structures shown on the building permit application (No. 07-105) site plan at this time. If, in the future, Rimrock does develop the property in accordance with the building permit application (No. 07-105) site plan, Rimrock understands it may be required by the City to pave the alley in order to provide primary access to the paved parking lot if such is required by the BMCC at the time of development.
 - f. The applicant shall maintain the existing healthy trees within the subject site, except where specific construction of the structure will be. Prior to the occupation of the structure, the applicant must install at least four (4) canopy trees, of a 2-inch caliper and 8-foot tall minimum. These four (4) trees shall be evenly spaced within the front yard setback along the northern 200 feet of property frontage on North 17th Street. Except as otherwise provided herein, the remaining landscaping of the subject property shall comply with the landscaping standards in BMCC 27-1105; 27-1106; 27-1107; and 27-1110.
 - g. Rimrock shall not use any brick or red siding materials on the structure.
 - h. The footprint of the structure may not exceed 4,100 square feet. Projections of building features will not be calculated in the total footprint square footage if those projections do not exceed the parameters established in BMCC Section 27-310(g) Permitted Projections. The total square footage of the structure may exceed 4,100 square feet, provided that the footprint, minus the permitted projections, does not exceed 4,100 square feet.
 - i. Any lighting within the parking lot shall have full cut-off shields so that light is directed to the ground and not onto adjacent property.
 - j. Construction of the structure must commence within five (5) years from the date of settlement.
 - k. The approval will not constitute approval of any building permit or any requirements set forth by the Building and Engineering Department in order to obtain a building permit.
3. **Dismissal of Lawsuit.** The parties shall promptly execute a stipulation for the dismissal **WITH PREJUDICE**, to any and all pending litigation matters referenced herein. The stipulation with each party to bear its own respective costs, expenses, and attorney's fees.
 4. **Release of All Claims.** Rimrock Foundation hereby releases any and all claims and causes of action, if any, that it may have, known or unknown, now existing or hereafter arising, of whatsoever kind or character, whether in contract, tort, common law, statute, constitution, law or in equity, that Rimrock Foundation may have against the City of Billings arising out of or as a result of

Special Review #800 or any claims, causes of action and/or issues relating to any litigation referenced above. It is the intent of the parties that this Release of all claims include any and all claims and causes of action that were asserted by Rimrock, or which could have been asserted by Rimrock, in the litigation described in Recital hereinabove. It is the intent of the parties that this Release of all claims be construed to the broadest extent possible to achieve the complete full and final resolution of the litigation involving these parties described herein in any and all claims and causes of action related thereto.

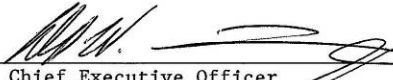
5. **Consultation With Professionals.** Rimrock Foundation warrants and certifies that its authorized representatives and/or Board of Directors have carefully read this Agreement; that Rimrock Foundation has discussed this Agreement's legal effects with such legal advisors as it deems prudent or advisable; that Rimrock Foundation understands the contents of this Agreement and the Release of all claims contained herein; that in executing this Agreement, Rimrock Foundation has not relied upon the advice, opinion, or statements of the City, its officers, directors, employees, agents, or attorneys; and that Rimrock Foundation signs this Agreement of its own free will and accord. Rimrock Foundation further declares and represents that no promise, inducement, or agreement not herein expressed has been made to Rimrock Foundation.
6. **Severability.** In the event that any portion of this Agreement is found to be unenforceable for any reason whatsoever, the unenforceable provision shall be considered to be severable, and the remainder of this Agreement shall continue in full force and effect. A partial, non-material breach of this Agreement shall not operate to render the entire Agreement unenforceable, and in the event of any such breach, all of the provisions shall remain fully enforceable.
7. **Attorney's Fees.** In the event that any party shall be required to commence any action or proceeding against the other party by reason of any breach or claim to breach of any provision of this Agreement, or to commence any action or proceeding in any way connected with this Agreement, or seek a judicial declaration of rights hereunder, the party prevailing in such action or proceeding shall be entitled to recover from the other party and prevailing party's reasonable attorney's fees, taxable costs and expenses.
8. **Entire Agreement.** This Agreement and all provisions hereto, including all representations and promises contained herein, are contractual and not a mere recital, and shall continue in permanent force and effect. This Agreement constitutes the sole and entire agreement of Rimrock and the City as of the date of this Agreement. The terms of this Agreement may be waived, altered, or amended, in whole or in part, only upon the written consent of all parties to this Agreement. No oral agreements may modify any of the terms of this Agreement.
9. **Waiver.** No waiver of any of the terms of this Agreement shall constitute a waiver of any other terms, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver

shall be binding unless executed in writing by the party making the waiver. Any party may waive any provisions of this Agreement intended for its benefit, but such waiver shall in no way excuse the other party from the performance of any other obligation under this Agreement.


10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.
11. **Headings Not Binding.** The headings in this Agreement are used only for ease of reference. The headings shall have no effect and are not to be considered material parts or terms of this Agreement.
12. **Bind and Inure.** This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns.
13. **Other Documents.** The parties promise and agree to execute, acknowledge, and deliver to each other such other and further documents and instruments, and to do such other and further acts as may be necessary or desirable to effect the intent of this Agreement.

DONE and DATED this 30TH day of June, 2008

RIMROCK FOUNDATION

By: 
Its: Chief Executive Officer

APPROVED IN FORM AND CONTENT:


Attorney: _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Travel to Anchorage, Alaska for Western Identification Network (WIN) Board of Director’s Meeting

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: Todd McCrohan, I. D. Supervisor for the City of Billings, and Sam Bofto, Detective with the Yellowstone County Sheriff’s Office, are members of the Western Identification Network which links the Automated Fingerprint Identification System (AFIS) users to each other in Montana and surrounding states. This year, the Board meeting will be held in Anchorage, Alaska on May 21-22, 2009. Staff is asking Council approval to send both Todd McCrohan and Detective Sam Bofto to the WIN Board Meeting in Anchorage, Alaska.

FINANCIAL IMPACT: Each year, the City prepares a budget for the AFIS program. The City and the County both share in the total cost of this program. Since Todd McCrohan is a board member, all of his expenses will be paid for by WIN. Since Detective Bofto is not a board member, but can attend the meeting, his expenses will be charged to our AFIS budget.

RECOMMENDATION

Staff recommends that Council approve the travel to Anchorage, Alaska for Todd McCrohan and Sam Bofto to attend the WIN Board Meeting on May 21st and 22nd, 2009.

Approved By: City Administrator ____ City Attorney ____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: W.O. 04-26 – Zone 4 Reservoir, State Revolving Fund (SRF) Backed Loan Application

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The cost of the FY 2009 water Capital Improvement Program (CIP) exceeds the amount of immediate funding available, thus a loan or revenue bond sale will be required to finance part of the water CIP. The State Revolving Fund (SRF) Loan Program was established by the legislature to make at or below market interest rate loans to eligible Montana entities for water and wastewater improvement projects. The SRF programs are funded with capitalization grants from the U.S. Environmental Protection Agency and are matched by 20% with State issued general obligation bonds. Combined, these two sources of funds create the State Revolving Fund from which loans are made and borrower repayments revolve to provide loans for infrastructure projects. The Zone 4 Reservoir Project, which includes construction of a 2 million gallon reservoir and a pump station, is primarily intended to support existing capacity, making this project eligible for SRF funding.

The current SRF loan terms are 20 year amortization with a 3.75% interest rate. The current rate for an INTERCAP loan is 3.25% with an annual adjustment of the interest rate. The 5 year average rate for an INTERCAP loan is 4.2%. A comparative current market rate for 20 year, non-collateralized revenue bonds is 4.8%. The SRF Application and Preliminary Engineering Report are both available at the City Clerk’s office.

ALTERNATIVES ANALYZED:

- Apply for SRF funding. The cost savings for the SRF loans versus INTERCAP loans is estimated to be \$380,000 over the life of the loan and the cost savings for the SRF loans versus revenue bond financing is more than \$1,800,000 over the life of the loan.
- Do not apply for the SRF loans. An INTERCAP loan would still need to be secured or revenue bonds would need to be sold for \$8,387,000 to complete this project.

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

CIP Project PUD 104 – Zone 4 Water Reservoir

State Revolving Fund Loan	\$9,500,000
Estimated Cost of Zone 4 Reservoir Project	\$8,992,000
<u>Amount Funded with Water Revenues</u>	<u>\$ 605,000</u>
Amount to be funded through SRF Loan	\$8,387,000 (This

memo)

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the application for a State Revolving Fund backed water loan in the amount of \$8,387,000.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Request to Submit 2009 Justice Assistance Recovery Grant (JAG Recovery) Application and Acceptance of Award in the amount of \$222,508

DEPARTMENT: Billings Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On February 17, 2009, President Obama signed into law the landmark American Recovery and Reinvestment Act of 2009 (the “Recovery Act”). It has been confirmed on line that the City will receive \$222,508 from this JAG Recovery Grant. The Billings Police Department will receive \$174,866 and Yellowstone County Sheriff’s office will receive \$47,642. This will be a joint application with the City acting as administrator of the grant. The Interlocal Agreement, required as part of the grant requirements, has been approved by the County Commissioners and is attached for the Mayor to approve. The County will be requesting ICOP digital video cameras, portable radios, ear protection for their Tactical Response Team and LED lightbars. The Police Department will be requesting, but is not limited to, ammunition for the Patrol Rifle Program, Tasers and holsters, physical fitness equipment for the Montana Physical Abilities Testing for the hiring of law enforcement officers, Stop Sticks (tire deflation devices to stop vehicles on the streets), a sign for the Crime Prevention Center, an Omnicout Tracker (which is a tracking system for suspects), shelving units for department records, radars, riot equipment, and drug testing kits. Staff is requesting Council approval for submission of the 2009 JAG Recovery Grant application, acceptance of the \$222,508 grant award, and authorize the Mayor to sign the award documents when they are received.

FINANCIAL IMPACT: There will be no cost to the City. No match is required.

RECOMMENDATION

Staff is requesting Council approval for submission of the 2009 JAG Recovery Grant application, acceptance of the \$222,508 grant award, and authorize the Mayor to sign the award documents when they are received.

Approved By: City Administrator ____ City Attorney ____



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Central Heights PTA Community Fun Run
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT:

The Central Heights PTA request temporary street closures as outlined in the attached event route map for Saturday, May 30, 2009, from 8:30 am to 10:30 am, for the Community Fun Run.

Recommended conditions of approval include that the Central Heights PTA:

1. Have no alcohol consumption in the public right of way
2. Clean area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide a certificate of insurance naming the City of Billings as additional insured
6. All course guards or other event staff that will be controlling vehicular traffic at intersections must be currently certified as traffic control flaggers by the Montana Flagger Training Program (MDT/LTAP) or by an American Traffic Safety Services Association (ATSSA) flagger training program. All course guards (flaggers) shall wear safety apparel and use STOP/SLOW paddles meeting the requirements of Chapter 6E or the Manual on Uniform Traffic Control Devices (MUTCD).

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the City of Billings for this event other than administrative time to process the permit. Police, traffic control and litter removal are to be paid for by the Central Heights PTA.

RECOMMENDATION

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

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

ATTACHMENTS

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


Kristopher Cummings
1200 30th Street West
Billings, MT 59102
406-655-3124
cummingsk@billings.k12.mt.us

City of Billings
Engineering Division
Attn: Susan Wellbrook
2224 Montana Ave.
Billings, MT 59101

To Whom It May Concern:

On behalf of the Central Heights Elementary PTA I am requesting a Right-Of-Way Special Activity Permit for a *Community Fun Run*, in and around Central Heights Elementary, located at 120 Lexington Drive, Billings, Montana. The race will be held on Saturday May 30th 2009 and will assemble at 8:30 am, commence at 9:00 am and disband at 10:30 am. Road guard attendants will be stationed at 22 different street intersections along the race route (see attached map). The road guards will stop traffic in order to allow runners to pass safely through the intersections, traffic will be able to safely pass through the intersections in between groups of runners. All road guard attendants will be relieved at 10:30 am Saturday, May 30th 2009. The roads will not be blocked during the race. The attached brochure and map detail exact locations of road attendants, race route, and an event description. Thank you for your consideration.

Sincerely,



Kristopher Cummings

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



CITY of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT

Please check the type of activity you are applying for:

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

Submit this application with attachments to either the: Public Works office, 2224 Montana Ave., Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Kris Cummings

ORGANIZATION MAKING APPLICATION Central Height PTA

PHONE 406-655-3124

ADDRESS 120 Lexington Dr. Billings, MT 59102

EMAIL ADDRESS Cummingsk@billings.k12.mt.us

APPROXIMATE TIME EVENT WILL:

Assemble 8:30am Start 9:00am Disband 10:30am

DATE OF EVENT 5/30/2009

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

Community Fun Run to promote health & fitness,

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

Attached

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

N/A

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

Central Height PTA volunteers

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 [Signature] DATE 3/30/2009

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

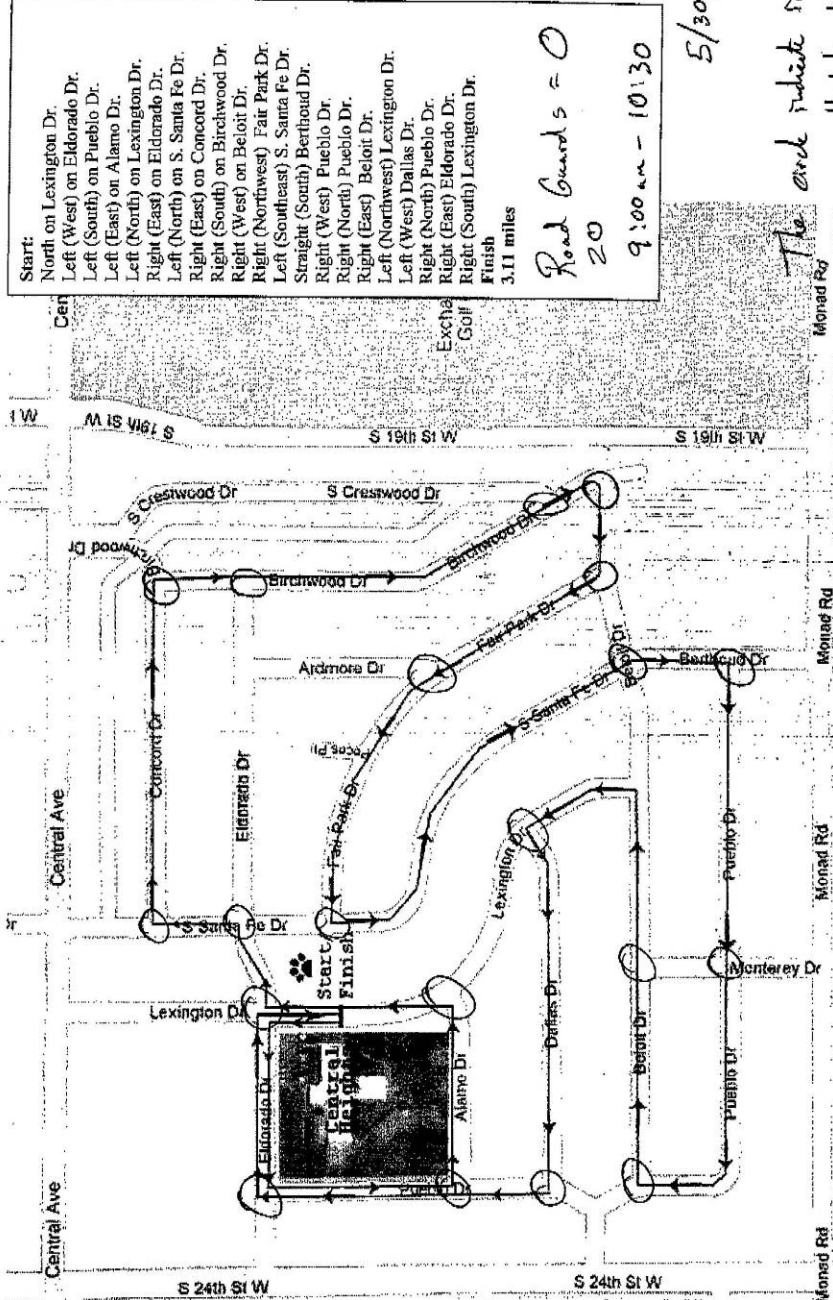
FOR CITY USE ONLY

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 |
| PRFL DIRECTOR |
| PARKING SUPERVISOR |
| CITY ATTORNEY |



Start:
 North on Lexington Dr.
 Left (West) on Eldorado Dr.
 Left (South) on Pueblo Dr.
 Left (East) on Alamo Dr.
 Left (North) on Lexington Dr.
 Right (East) on Eldorado Dr.
 Left (North) on S. Santa Fe Dr.
 Right (East) on Concord Dr.
 Right (South) on Birchwood Dr.
 Right (West) on Belmont Dr.
 Right (Northwest) Fair Park Dr.
 Left (Southeast) S. Santa Fe Dr.
 Straight (South) Berthoud Dr.
 Right (West) Pueblo Dr.
 Right (North) Pueblo Dr.
 Right (East) Belmont Dr.
 Left (Northwest) Lexington Dr.
 Left (West) Dallas Dr.
 Right (North) Pueblo Dr.
 Right (East) Eldorado Dr.
 Right (South) Lexington Dr.
 Finish
 3.11 miles

Road Guards = 0
 20
 9:00 am - 10:30

5/30/2009

The circle indicates road guards or attendants & not actual closures. Traffic will be able to pass safely through the course during the race.

MEMBER CERTIFICATE OF INSURANCE

3/27/09

Thank you for purchasing your insurance from AIM. This is your Member Certificate and should be kept with your permanent records.

Insured #: 155MT57423

NAMED INSURED MEMBER:

Central Heights PTA
 Attn: Nancy Vermeulen
 120 Lexington Drive
 Billings, MT 59102

PRODUCER NAME:

Association Insurance Management Inc.
 PO Box 742948
 Dallas TX, 75374-2946

Company / Coverage	Policy #	Effective Dates	Deductible	Limits of Insurance	
American Safety Indemnity Company / Commercial General Liability	155AIMGL100002	6/13/08 - 6/13/09	NONE	General Aggregate	\$2,000,000
				Products - COMP/OPS Aggregate	\$2,000,000
				Personal & Advertising Injury	\$1,000,000
				Each Occurrence	\$1,000,000
				Fire Damage (any one fire)	\$50,000
American Safety Indemnity Company / Medical (Accident Medical)	155AIMGL100002	6/13/08 - 6/13/09	NONE	Any one Person	\$5,000
				Aggregate	\$5,000

Certificate Holder:

This member certificate, together with the common policy conditions, coverage part(s), coverage form(s), and endorsements, if any, complete the above numbered policy. Copies of the Master Policies are available upon request or may be printed at www.aim-companies.com

AUTHORIZED REPRESENTATIVE



Client#: 200

CITYOFBI

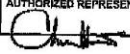
ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 03/27/09
PRODUCER Hoiness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED	INSURERS AFFORDING COVERAGE	NAIC #
City Of Billings %Human Resources Dept P.O. Box 1178 Billings, MT 59104	INSURER A: Penn-American Insurance Co.	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

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

INSURANCE TYPE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded:250 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LOC	BINDER829538	04/01/09	04/01/10	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If Yes, describe under SPECIAL PROVISIONS below OTHER				WC STATUTORY LIMITS OTHER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Central Heights Fun Run May 30, 2009 from 9am to 11pm

CERTIFICATE HOLDER Central Heights PTA 5135 Granite Ridge Circle Billings, MT 59106	CANCELLATION 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. AUTHORIZED REPRESENTATIVE 
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Runners just do it - they run for the finish line even if someone else has reached it first.

~Unknown

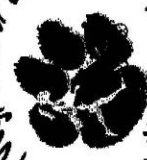
It's hard to beat a person who never gives up.

~Babe Ruth

Run when you can, walk if you have to, crawl if you must: just never give up.

~Dean Karnazes

Run, Jog, Walk or Stroll

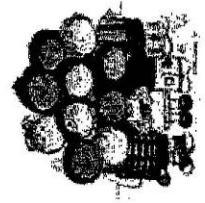


All abilities welcome!!

The Central Heights PTA and Central Heights Elementary are committed to promoting healthy schools and communities.

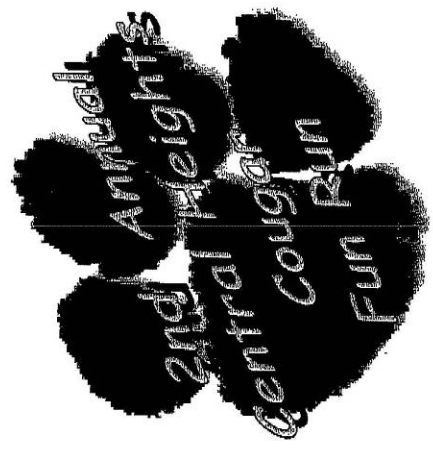
Please join us on Saturday, May 30th 2009 for a fun and healthy community event!

Central Heights PTA
Mission Statement:
Every child. One voice.

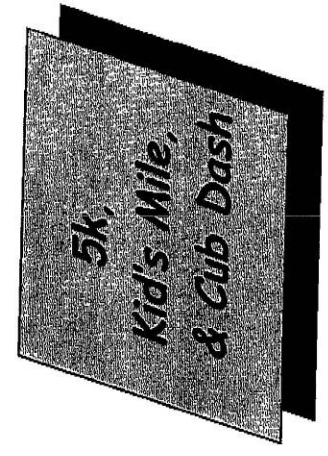


Proceeds will benefit Central Heights Elementary's academic needs.

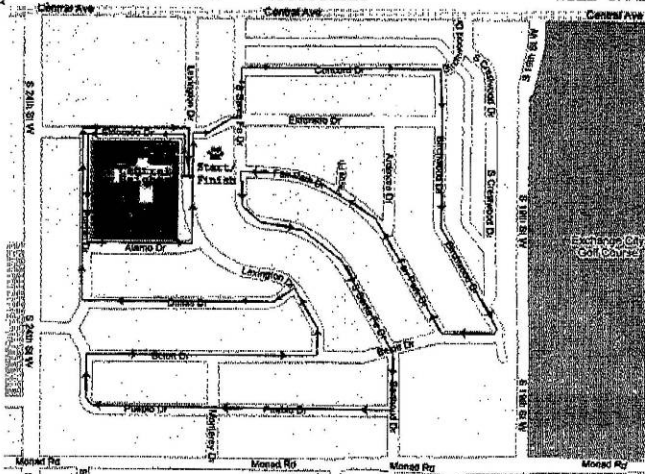
If you are interested in becoming a sponsor please contact Kris Cummings cummingsk@billings.k12.mt.us



Saturday
May 30th 2009



Racing for a healthier community!



Start:
 North on Lexington Dr.
 Left (West) on Eldorado Dr.
 Left (South) on Pueblo Dr.
 Left (East) on Alamo Dr.
 Left (North) on Lexington Dr.
 Right (East) on Eldorado Dr.
 Left (North) on S. Santa Fe Dr.
 Right (East) on Concord Dr.
 Right (South) on Birchwood Dr.
 Right (West) on Beloit Dr.
 Right (Northwest) Fair Park Dr.
 Left (Southeast) S. Santa Fe Dr.
 Straight (South) Berthoud Dr.
 Right (West) Pueblo Dr.
 Right (North) Pueblo Dr.
 Right (East) Beloit Dr.
 Left (Northwest) Lexington Dr.
 Left (West) Dallas Dr.
 Right (North) Pueblo Dr.
 Right (East) Eldorado Dr.
 Right (South) Lexington Dr.
Finish

MAP

**2nd Annual Central Heights
 Cougar 5k Fun Run,
 Cougar Mile and Cub Dash!**
 Open to all ages and abilities. Come join us for a great event that will benefit both the school and community!

Location
 Start and finish at Central Heights Elementary
 Main Entrance (East side of building)
 120 Lexington Drive

Race Times
 Registration starts at 8:00 am
 5k starts at 9:00 am
 Cougar Mile starts after the 5k Finish
 Cub Dash immediately following the 1 mile

Course
 The course is asphalt and flat.
 Water and split times will be at miles 1 and 2 of the 5k race.
 Beverages and fruit will be available at the finish line!

Awards
 Medals will be given to all finishers in the Cougar Mile and the Cub Dash.
 The top finishers in each age division in the 5k, as well as the top male and female 5k Jog Strollers will be given an award. Awards will not be mailed.

Entries
 \$15 per person 5K
 \$10 (12 and under) 5K
 \$7 per person Cougar Mile
 \$5 per person Cub Dash

Questions?
 Kelly Parrinworth 406-652-1293
 Kris Cummings cummingsk@billings.k12.mt.us

Race Packet and T-Shirt Pick-up
 Participants may pick up their race packets from 9:00 am - 5:00 pm on Friday, May 30th at Central Heights Elementary or 8:00 am - 8:45 am on the day of the race Saturday, May 30st.
 Day of the event registration will be available however a T-Shirt will not be guaranteed.

More Information on the Web:
www.billings.k12.mt.us/centralheights/cenths/goodstuff/funrun.html

(Circle one)

Name: _____ Distance: 5k

Sex: Male Female

Date of Birth: ____/____/____

Entry Fee

5k Jog Stroller (child must be in stroller) \$15 per person 5K
 12 and under 13-14 15-19 20-29 30-39 40-49 \$10 (12 and under) 5K
 50-59 60-69 65-69 70 and over \$7 per person Cougar Mile
 \$5 per person Cub Dash

1 mile (12 yrs and under)
 Cub Dash 50 yards (9 and under)

Shirt Size: Adult S M L XL 2XL
 Child S M L XL

Please make checks payable to:

Central Heights PTA
 Mail to:
 Central Heights PTA Fun Run
 120 Lexington Drive

In consideration for my right to participate in this road race, I waive and release any and all rights and claims for damages that I may have against the Central Heights PTA, School District #2, the city of Billings and all race officials.

Signature (Parent if under 18) _____ Date _____



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Cinco de Mayo Street Closure
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Don Luis Restaurant requests the closure of the 100 Block of 26th Street North from 3:00 pm until 10:00 pm on Friday, May 1, 2009 for the Cinco de Mayo Celebration.

Recommended conditions of approval include Don Luis Restaurant:

1. Obtain the proper open container from the Police Department if alcohol will be consumed in
the public right of way
2. Contact Police Department to determine if noise permit will be required
3. Contact all businesses and make them aware of the event 30 days in advance
4. Clean the area to be used and provide and empty waste cans
5. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
6. Provide and install adequate traffic barricades and signs directing motorists around closure
7. Provide certificate of insurance naming City of Billings as additional insured
8. Provide an unobstructed 10' wide lane in the section of closed street for emergency vehicle access

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closures named above from 3:00 pm to 10:00 pm on Friday, May 1, 2009.

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

ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. BID Event Kit of Parts Usage Packet
- C. Course Map
- D. Certificate of insurance



City of Billings RIGHT-OF-WAY ACTIVITY PERMIT

Please check the type of activity you are applying for:

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

Submit this application with attachments to either the: Public Works office, 2224 Montana Ave., Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Carmen Guerrero Salazar
ORGANIZATION MAKING APPLICATION Don Luis Restaurant
PHONE 256-3355 308 1489
ADDRESS 15 N. 24th St Billings MT 59101
CITY STATE ZIP
EMAIL ADDRESS Carmen.donluis@msn.com

APPROXIMATE TIME EVENT WILL:

Assemble 3:00 P Start 5:00 P.m Disband 10:00 P.m

DATE OF EVENT May 1st 2009

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

Cinco de Mayo celebration

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

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

1st Ave N and Montana Ave

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

Don Luis Cleanup

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE: C. R. D. Salgan D DATE 3-20-09

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ REASON _____

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

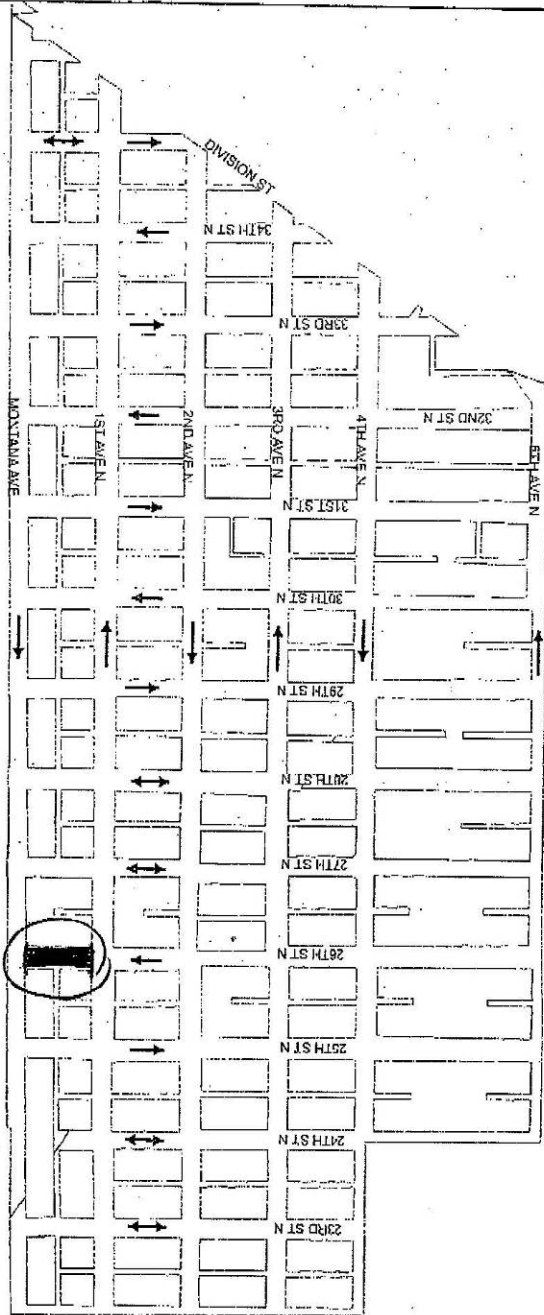
FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY _____

DATE: _____

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



Downtown Billings Street Direction Map



BID Event Kit of Parts Usage Packet

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

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

-Date(s) of Event: Don Lewis May 1, 2009

- Does this event require any Street Closure? Yes No
- Do you have Liability insurance that will cover this event? Yes No
(You will be required to provide a "Binder" to the City of Billings showing coverage)
- Will you be serving alcoholic beverages? Yes No
(A permit may be required from the Billings Police Department)

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

List all:

100 Block of N 26th St

Briefly Describe Your Event Activity/Participants:

- Specify the exact date and TIME the blocks noted above will be CLOSED: 3:00 P.m
- Specify the exact date and TIME the blocks noted above will be REOPENED: 10:45 P.m
- Indicate your traffic re-route plan: BE SEPCIFIC... SEE EXAMPLE
(Example if closing the 200 Block of N. Broadway... Northbound traffic on N. 28th would be diverted west at 1st Ave. North then resume northbound at N. 29th & southbound traffic on N. 25th would be diverted east at 2nd Ave. North then resume southbound at N. 27th)

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

BUSINESS NAME:	ADDRESS:	SIGNATURE:
1. <u>Post Office</u>	<u>1st Ave N.</u>	
2. <u>CSA</u>	<u>N 26th St</u>	
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____
11. _____	_____	_____

THIS IS A CONTRACT - TERMS: Net 30 Days

The words Renter, You and Yours means the person who signs this contract (or is obligated under its terms).
 We, Our and BID refer to the Business Improvement District
 Established open accounts are payable net 30 days. Past due accounts bear late payment penalties of 1.5% per month!
 REMIT PAYMENT TO:
 Downtown Business Improvement District - 2815 2nd Ave. North - Billings, MT 59101

RENTER: Don Luis Inc
 Authorized Person: Carmen G. Salazar
 Address: 3113 7th Ave S.
 City: Billings State: MT Zipcode: 59101
 Phone: 256-3355
 Item(s): SEE ATTACHED EVENT KIT OF PARTS RENTAL/USAGE PRICE LIST

ORDER OUT:
 (Start/Delivery Time) Date: _____ Time: _____ Renter Initials _____ BID Initials: _____

ORDER IN:
 (End/Return Time) Date: _____ Time: _____ Renter Initials _____ BID Initials: _____

Total Amount Rental Fee Due: \$ _____

I, the undersigned renter, specifically acknowledge that I have received and understand the instructions regarding use and operations of the rented equipment/items. Renter further acknowledges that he/she has read and fully understands the within rental contract and the attached "TERMS AND CONDITIONS OF RENTAL" and agrees to be bound by all of the terms, conditions and provisions hereof. Renter acknowledges that he/she has received a true and correct copy of this agreement at the time of execution hereof.

x Carmen G. Salazar
 SIGNATURE
 Printed Name Carmen G. Salazar

THIS IS YOUR CONTRACT, READ ALL PAGES BEFORE SIGNING!

Transaction Report						
Send Transaction(s) completed						
No.	TX	Date/Time	Destination	Duration	P.#	Result Mode
980	APR-07	16:05	2459887	0'00'41"	001	OK N ECM

Rx Date/Time APR-07-2009 (TUE) 13:18 P.002
 From: Jody Hopper - Payne Financial Group, Inc. To: Page: 2/4 Date: 4/7/2009 2:04:46 PM
 Client: 54779 DONLUIS

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 04/07/09
PROGRAM: Hoiness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED: DON LUIS, INC. 15 N 26TH STREET BILLINGS, MT 59101		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: St Paul Travelex		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES

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

INSURANCE CODE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Liquor Liability GENL AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LOC <input type="checkbox"/>	IS801488L243IND09	05/01/09	05/01/10	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$300,000 MED + XN (any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 BIENNIAL AGGREGATE \$2,000,000 PRODUCTS - COMMOD AGG \$2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (per person) \$ BODILY INJURY (per accident) \$ PROPERTY DAMAGE (per accident) \$
	CANADA LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$5000	ISFCUP9349Y964IND0	05/01/09	05/01/10	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? IF YES, CHECKED UNDER SPECIAL MEMORANDUM SHOW OTHER				WC STATUS - <input type="checkbox"/> LTD <input type="checkbox"/> LTD E.L. EACH ACCIDENT \$ S.I. DISABER - P.A. PERM OTH \$ F.L. DISEASE - POLICY LIMIT \$


DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 As respects to General Liability, Certificate Holder is Additional Insured- State or PCL
 Subdivisions-Permits-PRM, CG 20 13, FOR: Cinco de Mayo on May 1, 2009

(See Attached Descriptions)

ACORD. CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 04/07/09
PRODUCER Hoiness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED DON LUIS, INC. 15 N 26TH STREET BILLINGS, MT 59101		INSURERS AFFORDING COVERAGE INSURER A: St Paul Travelers INSURER B: INSURER C: INSURER D: INSURER E:
		NAIC #

INSR ADD'L TR	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Liquor Liability GENT. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PER OCC <input type="checkbox"/> LOC	IS601488L243IND09	05/01/09	05/01/10	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 BIENNIAL AGGREGATE \$2,000,000 PRODUCTS - COMPROP AGG \$2,000,000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE: <input checked="" type="checkbox"/> RETENTION \$ 5000	ISFCUP9349Y964IND0	05/01/09	05/01/10	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STATUS: <input type="checkbox"/> OTHER <input type="checkbox"/> TONY LIMITS: <input type="checkbox"/> E.L. EACH ACCIDENT \$ P.L. DISPASS - FA FMRD OYFR \$ E.L. DISPASS - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 As respects to General Liability, Certificate Holder is Additional Insured - State or POL
 Subdivisions-Permits-PRM, CG 20 13, FOR: Cinco de Mayo on May 1, 2009
 (See Attached Descriptions)

CERTIFICATE HOLDER CITY OF BILLINGS PO BOX 1178 BILLINGS, MT 59103	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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DESCRIPTIONS (Continued from Page 1)

Liquor Liability is a single and separate limit of \$ 1 million.



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: W.O. 08-30 Poly Drive Sidewalk Improvements - Billings, Federal Aid No. STPE 1099(61), Resolution of Intent and Set a Public Hearing Date

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The Poly Drive Sidewalks project was approved through the local CTEP selection process and approved by MDT. Council approved the CTEP Project Specific Agreement (PSA) for this project on April 14, 2008. This project will construct sidewalks and associated public improvements along Poly Drive between Westfield Drive and Shiloh Road. The proposed sidewalk assessments follow the SID Policy adopted by Council in 2004, as the missing public improvements will be assessed to adjoining property owners.

FINANCIAL IMPACT: Sidewalk assessments for this project are an integral part of the entire project's budget that has already been authorized in the City's Capital Improvement Plan (CIP). The approved funding information for this project is as follows:

CTEP Grant	\$ 74,080
Property Assessments	\$ 5,000
Gas Tax	\$ 25,000
Total	\$104,080

RECOMMENDATION

Staff recommends that Council pass a Resolution of Intent to construct the sidewalk and related improvements identified in W.O. 08-30 Poly Drive Sidewalk Improvements - Billings, Federal Aid No. STPE 1099(61), and establish a Public Hearing date of May 26, 2009.

Approved By: City Administrator _____ City Attorney _____
ATTACHMENT

- A. W.O. 08-30 Poly Drive Sidewalk Improvements, Resolution of Intent

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 09-_____, entitled: **"A RESOLUTION RELATING TO W.O. 08-30 – POLY DRIVE SIDEWALK IMPROVEMENTS -BILLINGS, FEDERAL AID NO. STPE 1099(61); DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND; AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE"** (the "Resolution"), on file in the original records of the City Council of the City at a meeting on April 27, 2009, 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 Councilmembers voted in favor thereof: _____

Voted against the same: _____

·
Abstained from voting thereon: _____

·
or were absent: _____

·

WITNESS my hand officially this 27th day of April, 2009.

CLERK

CITY

A RESOLUTION RELATING TO W.O. 08-30, POLY DRIVE SIDEWALK IMPROVEMENTS; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY’S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND.

WHEREAS, the city is granted the power pursuant to M.C.A. 7-14-4109 to order certain improvements without creation of a special improvement district and certain sections of curb and gutter, sidewalks, drive approaches, alley approaches and/or appurtenant features have deteriorated, settled and cracked, or none exist, or some of the foregoing do not exist; and

WHEREAS, the safety and convenience of the public require installation, construction, reconstruction, repair or replacement of curbs and gutters, sidewalks, drive approaches, alley approaches, and/or appurtenant features or combinations thereof; and

WHEREAS, said improvements should be ordered as provided by law.

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

1. INTENTION TO ORDER IN. It is the intention of the Council to order the installation, construction, reconstruction, or replacements of certain curbs, gutters, sidewalks, drive approaches, alley approaches and appurtenant improvements in certain locations, which improvements and locations are more fully described in Exhibits “A” and “B” attached hereto.
2. AFFECTED PROPERTIES. All properties, which will be required to pay any portion of the costs of the improvements identified herein, are listed and the owners of those properties are identified on Exhibit “B” attached hereto.
3. ESTIMATED COSTS. The estimated assessed costs of the proposed improvements, including construction costs, incidental expenses, engineering fees, legal fees, administrative fees and bond issuance costs, but exclusive of interest charges, will be \$5,000 as described below:

Construction Costs	\$ 3,865.72
Engineering & Administration (12.5%)	\$ 625.00
Revolving Fund (5%)	\$ 250.00
Bond Discount (2%)	\$ 100.00
Issuance Costs (3.0%)	\$ 150.00
Bank Fees	\$ 100.00
Roundoff	\$ (90.72)
Total Assessed Costs	\$ 5,000.00

Estimated unit costs for construction only, not including engineering, legal, administrative, and

bond costs as follows:

<u>Removal of:</u>	<u>Unit Price:</u>
Flatwork Removal	\$13.20/SY
Curb and Gutter Removal	\$8.25/LF

<u>New Construction:</u>	
Concrete Sidewalk	\$ 5.78/SF
Curb and Gutter	\$23.10/LF
New Drive Approach	\$ 6.28/SF
New Alley Approach	\$ 6.28/SF
Street Reconstruction	\$48.50/SY

The actual cost to be assessed against any benefited property will be determined by the actual amount of work done adjacent to the property.

4. ASSESSMENT OF COSTS. All costs of constructing the curbs, gutters, sidewalks, and drive approaches, including engineering, administrative and bond costs, will be assessed against the properties which are adjacent to the improvements installed. As shown on Exhibit "B", assessments will be levied against 2 separate lots, parcels, or tracts.

The costs for each property will vary depending upon the actual construction that is required adjacent to each property. The estimated total assessment, including engineering, administrative, and bond costs is estimated to be \$1,612.91 and \$3,387.00 for the two properties to be assessed.

5. PERIOD OF ASSESSMENT. The assessments for all improvements and costs shall be paid in not more than twelve (12) annual installments, plus interest, provided however, that payment of one-half of each annual installment, plus interest, may be deferred to May 31 of the year following the assessment.
6. PROPERTY OWNER OPTION TO CONSTRUCT IMPROVEMENTS. In the event that the City Council orders in the above-described improvements following the public hearing, then the owners of all properties to be assessed for the costs of said improvements will be notified of such action in writing. Said owners will have thirty (30) days from the date of said notice in which to install the required improvements at their own expense. In the event the owners do not install these improvements, the City will do so and will assess the costs against the benefited properties as described herein.
7. METHOD OF FINANCING; PLEDGE OF REVOLVING FUND; FINDINGS AND DETERMINATIONS. The City will issue **Sidewalk, Curb, and Gutter Improvement Bonds** in an aggregate principal amount not to exceed \$5,000 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the Project. This Council further finds it is in the public interest, and in the best interest of the City and the Project, to secure payment of principal of and interest on the Bonds by the

Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect to the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

- (a) Estimated Market Value of Parcels. The estimated total market value of the lots, parcels, or tracts in the Project, as of the date of adoption of this resolution, as estimated by the County Assessor, is \$182,226.00. The average market value is \$91,113.00 with a high of \$99,264.00 and a low of \$82,962.00 and median value of \$91,113.00. The special assessments to be levied against each lot, parcel, or tract are less than the increase in the estimated market value of the properties as a result of the construction of the improvements.
- (b) Diversity of Property Ownership. For the 2 Tax codes in this project, there are 2 separate owners. It is unlikely that financial difficulties would arise that would require a loan to be made from the Revolving Fund.
- (c) Comparison of Special Assessments, Property Taxes and Market Value. There are no current SIDs levied against the two properties.

As noted in Section 4, there are two properties being assessed in the amount of \$1,612.91 and \$3,387.00 with an average market value of \$91,113.00 between the two properties. The average yearly principal payment for the two properties are \$134 (approximate monthly principal of \$11.16) and \$282 (approximate monthly principal of \$23.50) respectively, assuming 6% interest rate, the amount of assessment versus the value of the property would appear acceptable. As such, no unusual need for loans from the Revolving Fund would be expected. Further information comparing the total cost (estimate) to the market value for each parcel is listed in Exhibit "B".

- (d) Delinquencies. For tax year 2008, Zero (0) parcels were delinquent. This rate is above the average city collection rate of 95%.

Therefore, given the delinquency history of this Project area, no unusual need for loans from the Revolving Fund would be expected.

- (e) The Public Benefit of the Improvements. Current City Subdivision and Site Development Ordinances, and under City Council policies, the cost of installation of new curb, gutter, sidewalk, and drive approaches is to be borne by the adjoining property owners.

The subject sections of City streets are identified as being on an identified priority school walking route. The main purpose of these improvements is to provide a safe, accessible walking surface for school children and other pedestrians walking along the streets. A portion of the assessed costs to property owners is to be offset by a federal grant under the Community Transportation Enhancement Program (CTEP) administered by the Montana Department of Transportation (MDT). City funding sources will fund the costs to replace non ADA compliant but otherwise serviceable drive approaches; to replace deteriorated curb & gutter; to build curb extensions; to build minor bridge modifications;

and to build corner accessibility ramps. The funding sources for the City contribution to this project include gas tax funds, arterial street funds, and storm drain funds.

The project improvements are located on Poly Drive from Westfield Drive to Shiloh Road.

8. REIMBURSEMENT EXPENDITURES.

- (a) Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.
- (b) Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.
- (c) Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$5,000 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.
- (d) Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

(e) Reimbursement Allocations. The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

9. PUBLIC HEARING. On Tuesday, May 26, 2009, at 6:30 p.m., in the Council Chambers located on the Second Floor of the Police Facility, 220 North 27th Street, Billings, MT, the City Council will conduct a public hearing concerning this project and all interested parties will be allowed to testify. The City Council will also consider all written comments submitted to the City Clerk prior to the hearing or submitted to the Council during the hearing.

10. NOTICE OF PASSAGE OF RESOLUTION OF INTENTION. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the BILLINGS TIMES, a newspaper of general circulation in the county on May 7 and May 14, 2009, in the form and manner prescribed by law, and to mail or cause to be mailed, a copy of said Notice to every person, firm corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county and school district taxes, at his last-known address, on or before the same day such notice is published.

PASSED by the City Council and APPROVED this 27th day of April, 2009.

CITY OF BILLINGS:

BY: _____

Ron Tussing

MAYOR

ATTEST:

Cari Martin

CITY CLERK

Exhibit "A"

Location of Work

WO 08-30 Poly Drive Sidewalk Improvements

Construction of sidewalk along the south side of Poly Drive from Westfield Drive to 41st Street West and along the north side of Poly Drive from 41st Street West to Shiloh Road

Properties being assessed

Sidewalk, curb & Gutter, Drive Aprons: 4106 Poly Drive * 4015 Poly Drive *

WO 08-30 Poly Drive Sidewalk Improvements - Billings STPE 1099(61)
Exhibit B

Tax Code	SID #	SID Pay-off	Delinquent	WO 08-30 Assessment	SID Pay-off + Delinquent + WO 08-02- Assessment	Estimated Market Value
C02233				\$ 1,612.91	\$ 1,612.91	\$ 99,264.00
D04718				\$ 3,387.00	\$ 3,387.00	\$ 82,962.00
			Average	\$ 2,499.96	\$ 2,499.96	\$ 91,113.00
			Median	\$ 2,499.96	\$ 2,499.96	\$ 91,113.00
			Low	\$ 1,612.91	\$ 1,612.91	\$ 82,962.00
			High	\$ 3,387.00	\$ 3,387.00	\$ 99,264.00
			Total	\$ 4,999.91	\$ 4,999.91	\$ 182,226.00



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: 2nd Reading Ordinance Adopting City Code Language to Close Hazardous Fire Areas and Update References to the Fire Code

DEPARTMENT: Fire Department

PRESENTED BY: Tina Volek, City Administrator
Paul Dextras, Fire Chief
Frank Odermann, Assistant Fire Chief
Mike Spini, Fire Marshal

PROBLEM/ISSUE STATEMENT: A public hearing and first reading were held at the City Council meeting of April 13, 2009. In previous years, the adopted Fire Code in the City of Billings contained language pertaining to the closing of hazardous fire areas. This language provided the Fire Department the necessary authority to close public lands that present exceptional and continuing fire danger because of the density of natural growth, difficulty of terrain, proximity to structures, and accessibility to the public. For many years, the Fire Department has closed all or part of the Rims during the Fourth of July holiday to prevent wildland fires. In 2007, the City of Billings adopted the 2006 International Fire Code (IFC). The language pertaining to hazardous fire areas was inadvertently removed from this edition of the code. The attached ordinance would provide the enforcement mechanism to manage hazardous fire areas.

Sections 27-614 and 24-471 of the Billings, Montana City Code currently reference the Uniform Fire Code. The Uniform Fire Code is no longer adopted and these sections need to be updated with the appropriate language. The attached ordinance will correct this issue.

ALTERNATIVES ANALYZED: The alternative of adding language to the adopted Fire Code instead of City Code was considered. It was decided that placing the language in the City Code would be the best option due to the fact that police and code enforcement personnel can readily access and cite the City Code. The least desirable alternative would be to allow hazardous fire areas to remain open at all times.

FINANCIAL IMPACT: There is no financial impact to the City if the ordinance is approved. There is, however, a potential financial impact if the ordinance is not approved.

The cost of fighting wildland fires in hazardous fire areas such as the Rims is very expensive. Nearby homes and private property could also be threatened by wildfire if hazardous fire areas were to remain open at all times.

RECOMMENDATION

Staff recommends that Council consider and adopt the attached ordinance, which provides the necessary language for the Fire Department to close hazardous fire areas to unauthorized persons.

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

INTRODUCTION

There is currently no specific code or law providing the Billings Fire Department with the authority to close hazardous fire areas. This presents a problematic situation in that the public area around the Rims is typically closed during the Fourth of July holiday. This practice has been occurring for many years and was enforced by language that was previously located in the Fire Code. Specific language addressing this issue needs to be added to the City Code. The attached ordinance would provide the Fire Department with the authority necessary to continue closing hazardous fire areas and would provide an enforcement mechanism for police officers, code enforcement personnel, and fire marshals.

BACKGROUND

- Previous Fire Codes that were adopted by the City of Billings provided the Fire Department with the authority to close hazardous fire areas when deemed necessary.
- In August 2007, the 2006 Edition of the International Fire Code was adopted by the City of Billings. The language providing the Fire Department with the authority to close hazardous fire areas was inadvertently removed from this code and placed in a different code that was not adopted by the City of Billings.
- For the past 20 years, the Billings Fire Department has closed the area around the Rims during the Fourth of July holiday. This area is considered a hazardous fire area due to the abundance of dry vegetation, difficulty of terrain, limited access, and the fact that numerous wildland fires have occurred in the past due to the use of fireworks. This area was closed to the public to prevent wildland fires from occurring.
- Adoption of the proposed ordinance would provide the necessary enforcement capabilities to close hazardous fire areas when necessary.

ALTERNATIVES ANALYSIS

There are two alternatives to the proposed ordinance. The first would be to add language to the currently adopted Fire Code that would address hazardous fire areas. This option would provide the needed enforcement tools to the Fire Department, but would be cumbersome for police officers and code enforcement officers to enforce due to the fact that they are not familiar with the Fire Code and do not typically have the Fire Code readily available to them.

The second alternative would be to allow hazardous fire areas to remain open at all times. This option would remove the Fire Department's ability to protect people and property from certain hazardous situations. Many homes are located close to hazardous fire areas and would be subject to the increased exposure of fire.

STAKEHOLDERS

The stakeholders consist of city residents, property owners, the City of Billings, the Police Department, and the Fire Department.

RECOMMENDATION

Staff recommends that Council adopt the attached ordinance upon first and second readings.

If the ordinance is passed, the Fire Department will continue to close hazardous fire areas when necessary, as it has done for the past 20 years. Additionally, this ordinance will update Sections 27-614 and 24-471 of the Billings, Montana City Code.

ATTACHMENTS

Attachment A: Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING ARTICLE 14-500 AND REVISING SECTIONS 27-614 AND 24-471 OF SAID CODE; PROVIDING FOR THE CLOSING OF HAZARDOUS FIRE AREAS AND PROHIBITING ENTRY AND DAMAGE TO OR REMOVAL OF POSTED NOTICES; UPDATING REFERENCES TO FIRE CODE

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

Section 1. That the Billings, Montana, City Code be amended by adding a new Article 14-500, to read as follows:

Article 14-500. Hazardous Fire Areas

Sec. 14-501. Hazardous Fire Areas

The Fire Chief or his designee is authorized to determine and publicly announce when hazardous fire areas shall be closed to entry and when such areas shall again be opened to entry.

Sec. 14-502. Posting of Hazardous Fire Areas

The Fire Chief or his designee shall post signs prohibiting entry into closed hazardous fire areas. Posting shall be accomplished by placing orange signs of not less than 50 square inches at each normal point of access to the area and at regular intervals of not less than every one-fourth mile along roadways with points of access to the closed area.

Sec 14-503. Criminal Trespass to Hazardous Fire Areas

A person commits the offense of Criminal Trespass to Hazardous Fire Areas if the person enters or remains unlawfully in a properly posted hazardous fire area. Exceptions: owners and occupants of private property within the closed and posted areas; their guests or invitees; authorized persons engaged in the operation and maintenance of necessary utilities such as electrical power, gas, telephone, water, and sewer; and local, state and federal public officers and their authorized agents acting in the course of duty.

Sec. 14-504. Tampering with signs, barricades, or locks

No person shall tamper with, mutilate, destroy or remove locks, barricades, or signs posting or closing hazardous fire areas.

Section 14-505. Penalty. A person convicted of a violation of this article shall be fined not to exceed five hundred dollars (\$500.00) or be imprisoned not to exceed six (6) months or both.

Section 2. That section 27-614 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 27-614. Temporary uses and structures.

(a) *Definitions.* For the purposes of this section, the definitions found in section 27-201 for both temporary uses and temporary structures shall be used in the regulation of such uses and structures. In addition, all uses contained in temporary structures shall be considered temporary uses of property and therefore must comply with the provisions of this section. All temporary uses and structures shall also comply with the adopted Uniform Fire Code.

Section 3. That section 24-471 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 24-471. Parking in fire lanes.

There are established fire lanes adjacent to buildings within the city when so required by ~~Section 10.207~~ of the adopted Uniform Fire Code. Said fire lanes will be clearly posted and identified pursuant to the directions of the Billings Fire Department. It is unlawful for any person other than fire department personnel to park, stop or stand a vehicle within any posted fire lane.

Section 4. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 5. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 6. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2009.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2009.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Second and Final Reading for Social Host Ordinance
DEPARTMENT: Police Department
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: There is not an ordinance to hold a person accountable that organizes a party or event in which underage consumption of alcohol is taking place. The City Council held a public hearing and first reading of the Social Host Ordinance on April 13, 2009. The Ordinance was approved on first reading. Council is being asked to approve this Ordinance on second and final reading.

ALTERNATIVES ANALYZED:

- Approve the Ordinance on second and final reading.
- Do not approve the Ordinance on second and final reading.

FINANCIAL IMPACT: The financial impact will be revenue to Municipal Court for any violations.

RECOMMENDATION

Staff recommends that Council approve the Social Host Ordinance on second and final reading.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT
A – Ordinance

Ordinance No. _____

AN ORDINANCE AMENDING CHAPTER 18 (OFFENSES) OF THE BILLINGS CITY CODE BY ADDING A NEW ARTICLE 12 TO BE KNOWN AS THE SOCIAL HOST ORDINANCE

Section 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

That Chapter 18 of the Billings City Code is hereby amended by adding a new Article 12 as follows:

Chapter 14
SOCIAL HOST

Section	Title
18-1201	PURPOSE, FINDINGS
18-1202	DEFINITIONS
18-1203	PROHIBITED ACTS
18-1204	PENALTIES
18-1205	EXCEPTIONS

18-1201 Purpose, Findings

WHEREAS consumption of alcoholic beverages by minors and parties where minors consume alcoholic beverages present numerous problems for our community, minors and law enforcement. Specifically:

- Montana teens report one of the highest binge drinking rates in the nation (defined as 5 or more drinks in one sitting)
- Eighty-four percent (84%) of underage drinkers were in their own home or in someone else's home when they had their last drink.
- In Yellowstone County in 2008:
One out of ten (10.6%) of eighth graders, almost one out of four (23.5%) tenth graders, and more than one third of twelfth graders (36.3%) reported binge drinking in the two weeks prior to being surveyed.

WHEREAS alcohol abuse is also linked to several other health and life issues for our youth including but certainly not limited to sexual assault, unprotected sexual activity, teenage pregnancy, STDs, physical assault and academic difficulties; and,

WHEREAS, the CITY COUNCIL of the City of Billings finds and declares that the purpose of this ordinance is:

- (1) to protect public health, safety and general welfare;

- (2) to enforce laws prohibiting the consumption of alcohol by minors;
- (3) to reduce the costs of providing police services to parties, gatherings, or events that require a response by requiring social hosts to ensure minors are not consuming alcoholic beverages; and,

WHEREAS under Montana Code Annotated 7-1-4123, Legislative powers, the City of Billings has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

- (1) Preserve peace and order and secure freedom from dangerous of noxious activities;
- (2) Secure and promote the general public health and welfare; and,

WHEREAS Montana Code Annotated 7-32-4302, allows the City of Billings to both control disturbances of the peace as well as prevent intoxication and disorderly conduct within the city and within three miles of the limits.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL:

18-1202 Definitions

Alcohol or Alcoholic Beverage:

Mont. Code Annotated 16-1-106. Definitions. As used in this Article, the following definitions apply:

- (1) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (2) "Alcoholic beverage" means a compound is produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.
- (3) "Beer" means a malt beverage containing not more than 7% of alcohol by weight
- (4) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.
- (5) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold ad wine in accordance with federal regulations are also wine.

Emergency Responders:

Includes, but is not limited to, law enforcement officers, firefighters, emergency medical service personnel and other persons having emergency response duties.

Enforcement Services or Response Costs:

Includes the salaries and benefits of emergency responders for the amount of time actually spent responding to or remaining at an event, gathering or party and administrative costs attributable to the incident; the actual costs for medical treatment for any injured emergency responder, and the costs of repairing any damage to emergency responder equipment or vehicles, and the cost of use of such equipment of vehicle.

Parent:

Any person having legal custody of a juvenile including natural parent, adoptive parent, step-parent; legal guardian; person to whom legal custody has been given by court order.

Person:

"Person" includes a corporation, company, partnership, association or society as well as a natural person.

Premises:

Any home, yard, farm, field, land, apartment, condominium, hotel or motel room, or other dwelling unit, hall or meeting room, park or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented or used with or without permission or compensation.

Social Host:

Any person who conducts, allows, organizes, supervises, controls, permits or aids another in conducting, allowing, organizing, supervising, controlling or permitting an event or gathering. The term includes, but is not limited to the following:

- (1) Any person or persons who owns, rents, leases or otherwise controls the premises where the event, gathering or party takes place;
- (2) The person or persons in charge of the premises;
- (3) The person or persons who organized the activity.

Underage Person:

Any person less than 21 years of age.

18-1203 Prohibited Acts

It is a violation of this Chapter for a social host who knows or reasonably should know that an underage person has possessed or consumed alcohol at an event, gathering or party, to fail to take reasonable steps to prevent the underage consumption or possession by the underage

person. The social host does not have to be present at the event, gathering or party at the time the prohibited act occurs.

18-1204 Penalties

Any person found guilty of a violation of this Chapter shall be guilty of a misdemeanor, and punished as provide in BMCC Sec. 1-110. In addition to penalties provided therein, the Municipal Judge shall consider any response costs incurred by the City associated with any event, gathering, or party resulting in a violation of this Chapter, and may order restitution to the City for such response costs upon conviction.

18-1205 Exceptions

The provision of an alcoholic beverage in a non-intoxicating quantity to a person under 21 years of age by the person’s parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in connection with a religious observance shall not constitute a violation of this Chapter. (See Mont. Code Ann. 16-6-305).

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

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

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

PASSED by the City Council on first reading this _____ day of _____, 2009.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2009.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____

City Clerk



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
April 27, 2009

SUBJECT: Second and Final Reading of an Ordinance Authorizing a \$25.00 Municipal Treatment Court Administrative Fee

DEPARTMENT: Municipal Court and Administration-Finance Division

PRESENTED BY: Mary Jane Knisely, Municipal Court Judge; Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: A public hearing and first reading of the ordinance authorizing a \$25.00 Municipal Court Treatment Court Administrative Fee was held on April 13, 2009. The ordinance was approved on first reading. The attached ordinance authorizes a \$25.00 court fee to Treatment Court participants to help defray Municipal Court related administrative costs incurred by the City for processing misdemeanor criminal offenses in treatment courts. The Council agreed to consider this fee when it adopted the FY 2009 budget because the fee will offset budgeted expenses in the Treatment Courts. Currently, three treatment courts exist: Billings Adult Misdemeanor Drug Court; Billings Adult Misdemeanor DUI Court; and Billings Adult Misdemeanor Mental Health Court.

FINANCIAL IMPACT: The Municipal Court administrative fee will produce approximately \$30,000 general fund revenue annually.

RECOMMENDATION

Staff recommends that Council approve the attached ordinance that establishes Municipal Court Treatment Court Administrative Fee.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A – Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS MONTANA CITY CODE BE AMENDED BY ADDING A SECTION NUMBERED _____; PROVIDING FOR THE ASSESSMENT OF ADMINISTRATIVE FEE BY MUNICIPAL COURT AS PART OF THE OPERATION OF TREATMENT COURTS.

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

Section 1. That the Billings, Montana City Code be amended by adding a section to be numbered _____, to read as follows:

Sec. _____. Establishment of Municipal Treatment Court administrative fee.

The Municipal Court shall assess an administrative processing fee of twenty five dollars (\$25.00) as part of the disposition of all citations and complaints, criminal and traffic, in which a factual nexus to alcohol, dangerous drugs, controlled substances or drug paraphernalia exists. This surcharge shall be assessed to offset administrative expenses or costs for operation of Billings Municipal Court Treatment Courts. It shall be assessed upon a conviction, bond forfeiture, nolo contendere plea, or plea of guilty entered. This surcharge is not a fine and shall be assessed in addition to other taxable court costs, fees, or fines. The amount of this administrative processing fee may be modified by resolution of the city council.

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

Section 3. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2009.

PASSED, ADOPTED and APPROVED on second reading this
_____ day of _____, 2009.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

City Clerk



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2008

TITLE: Preliminary Minor Plat of Lenhardt Square Subdivision, First Filing
 DEPARTMENT: Planning and Community Services
 PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On March 16, 2008, the subdivider, M & K Blue One, LLC, applied for preliminary minor plat approval for Lenhardt Square Subdivision, First Filing. The proposed subdivision creates five lots from a 33.8-acre tract of land. The subject property is located north of King Avenue West, across from the Montana Sapphire Subdivision. The property was annexed into the City in 2008 and Planned Unit Development (PUD) zoning was approved for the property at the same time. The five lots will be developed in phases as multi-family residential uses. The City Council will review the preliminary plat, and approve, conditionally approve, or deny the proposed subdivision at the April 27, 2009, meeting. The representing agent is Sanderson Stewart.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict a subdivider’s ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated.

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

RECOMMENDATION

Planning staff recommends conditional approval of the preliminary plat of Lenhardt Square Subdivision, First Filing, approval of two variance requests, and adoption of the Findings of Fact as presented in the staff report to the City Council.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Preliminary Plat
- B. Variance Requests
- C. Findings of Fact

D. Mayor's Approval Letter

INTRODUCTION

On March 16, 2008, the subdivider, M & K Blue One, LLC, applied for preliminary minor plat approval for Lenhardt Square Subdivision, First Filing. The proposed subdivision creates five lots from a 33.8-acre tract of land. The subject property is located north of King Avenue West, across from the Montana Sapphire Subdivision.

PROCEDURAL HISTORY

- A pre-application meeting was held on January 8, 2009, to discuss the proposal.
- The preliminary plat application was submitted to the Planning Division on March 16, 2009.
- The City Council will consider the preliminary plat on April 27, 2009.

BACKGROUND

The proposed subdivision will create five lots ranging in size from 3.1 to 7.2 acres in size. The applicants intend to develop the lots in phases with multi-family housing. The property is bordered on the north by agricultural uses, on the west by agricultural and large lot residential uses, on the east by vacant land planned for medical, commercial, and residential uses, and on the south by King Avenue West and existing commercial and planned multi-family residential uses.

General location:	North of King Avenue West across from the Montana Sapphire Subdivision.
Legal Description:	Tract 1A, of Certificate of Survey 2063, Amended located in Section 10, T1S, R25E
Subdivider/Owner:	M & K Blue One, LLC/Lenhardt Property, LP
Engineer and Surveyor:	Sanderson Stewart
Existing Zoning:	PUD – Multi-family
Existing land use:	Agricultural
Proposed land use:	Multi-family residential
Gross area:	33.82 acres
Proposed number of lots:	5
Lot sizes:	Max: 7.288 acres Min.: 3.165 acres
Parkland requirements:	1.12 acres of private parkland is proposed

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potentially negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments reviewed this application and provided input on effects and mitigation. The Planning Division staff develops and recommends conditions of approval that are based on departmental comments. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

RECOMMENDED CONDITIONS OF APPROVAL

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact:

1. Utility easements shall be shown on the face of the final plat as requested by Montana-Dakota Utilities (MDU) and NorthWestern Energy (NWE) (*Required by 23-410.A., BMCC*).
2. In order to mitigate impacts on local services, mail delivery to the proposed subdivision shall be accomplished using centralized mailboxes. Location(s) and design of proposed centralized mailbox unit(s) and any required pull-out(s) shall be approved in writing by the United States Postal Service (USPS) prior to final plat approval (*Required by 23-406.A.17, BMCC*).
3. To mitigate the impacts to public health and safety, prior to final plat approval, the street named Saratov on the preliminary plat must be renamed 44th Street West from King Avenue West all the way north to the curve where 44th Street West turns east to become Monad Road at the northwest corner of Lot 1 (*Required by the City Engineering Division, City Fire Department, and as per Section 23-406 (8), BMCC*).
4. To mitigate the impacts to local services, prior to final plat approval, language in Section VI of the SIA on Page 7 shall be removed based on changes in the City's fee structure for water and sewer lines. The following language should be removed from the SIA: "It is acknowledged that the properties subject to the Subdivision Improvement Agreement shall be subject to the appropriate water and waste water local and interior construction fees in effect at the time payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the preceding paragraph above" (*Required by the City Public Works Department*).
5. To mitigate impacts on local services, prior to final plat approval, the Monad Road right-of-way in the Lenhardt Square Subdivision must match the right-of-way width of Monad Road in the Village Subdivision to the east where the two sections of road connect. Monad right-of-way may be reduced in the Lenhardt Square Subdivision to the 56 foot right-of-way and 39-foot road width as requested by variance, but the reduction in right-of-way width must occur on the Lenhardt Square Subdivision property (*Required by the City Engineering Division*).
6. In order to mitigate impacts on local services, prior to final plat approval, the subdivider shall provide written documentation from the Montana Department of Transportation (MDT) that he has met any infrastructure improvement requirements for King Avenue West identified by MDT.

7. In order to mitigate impacts on local services, prior to final plat approval, the last sentences in Section III.A.2 and Section III. B of the SIA must both be changed to read “The design of the 10-foot wide bike trail is subject to the approval of the Public Works Department-Engineering Division prior to construction at the time of site development” (*Required by the City Engineering Division*).
8. In order to mitigate impacts on local services, prior to final plat approval, language must be added to Section III.C of the SIA stating that streetlights are required if any median curb is installed on 44th Street West. Language also should be included in this section stating when and by whom the streetlights will be installed, and that a Street Light Maintenance District must be approved by the City prior to the installation of streetlights (*Required by the City Engineering Division*).
9. To mitigate the impacts to local services, prior to final plat approval, the cost participation for this subdivision for the intersection of King Avenue West with 44th Street West shall be recalculated based on the percentage of side street traffic and not on total entering traffic volume (*Required by the City Engineering Division*).
10. To mitigate the impacts to local services and public health and safety, prior to final plat approval, language shall be added to Section III of the SIA stating that prior to construction of 44th Street West, the house addressed as 4345 King Avenue West that is located west of Lot 5, Block 1, shall be removed from the right-of-way (*Required by the City Engineering Division*).
11. To mitigate impacts to local services, prior to final plat approval, all the necessary right-of-way as required by the City Engineering Division along the north side of King Avenue West for a potential future roundabout at the intersection of 44th Street West and King Avenue West shall be dedicated and shown on the final plat (*Required by the City Engineering Division*).
12. To mitigate impacts to local services and to align with the requirements of the Lenhardt Square PUD Agreement and the Lenhardt Square Master Site Plan Agreement, prior to final plat approval, a Homeowners’ or Master Association shall be established to provide for maintenance of the park land easements provided with this subdivision. Language also shall be added to Section VII. of the SIA stating that a Master Association will be responsible for the development and maintenance of the linear park easements throughout the subdivision (*Required by the Lenhardt Square PUD Agreement, Lenhardt Square Master Plan Agreement and the City Parks, Recreation and Public Lands Department*).
13. To bring the SIA into alignment with the two variance requests submitted for consideration and to avoid future confusion, Section I of the SIA should be revised to reflect two variance requests by combining Part A and B into one variance request and combining Part C and D into one variance request.
14. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
15. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

Two variances have been requested from the City Subdivision Regulations for this subdivision:

1. A variance from Section 23-406 (B) (6) to allow a 56-foot right-of-way dedication along 44th Street West and Monad Road adjacent to the subdivision where a 74-foot right-of-way is required for roads classified as collectors. The paved street width for Monad and 44th Street West will be 39-feet and may be accommodated in a 56-foot right-of-way. This variance is supported by City Engineering staff since the additional park land easements adjacent to the right-of-way will provide enough room for boulevard with a bike trail on one side and boulevard sidewalks on the other. However, Condition #5 does specify that the Monad Road right-of-way in the Lenhardt Square Subdivision must match the Monad Road right-of-way width in the Village Subdivision to the east where the two sections of road connect. Monad right-of-way may be reduced in the Lenhardt Square Subdivision to the 56 foot right-of-way and 39-foot road width requested in this variance, but the reduction in right-of-way width must occur on the Lenhardt Square Subdivision property.

2. A variance from Section 23-406 (B) (13) to allow a total 8.5-foot width of right-of-way for boulevard and sidewalk along the 44th Street West and Monad Road. Since a 10-foot-wide park and bikeway easement is being provided adjacent to the City road right-of-way, this provides additional area for the boulevard and bike trail along the road. The design is going to be for the bike trail to meander along the roadway so the trail will go in and out of right-of-way and the park easement. This design and area is acceptable to the City Engineering Division and Planning Division and the variance is supported by staff. Additional information regarding the variances is provided in Attachment B.

STAKEHOLDERS

A public hearing is not required for minor subdivisions. However, any interested party may review the proposal and make comments. The Planning Division has received no public input on this proposal at the time this staff report was completed.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, West Billings Plan, the Transportation Plan and the Heritage Trail Plan is discussed within the Findings of Fact.

RECOMMENDATION

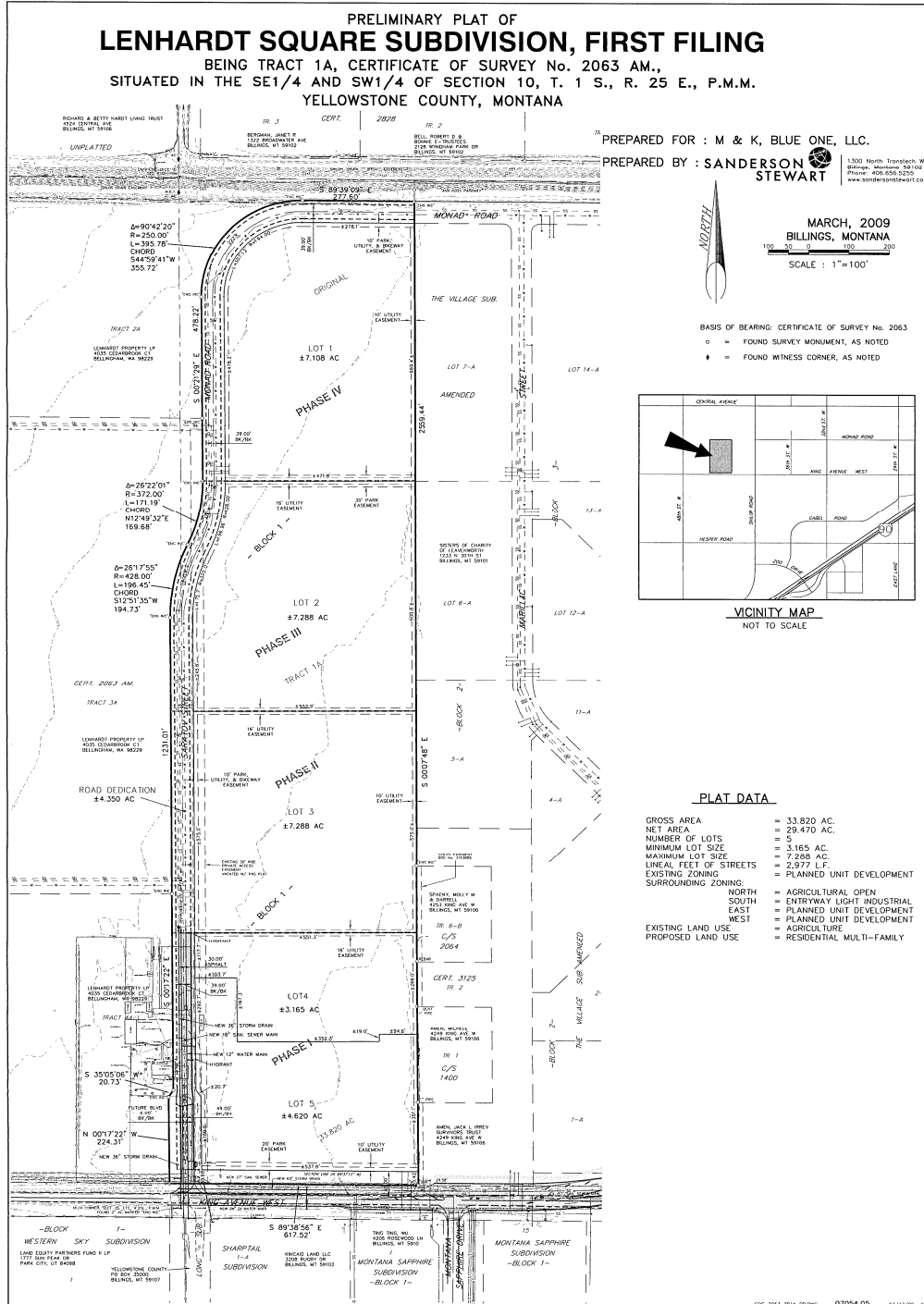
Planning staff recommends conditional approval of the preliminary plat of Lenhardt Square Subdivision, First Filing, approval of two variance requests, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

- A. Preliminary Plat
- B. Variance Requests
- C. Findings of Fact
- D. Mayor's Approval Letter

ATTACHMENT A

Preliminary Plat of Lenhardt Square Subdivision, First Filing



ATTACHMENT B Variance Requests

FINDINGS OF FACT:

Variance Request: 23-406(B) to allow 56-foot right-of-way dedication along Saratov Street adjacent to the property to its intersection with Monad Road in lieu of the required 74-foot right-of-way requirement

Variance Request: 23-406B(6) to allow a 8.5-foot total boulevard width/sidewalk dedication along Saratov Street adjacent to the property to its intersection with Monad Road in lieu of the required 10-foot requirement.

1. **The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.**

The variance would not be detrimental to the public health, safety, or general welfare of the public or be injurious to other properties. It has been determined that a 39-ft wide roadway surface (measured from back of curb to back of curb) would be constructed and would have the capacity to accommodate the anticipated traffic volumes. With the required 10-ft wide parks on either side of the right-of-way, it would create 27.5-ft of open space on either side of the street if the 74-ft right-of-way requirement were enforced. The intent of the development was to provide approximately 20-ft of open space on either side of the street as indicated in the master plan document for the property.

By creating less open space along the street, speeding should be kept to a minimum. In addition, the creation of the 56-ft right-of-way would in fact help adjoining properties by creating more developable area.

2. **Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulations was enforced.**

By enforcing the 74-ft right-of-way requirement on Saratov Street, the developable area of the property would be significantly impacted. Because Saratov Street is forced to be located on the mid-section line at approximately 44th Street West, enforcing a 74-ft right-of-way would limit the developable area for this property and densities agreed upon during the zoning process would likely be unattainable.

3. **The variance will not result in an increase in taxpayer burden**

By allowing a 56-ft right-of-way, the City of Billings would actually be creating more developable area within the Lenhardt Square Subdivision, First Filing, thus creating a higher tax base for the City of Billings.

4. **The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.**

Allowing a 56-ft right-of-way would not place the subdivision in nonconformance with the adopted City of Billings Zoning regulations. In addition, this variance would still

allow the subdivision to be in compliance with the Growth Policy and the West Billings Plan.

5. **The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.**

A 56-ft right-of-way would still accommodate a 39-ft street (measured from back of curb to back of curb). This street width would be adequate to meet the projected traffic demands for Saratov Road. In addition, this right-of-way, along with required setbacks in the Lenhardt Square master plan would create 20-ft wide boulevard/open space areas, which was the intent of the provisions within the master plan document. The 18.5-ft wide area (including the right-of-way and the 10-ft park strip) would be sufficient to place the 10-ft wide bike path in and the street would still be wide enough to handle any projected traffic volumes.

FINDINGS OF FACT:

Variance Request: 23-406(B) to allow 56-foot right-of-way dedication along Monad Road adjacent to the property to its intersection with Saratov Street in lieu of the required 74-foot right-of-way requirement

Variance Request: 23-406B(6) to allow a 8.5-foot total boulevard width/sidewalk dedication along Monad Road adjacent to the property to its intersection with Saratov Street in lieu of the required 10-foot requirement.

- 1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.**

The variance would not be detrimental to the public health, safety, or general welfare of the public or be injurious to other properties. It has been determined that a 39-ft wide roadway surface (measured from back of curb to back of curb) would be constructed and would have the capacity to accommodate the anticipated traffic volumes. With the required 10-ft wide parks on either side of the right-of-way, it would create 27.5-ft of open space on either side of the street if the 74-ft right-of-way requirement were enforced. The intent of the development was to provide approximately 20-ft of open space on either side of the street as indicated in the master plan document for the property.

By creating less open space along the street, speeding should be kept to a minimum. In addition, the creation of the 56-ft right-of-way would in fact help adjoining properties by creating more developable area.

- 2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulations was enforced.**

By enforcing the 74-ft right-of-way requirement on Monad Road, the developable area of the property would be significantly impacted. Because Saratov Street is forced to be located on the mid-section line at approximately 44th Street West and Monad Road is an extension of that street, enforcing a 74-ft right-of-way would limit the developable area for this property and densities agreed upon during the zoning process would likely be unattainable.

- 3. The variance will not result in an increase in taxpayer burden**

By allowing a 56-ft right-of-way, the City of Billings would actually be creating more developable area within the Lenhardt Square Subdivision, First Filing, thus creating a higher tax base for the City of Billings.

- 4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.**

Allowing a 56-ft right-of-way would not place the subdivision in nonconformance with the adopted City of Billings Zoning regulations. In addition, this variance would still

allow the subdivision to be in compliance with the Growth Policy and the West Billings Plan.

5. **The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.**

A 56-ft right-of-way would still accommodate a 39-ft street (measured from back of curb to back of curb). This street width would be adequate to meet the projected traffic demands for Monad Road. In addition, this right-of-way, along with required setbacks in the Lenhardt Square master plan would create 20-ft wide boulevard/open space areas, which was the intent of the provisions within the master plan document. The 18.5-ft wide area (including the right-of-way and the 10-ft park strip) would be sufficient to place the 10-ft wide bike path in and the street would still be wide enough to handle any projected traffic volumes.

ATTACHMENT C
Findings of Fact

The Planning staff is forwarding the recommended Findings of Fact for Lenhardt Square Subdivision, First Filing, for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-304 (c) (1)]

1. Effect on agriculture and agricultural water user facilities

The subject property is part of a larger 114-acre property that was annexed into the City in 2008 and rezoned for Planned Unit Development (PUD) zoning at that time. The property has remained as agricultural land since the annexation and zone change and is now beginning to be prepared for development. There is agricultural and large-lot residential property to the north and west of the subject property. The subject property has been irrigated and farmed for many years. The proposed development will take 33-acres out of agricultural production with the remainder of the 114 acres being taken out of agricultural production as it develops in the future. The property owners plan to maintain the irrigation ditches and infrastructure on the non-developed portions of the property and changes to irrigation on this property are not expected to affect other agricultural water user facilities in the area.

2. Effect on local services

- a. **Utilities – Water:** Water services will be provided by the City of Billings. The subdivider will extend water mains from a 24-inch water main to be installed in King Avenue West along the frontage of the subdivision. Language in Section VI (A) of the Subdivision Improvement Agreement (SIA) also specifies water service limitations for the subdivision based on available water supply that the City can deliver at this time. Additional domestic water availability to the subdivision is based on two planned future City reservoir storage projects and on the City’s determination of when additional capacity may be supplied.

Sewer: Sanitary sewer service can be provided by the City of Billings by installation of a 27-inch sewer main in King Avenue West. The subdivider will extend sewer mains from the King Avenue West main line at the time of lot development.

Language in Section VI of the SIA on Page 7 needs to be removed based on changes in the City’s fee structure for water and sewer lines (**See Condition #4**). The following language should be removed: “It is acknowledged that the properties subject to the Subdivision Improvement Agreement shall be subject to the appropriate water and waste water local and interior construction fees in effect at the

time payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the preceding paragraph above.”

MDU will provide gas services and NWE will provide electric services to the subdivision in the future. Utility easements shall be provided along lot boundaries as requested by the utility providers and shall be shown on the face of the final plat (**See Condition #1**).

Street Lights: Section III. C of the SIA states that streetlights will not be required at this time. However, a median is proposed at the south end of 44th Street West near the intersection of King Avenue West. The City requires streetlights to be installed when median curb is installed. Prior to final plat approval, language must be added to Section III.C of the SIA stating that streetlights are required if any median curb is installed on 44th Street West. Language also should be included in this section stating when and by whom the streetlights will be installed, and that a Street Light Maintenance District must be approved by the City prior to the installation of streetlights (See Condition #8).

- b. **Storm water** – Storm water drainage will be collected via new storm water lines in the subdivision that will connect to a new 66-inch storm drain to be installed in King Avenue West along the frontage of the subdivision. All improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the City Engineering Department.
- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** – The subdivision will be served by internal public and private residential streets and by Monad Road and 44th Street West (Saratov) connecting to King Avenue West. Right-of-way is being dedicated for King Avenue West, a principal arterial along the southern boundary of the subdivision. King Avenue West is under the jurisdiction of the Montana Department of Transportation in this area. Improvements to King Avenue West will be required and approved by the Montana Department of Transportation (**See Condition #6**).

Saratov Street on the preliminary plat aligns with 44th Street West to the south of King Avenue West. As per Section 23-406 (8) of the City Subdivision Regulations pertaining to consistency of street names and to mitigate impacts to public health and safety, Saratov Street on the preliminary plat must be renamed 44th Street West on the final plat (**See Condition #2**).

Access to the subdivision will be off of King Avenue West via 44th Street West and Monad Road. When the property to the east of this subdivision developments, access to Shiloh Road will be available via Monad Road at the northeastern corner of Lot 1 of the subdivision. Access to the individual lots has been specified in the SIA as follows: Two accesses for Lot, Block 1 to Monad Road; two accesses each for Lot 2 and Lot 3, Block 1, from 44th Street West; and one access each for Lot 4

and Lot 5, Block 1 onto 44th Street West. Internal connectivity shall be reviewed and provided between lots as they develop. All access designs and locations on public rights-of-way shall be reviewed and approved by the City Engineering Division.

Right-of-way for 44th Street West and Monad Road is being dedicated along the western portion of the subdivision and right-of-way for Monad Road also is being dedicated along the northern portion of the subdivision. Monad Road and 44th Street West are classified as collector streets. The standard right-of-way dedication for collector streets is 74 feet. Driving surface widths for collector streets range from 53 feet from back-of-curb to back-of-curb to 39 feet from back-of-curb to back-of-curb. In this situation, a 39-foot paved road section is being proposed.

The subdivider is requesting a variance from the required collector right-of-way dedication of 74 feet for this subdivision. The subdivider is applying for a variance to provide a 56-foot right-of-way width for Monad Road and 44th Street West with 39 feet of back-of-curb to back-of-curb paving. Since a 10-foot-wide park and bike trail easement is being proposed adjacent to Monad Road and 44th Street West along the subdivision property in addition to the road right-of-way, and since this easement will provide additional space for sidewalk on the west side of the roads in the future and bike path improvements along the east side of the roads when this subdivision is developed, the City Engineering Division is supportive of the right-of-way variance except where Monad Road intersects the property to the east. The width of Monad Road in the Lenhardt Square Subdivision must match the width of Monad Road in the Village Subdivision to the east. Monad may “neck down” in Lenhardt Square Subdivision to the 56 foot right-of-way and 39-foot road width but it must occur on the Lenhardt Square Subdivision property (**See Condition #5**).

It is likely that a roundabout may be installed in the future at the intersection of King Avenue West and 44th Street West, according to the City Engineering Division. To plan for this possibility, City Engineering Division is requiring that all the necessary right-of-way as required along the north side of King Avenue West for a potential future roundabout at the intersection of 44th Street West and King Avenue West be dedicated and shown on the final plat (**See Condition #11**).

The house located west of the proposed Lot 5, Block 1, of the subdivision will be encroaching into the right-of-way of 44th Street West according to the road design planned for the subdivision. The house is going to be too close to roadway to be safe. City Engineering has specified that language shall be added to Section III of the SIA stating that prior to construction of 44th Street West, the house addressed as 4345 King Avenue West and located west of Lot 5, Block 1, shall be removed from the right-of-way (**See Condition #10**).

Park and Bike Trail Easements: The subdivision is providing a 10-foot wide park and trail easement along the subdivision adjacent to 44th Street West and Monad Road. The subdivider also is providing a 20-foot wide park easement along King Avenue West and a 30-foot wide park easement along the property line between Lots 1 and 2. These park easements are private and will be maintained by a Master

Association (**See Condition #12**). The bike trail along Monad Road and 44th Street West will meander along and through the road right-of-way and park easement and maintain the proper 5-foot boulevard width along the streets. However, the total area of the five-foot boulevard and the 10-foot bike trail width will not be entirely in the road right-of-way. =

The subdivider is asking for a variance from the street development requirements to place a portion of the bike trail and boulevard area in the park and bike trail easement and outside of the road right-of-way along Monad Road and 44th Street West. Since the park and bike trail easement allows access by the public and the City to use the trail and service it if needed (See Declaration of Easement for Sidewalk and Bikeway), the City is supportive of the variance to allow portions of the bike trail and boulevard to be outside of the street right-of-way. The 10-foot wide bike trail will be constructed at the time of development of the adjacent lots in the Lenhardt Square Subdivision, First Filing.

A 10-foot wide bike trail also will be constructed within a 20-foot wide park easement adjacent to King Avenue West along the southern edge of the subdivision. This will be constructed at the time of development of Lot 5, Block 1 of the Lenhardt Square Subdivision, First Filing.

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. Two fire stations are about equidistant to the subdivision. One is located at 604 South 24th Street West (Station #5) and one is located at 1501 54th Street West (Station #7). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** – School District #2 provides educational services from elementary through high school students. Big Sky Elementary School, Riverside Middle School and West High School are expected to serve the children in this subdivision. Responses from these schools were not received at the time this report was written.
- g. **Parks and Recreation** – Specific parkland requirements for this subdivision were specified during the drafting and approval of the PUD Agreement recorded for this property in 2008. Section 76-3-621 of the Montana Subdivision and Platting Act and Section 23-1009 (A) of the City Subdivision Regulations address park dedication requirements for PUDs. According to the approved master plan adopted with the Lenhardt Square PUD, 1.12 acres of parkland is required for the Lenhardt Square Subdivision, First Filing. The subdivider is proposing to provide 1.2 acres for the subdivision. The parkland is provided as linear parks and trail corridors along King Avenue West, 44th Street West, Monad Road, and along the property line between Lot 1 and Lot 2 of the subdivision. The parkland will all be owned and maintained by either the subdivider or a Master Association to be established for this subdivision and for the balance of the Lenhardt Square PUD. As a condition of approval for the subdivision, language must be added to Section VII of the SIA specifying that either the subdivider, future owners of the property or a Master

Association shall maintain the park areas and not the City. If a Master Association is designated, documentation that the Master Association has been created must be provided prior to final plat approval. (**Condition #8**).

- h. **Mail Delivery** - The United States Postal Service (USPS) will provide postal service to the subdivision. Upon review of the proposal, USPS has requested that centralized mailboxes are installed to facilitate mail delivery. It is recommended as a condition of approval that the location and design of proposed centralized mailbox units and any required pull-outs shall be approved by the USPS prior to final plat approval (**See Condition 2**).

3. Effect on the natural environment

The subject property is on the western edge of the City of Billings. The property has been used for agricultural purposes for many years before it was planned for residential and commercial development. Creation of these lots and subsequent development of residential units on the property should have minimal effects on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. There is a note in the Conditions that Run with the Land section of the SIA that warns future lot owners of the possible presence of wildlife in the area. This subdivision should have a minimal effect on wildlife and wildlife habitat, as it is on the edge of an urbanized area and has been used for agricultural operations for many years.

5. Effect on the public health, safety and welfare

The subdivision is located in an area with no known natural hazards. The soil in the area is Kyle series with characteristics of low bearing capacity, low shear strength, high shrink-swell potential and slow permeability. Language has been added to the Conditions that Run with the Land section of the SIA to inform future property owners that a geotechnical analysis was completed for the subdivision and additional geotechnical work may be needed for design and construction of buildings.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-304 (c) (1)]

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA and Section 23-902 (C), BMCC.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2008 Growth Policy, the Urban Area 2005 Transportation Plan Update and the Heritage Trail Plan? [BMCC 23-304 (c) (3)]

1. Yellowstone County-City of Billings 2008 Growth Policy

The proposed subdivision is consistent with the following goals of the Growth Policy:

- a. Goal: More housing and business choices within each neighborhood (p. 6).
As this subdivision is built out, it will provide more housing choices in this area of Billings. Future development of the Lenhardt Square PUD also will

provide a mix of housing choices and business options in this area of Billings.

- b. Goal: Additional bicycle facilities throughout the City and County (P. 12).
This subdivision provides linear parks and trails in the parks to provide for bicycle and pedestrian facilities through this subdivision and connecting to other facilities in the future in this area of Billings.
- c. Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness. (p. 10).
The trail and pedestrian facilities proposed for this subdivision and the surrounding development will help connect people via non-motorized means to many places to shop, work and live in this area of Billings. Since the parks and trails in this development will be maintained by private means, the cost to the community is less while the benefits are realized.
- d. Goal: Contiguous development focused in and around existing population centers separated by open space (p. 6).
This subdivision is on the edge of the City of Billings and is contiguous to property that also is planned to be developed at urban densities soon.

The proposed subdivision is inconsistent with the following goals of the Growth Policy:

- a. Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).
Currently, this subdivision is surrounded by agricultural uses on three sides. One side will be developed at urban densities soon. The west and east areas adjacent to this property are expected to be in agricultural production/uses for some time. Having a high-density urban-style development adjacent to agricultural operations is not compatible at this time.
- b. Protection of groundwater, surface water, riparian areas, air quality, and productive agricultural land (p. 9).
The property proposed to be developed is part of a 114 acre site that has been used for agricultural production for many years. The property is irrigated and the soil is of high quality for agricultural production. Development of this subdivision will take 33 acres of the total 114 acres out of agricultural production.

2. 2001 West Billings Plan

The plan to develop the property at urban densities is in line with the managed growth theme of the West Billings Plan. However, the Plan also encourages compact and infill development to conserve land and natural resources (Theme 1, Planned Growth, Page 15). The development proposed for this property is compact but the property is on the fringe of the urban area and is not infill.

The subject property is located in an area that the West Billings Plan identifies as a place for residential development, with a commercial center identified to the east at the intersection of Shiloh Road and King Avenue West. The proposal for development of the

property would include both residential and commercial uses in a mixed use environment (Theme 3, Achieving a Distinctive Community Character, Page 38).

3. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

4. Heritage Trail Plan

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. The Lenhardt Square Subdivision, First Filing, and the Lenhardt Square PUD Agreement specify that linear parks and trails will be provided throughout this subdivision and the entire PUD. This subdivision is providing a 10-foot bike trail along King Avenue West, 44th Street West and Monad Road. An additional 30-foot-wide park corridor also will be located along the property line between Lot 1 and Lot 2 of this subdivision and will provide for pedestrian and bicycle access to the east. The trail network in this subdivision is designed to connect to the trail to be built along Shiloh Road and from there into the rest of the Heritage trail system.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-304 (c) (4)]

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [BMCC 23-304 (c) (5)]

The subdivision will utilize the City's sanitary sewer and water systems, and the City's solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-304 (c) (6)]

The subject property is located within Lenhardt Square PUD approved by the City in 2008 and shall comply with the standards set forth in the Lenhardt Square PUD Agreement.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-304 9 (c) (7)]

The subdivider shall provide utility easements as requested by MDU (**See Condition #1**).

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-304 9 (c) (8)]

Legal and physical access is provided to the proposed lots from 44th Street West, Monad Road which will connect to King Avenue West.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Lenhardt Square Subdivision, First Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2008 Growth Policy and is inconsistent with several goals. The proposed subdivision does not conflict with the Billings Urban Area Transportation Plan or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, April 27, 2009.

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

April 28, 2009

M & K Blue One, LLC
PO Box 3494
Billings, MT 59103

Dear Applicant:

On April 27, 2009, the Billings City Council conditionally approved the preliminary plat of Lenhardt Square Subdivision, First Filing and two variance requests. The conditions of approval are as follows:

1. Utility easements shall be shown on the face of the final plat as requested by Montana-Dakota Utilities (MDU) and NorthWestern Energy (NWE) (*Required by 23-410.A., BMCC*).
2. In order to mitigate impacts on local services, mail delivery to the proposed subdivision shall be accomplished using centralized mailboxes. Location(s) and design of proposed centralized mailbox unit(s) and any required pull-out(s) shall be approved in writing by the United States Postal Service (USPS) prior to final plat approval (*Required by 23-406.A.17, BMCC*).
3. To mitigate the impacts to public health and safety, prior to final plat approval, the street named Saratov on the preliminary plat must be renamed 44th Street West from King Avenue West all the way north to the curve where 44th Street West turns east to become Monad Road at the northwest corner of Lot 1 (*Required by the City Engineering Division, City Fire Department, and as per Section 23-406 (8), BMCC*).
4. To mitigate the impacts to local services, prior to final plat approval, language in Section VI of the SIA on Page 7 shall be removed based on changes in the City's fee structure for water and sewer lines. The following language should be removed from the SIA: "It is acknowledged that the properties subject to the Subdivision Improvement Agreement shall be subject to the appropriate water and waste water local and interior construction fees in effect at the time payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the preceding paragraph above" (*Required by the City Public Works Department*).
5. To mitigate impacts on local services, prior to final plat approval, the Monad Road right-of-way in the Lenhardt Square Subdivision must match the right-of-way width of Monad Road in the Village Subdivision to the east where the two sections of road connect. Monad right-of-way may be reduced in the Lenhardt Square Subdivision to the 56 foot right-of-way and 39-foot road width as requested by variance, but the reduction in right-of-way width must occur on the Lenhardt Square Subdivision property (*Required by the City Engineering Division*).

6. In order to mitigate impacts on local services, prior to final plat approval, the subdivider shall provide written documentation from the Montana Department of Transportation (MDT) that he has met any infrastructure improvement requirements for King Avenue West identified by MDT.
7. In order to mitigate impacts on local services, prior to final plat approval, the last sentences in Section III.A.2 and Section III. B of the SIA must both be changed to read “The design of the 10-foot wide bike trail is subject to the approval of the Public Works Department-Engineering Division prior to construction at the time of site development” (*Required by the City Engineering Division*).
8. In order to mitigate impacts on local services, prior to final plat approval, language must be added to Section III.C of the SIA stating that streetlights are required if any median curb is installed on 44th Street West. Language also should be included in this section stating when and by whom the streetlights will be installed, and that a Street Light Maintenance District must be approved by the City prior to the installation of streetlights (*Required by the City Engineering Division*).
9. To mitigate the impacts to local services, prior to final plat approval, the cost participation for this subdivision for the intersection of King Avenue West with 44th Street West shall be recalculated based on the percentage of side street traffic and not on total entering traffic volume (*Required by the City Engineering Division*).
10. To mitigate the impacts to local services and public health and safety, prior to final plat approval, language shall be added to Section III of the SIA stating that prior to construction of 44th Street West, the house addressed as 4345 King Avenue West that is located west of Lot 5, Block 1, shall be removed from the right-of-way (*Required by the City Engineering Division*).
11. To mitigate impacts to local services, prior to final plat approval, all the necessary right-of-way as required by the City Engineering Division along the north side of King Avenue West for a potential future roundabout at the intersection of 44th Street West and King Avenue West shall be dedicated and shown on the final plat (*Required by the City Engineering Division*).
12. To mitigate impacts to local services and to align with the requirements of the Lenhardt Square PUD Agreement and the Lenhardt Square Master Site Plan Agreement, prior to final plat approval, a Homeowners’ or Master Association shall be established to provide for maintenance of the park land easements provided with this subdivision. Language also shall be added to Section VII. of the SIA stating that a Master Association will be responsible for the development and maintenance of the linear park easements throughout the subdivision (*Required by the Lenhardt Square PUD Agreement, Lenhardt Square Master Plan Agreement and the City Parks, Recreation and Public Lands Department*).
13. To bring the SIA into alignment with the two variance requests submitted for consideration and to avoid future confusion, Section I of the SIA should be revised to reflect two variance requests by combining Part A and B into one variance request and combining Part C and D into one variance request.
14. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
15. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Variations Approved:

1. A variance from Section 23-406 (B) (6) to allow a 56-foot right-of-way dedication along 44th Street West and Monad Road adjacent to the subdivision where a 74-foot right-of-way is required for roads classified as collectors. Note: The width of Monad Road where it enters the Village Subdivision to the east of Lot 1, Block 1 of the Lenhardt Square Subdivision, First Filing, must match the Monad Road width in the Village Subdivision.
2. A variance from 23-406 (B) (13) to allow a total 8.5-foot width of right-of-way for boulevard and sidewalk along 44th Street West and Monad Road.

Should you have questions please contact Wyeth Friday with the Planning Division at 247-8660 or by email at fridayw@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

Pc: Will Ralph, PE, Engineering, Inc.
Lenhardt Property, LP



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,069,957.04 audited and are presented for your approval for payment. A complete listing of the claims dated March 27, 2009 in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$733,811.90 audited and are presented for your approval for payment. A complete listing of the claims dated April 3, 2009 in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

AGENDA ITEM: **R**
(added to agenda at mtg)



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Joint Use Right-Of-Way Easement for Northwestern Energy, Montana Dakota Utilities, QWest, and Bresnan Communications
DEPARTMENT: Parks/Recreation & Public Lands and Public Works Departments
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: On February 9, 2009, the Billings City Council granted a 15-foot Utility Easement to Northwestern Energy, LLC, in Ann Ross Park, Blocks 1 and 4, The Village Subdivision, for relocation of utility line as part of the Shiloh Road reconstruction project. To help minimize the impacts of utility locations within the Shiloh Road project, the City of Billings has been asked to modify the Easement Agreement to allow Montana Dakota Utilities (MDU), QWest Communications, Inc., and Bresnan Communications, LLC, to co-locate in the 15-foot utility easement. Approval of the utility easement will allow the utility companies to complete their relocation work before the Shiloh Road reconstruction project begins.

ALTERNATIVES ANALYZED: If the modification to the utility easement agreement is not approved, additional easements will be required to relocate the QWest, MDU, and Bresnan utilities. This would delay the utility portion of the project.

FINANCIAL IMPACT: There are no financial impacts for the City of Billings.

RECOMMENDATION

Staff recommends that Council approve the revised Joint Use Utility Right-Of-Way Easement agreement.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

A. Joint Use Utility Right-Of-Way Easement Agreement

JOINT USE UTILITY RIGHT-OF-WAY EASEMENT

City of Billings-Parks Division
P.O. Box 1178 of Billings, MT 59103
(hereinafter referred to as Grantor), in consideration of other good and valuable consideration, in hand paid, the receipt of which is hereby acknowledged, does hereby grant and convey to:

NORTHWESTERN ENERGY, L.L.C., a Montana limited liability company, 40 East Broadway, Butte, MT 59701;
MONTANA-DAKOTA UTILITIES Company, a division of MDU Resources Group, Inc., a Delaware corporation, Billings, MT;
QWEST COMMUNICATIONS, INC., a Colorado corporation, Billings, MT;
and also,
BRESNAN COMMUNICATIONS, L.L.C., Billings, MT.

(hereinafter collectively referred to as Grantee), and to each individual entities successors and assigns, a common easement area 15 feet in width to construct, operate, maintain, replace, upgrade and remove an electric powerline cable, a natural gas pipeline, a telephone communication cable, a television communication cable, together with the necessary appurtenances over, along and across that certain real property located in Yellowstone County, Montana, and particularly described as follows:

Township 1 South, Range 25 East, P.M.M.
Section 10, E1/2E1/2, The West Fifteen Feet (15) of Ann Ross Park, Blocks 1 and 4, The Village Subdivision, Being part of Parcel No. 25 on the MDOT Right of Way Plan Maps. See Exhibit 'A' attached hereto and made a part hereof.

TOGETHER with reasonable right of access to and from said easement area or right of way, over lands of the Grantor using existing roads and trails where practicable, the right to use and keep all of said easement area free and clear of any and all permanent obstructions except fences and the right to clear and remove all timber and brush from the right of way and to cut and remove such trees outside of said right of way which may endanger said lines or facilities.

THE GRANTOR does hereby covenant with the Grantee that the Grantor is lawfully seized and possessed of the real estate above-described, and the Grantor has a good and lawful right to convey it, or any part thereof.

DATED this _____ day of _____, _____

BY: _____

ATTEST: _____

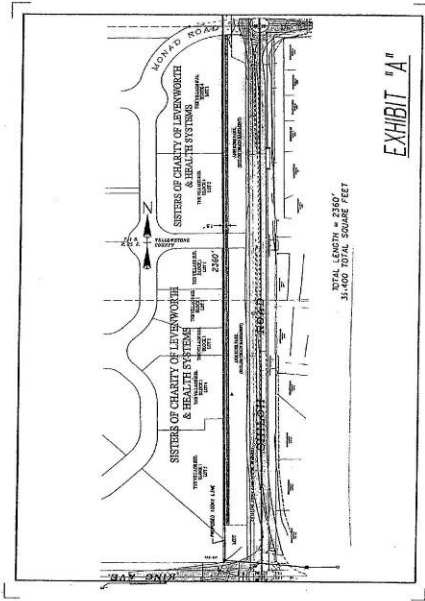
STATE OF _____

COUNTY OF _____ : ss.

This instrument was acknowledged before me on _____, 20____ by _____

(NOTARY SEAL)

(print name)
Notary Public for the State of _____
Residing at _____
My Commission Expires _____



S
AGENDA ITEM:
(added to agenda at mtg)



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Acceptance of \$750,000 of Water and \$750,000 of Wastewater State Revolving Funds under the American Recovery and Reinvestment Act of 2009

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). As one of its components, the ARRA provides funding for the Montana Drinking Water and the Water Pollution Control State Revolving Fund (SRF) programs. The City of Billings project selected to receive the ARRA funding is W.O. 08-01, the 2008 and 2009 Water and Wastewater Replacement Project. On March 9, 2009, Council approved the SRF-backed water and wastewater loans for this project with the terms of a 20 year amortization and a 3.75% interest rate. Water funds available under the ARRA total \$750,000, with \$416,300 of loan principal forgiven. Wastewater funding available under the ARRA totals \$750,000, with \$390,700 of loan principal forgiven. The remaining \$333,700 of water ARRA funds and \$359,300 of the wastewater ARRA funds will be at a reduced interest rate of 1.75%.

ALTERNATIVES ANALYZED:

- Approval and acceptance of the SRF funds.
- Decline the funding.

FINANCIAL IMPACT: Cost savings over the life of the loan is approximately \$496,000 for water and \$477,000 for wastewater.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to certify acceptance of \$750,000 of water and \$750,000 of wastewater American Recovery and Reinvestment Act of 2009 funds.

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

Attachments

- A. DEQ water cover letter and certification form

B. DEQ wastewater cover letter and certification form

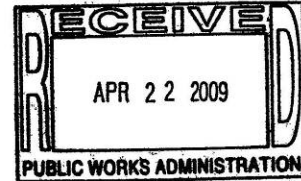


WATER

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.state.mt.us

April 17, 2009



City of Billings
c/o Al Towleron
PO Box 1178
Billings, Montana 59103

Dear Authorized Representative,

It is our pleasure to inform you that the project your community submitted for consideration for SRF funds under the American Recovery and Reinvestment Act of 2009 (ARRA) has been selected to receive \$750,000 in SRF funds. The amount of forgiven principal is \$416,300. The remainder of the loan will be at either 1.75% or 0.75%, depending on whether the community qualifies for additional subsidy based on affordability. That determination will be made by DNRC as they evaluate rates and charges after a loan application has been submitted. The loan terms are assumed to be twenty years and not to exceed the design life of the improvements being funded. Final loan terms will be determined by DNRC.

Attached is a certification of acceptance that must be completed, signed and returned to the address listed below by April 29, 2009 if your community wishes to receive these funds. If the department does not receive the signed statement, these funds will be allotted to another project(s). Please take whatever steps are necessary, including holding emergency council or board meetings, if necessary, to meet this deadline. Not all submitted projects were funded so there is a list of projects that could utilize these funds if your community does not wish to receive them. An electronic copy of the signed certification may be scanned and emailed to mabrahamson@mt.gov (WPCSRF Program) or marks@mt.gov (DWSRF Program) in lieu of the original signed copy.

Please read the certification letter carefully and call either Mr. Abrahamson or Mr. Smith if you have any questions on the certification letter.

For Water Pollution Control SRF projects, submit to Mike Abrahamson, MT DEQ, TFA Bureau, P. O. Box 200901, Helena, MT, 59620-0901.

For Drinking Water SRF projects, submit to Mark Smith, MT DEQ, TFA Bureau, Helena MT, 59620-0901

Water

Certification of Acceptance of ARRA Funds

I, Ron Tussing, as authorized representative of City of Billings

Billings Main Replacement, understand that the Billings Main Replacement project, submitted for consideration of American Recovery and Reinvestment Act (ARRA) funds under the Montana State Revolving Fund Program, has been identified by the Department of Environmental Quality (DEQ) as a candidate to receive those funds.

The City of Billings wishes to confirm that it still wants to accept the ARRA funds, that it will reasonably adhere to the schedule submitted to DEQ, acknowledges that DEQ will periodically evaluate the progress of the aforementioned project to ensure it moves in a timely manner toward construction and completion and that DEQ reserves the right to withdraw ARRA funds from the project, after consultation with the loanee, if adequate progress is not made toward design and construction of the project.

Furthermore, I acknowledge the requirement established in the ARRA that all iron, steel and manufactured goods (as defined by 2 CFR art 176) used in the aforementioned project or projects shall be produced in the United States and hereby agree to accept the responsibility of compliance with this requirement.

I understand that part of the ARRA includes requirements for reporting jobs created and retained for projects receiving these funds and agree to perform the reporting as required.

I understand that, in order to use the ARRA funds in a timely manner, SRF funds from the ARRA shall be utilized prior to other funds for the payment of construction and engineering services for the aforementioned project.

Name Ron Tussing
Title Mayor
Organization City of Billings
Signature _____
Date _____



Dave

WASTEWATER

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.state.mt.us

April 17, 2009

Mayor Ron Tussing
210 N 27th St.
PO Box 1178
Billings, MT 59103

Re: Billings Collection – Replacement

Dear Authorized Representative,

It is our pleasure to inform you that the project your community submitted for consideration for SRF funds under the American Recovery and Reinvestment Act of 2009 (ARRA) has been selected to receive \$750,000 in SRF funds. The amount of forgiven principal is \$390,700. The remainder of the loan will be at either 1.75% or 0.75%, depending on whether the community qualifies for additional subsidy based on affordability. That determination will be made by DNRC as they evaluate rates and charges after a loan application has been submitted. The loan terms are assumed to be twenty years and not to exceed the design life of the improvements being funded. Final loan terms will be determined by DNRC.

Attached is a certification of acceptance that must be completed, signed and returned to the address listed below by April 29, 2009 if your community wishes to receive these funds. If the department does not receive the signed statement, these funds will be allotted to another project(s). Please take whatever steps are necessary, including holding emergency council or board meetings, if necessary, to meet this deadline. Not all submitted projects were funded so there is a list of projects that could utilize these funds if your community does not wish to receive them. An electronic copy of the signed certification may be scanned and emailed to mabrahamson@mt.gov (WPCSRF Program) or marks@mt.gov (DWSRF Program) in lieu of the original signed copy.

Please read the certification letter carefully and call either Mr. Abrahamson or Mr. Smith if you have any questions on the certification letter.

For Water Pollution Control SRF projects, submit to Mike Abrahamson, MT DEQ, TFA Bureau, P. O. Box 200901, Helena, MT, 59620-0901.

For Drinking Water SRF projects, submit to Mark Smith, MT DEQ, TFA Bureau, Helena MT, 59620-0901.

Enforcement Division • Permitting & Compliance Division • Planning, Prevention & Assistance Division • Remediation Division

Wastewater

Certification of Acceptance of ARRA Funds

I, Ron Tussing, as authorized representative of City of

Billings, understand that the Billings Collection Replacement project, submitted for consideration of American Recovery and Reinvestment Act (ARRA) funds under the Montana State Revolving Fund Program, has been identified by the Department of Environmental Quality (DEQ) as a candidate to receive those funds.

The City of Billings wishes to confirm that it still wants to accept the ARRA funds, that it will reasonably adhere to the schedule submitted to DEQ, acknowledges that DEQ will periodically evaluate the progress of the aforementioned project to ensure it moves in a timely manner toward construction and completion and that DEQ reserves the right to withdraw ARRA funds from the project, after consultation with the loanee, if adequate progress is not made toward design and construction of the project.

Furthermore, I acknowledge the requirement established in the ARRA that all iron, steel and manufactured goods (as defined by 2 CFR part 176) used in the aforementioned project or projects shall be produced in the United States and hereby agree to accept the responsibility of compliance with this requirement.

I understand that part of the ARRA includes requirements for reporting jobs created and retained for projects receiving these funds and agree to perform the reporting as required.

I understand that, in order to use the ARRA funds in a timely manner, SRF funds from the ARRA shall be utilized prior to other funds for the payment of construction and engineering services for the aforementioned project.

Name Ron Tussing

Title Mayor

Organization City of Billings

Signature _____

Date _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, APRIL 27, 2009

SUBJECT: Public Hearing and Approval of Resolution Approving and Adopting Third Quarter Budget Amendments for Fiscal Year 2008/2009

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

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

1. A budget amendment is required for an SID bond sale that was not known when preparing the FY2009 budget. Bond costs related to SID 1385, located at King Avenue East, included capitalized interest costs which were transferred from the Construction Fund to the Debt Service Fund for SID 1385. Bond proceeds fund these costs.
2. The General Fund-Municipal Court will require a budget amendment for expenditures for a defendant's 90-day examination, transport to and treatment at the State Hospital to determine his fitness to proceed to trial. General Fund reserves will be used to fund these expenditures.
3. The General Fund-Code Enforcement expenditure budget will decrease by \$20,200, while the General Fund-Parks and Recreation Department expenditure budget will increase by \$20,200, as the Parks and Recreation Department will be performing the weed abatement services.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2008/2009.

Approved By: City Administrator ____ City Attorney ____
ATTACHMENT

A-Resolution to Make Fiscal Year 2008/2009 Adjustment Appropriations (with Exhibit A)



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Public Hearing and Resolution Authorizing Filing of the Federal Transit Administration Section 5307 Grant through American Recovery and Reinvestment Act

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: The American Recovery and Reinvestment Act (ARRA) appropriates \$6.9B for public transportation capital assistance. Because the City of Billings is a qualified recipient of 49 USC Section 5307 funds, the Act appropriates \$1,884,898 to be utilized by MET Transit for transit capital expenses. These dollars will be used to continue the fleet replacement program, (2 buses and 4 Paratransit Vans), renovation of the bus wash, to purchase and install CCTV surveillance cameras for the bus fleet and to replace mobile radios. This grant is funded 100% Federal, 0% local basis.

In order to apply for this grant, it is necessary to include with the grant application, a resolution formally authorizing the Mayor to execute the grant agreement with the Department of Transportation (DOT). There is also a requirement for a public hearing for this grant application. Public hearing notices were published in the Billings Times on March 26 and April 9, advertising a public hearing on April 27, 2009.

FINANCIAL IMPACT: The grant is funded 100% Federal, 0% local basis for the amount of \$1,884,898.

RECOMMENDATION:

Staff recommends that following the required public hearing, Council approve a resolution authorizing the filing of a grant application and the subsequent execution by the Mayor, of a grant agreement with the Department of Transportation, Federal Transit Administration, upon receipt of the grant offer provided for under the authorization of the Federal American Recovery and Reinvestment Act (ARRA).

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS :

Attachment A – Authorizing Resolution (2 pages).

RESOLUTION 09-

A RESOLUTION TO MAKE **FISCAL YEAR 2009** ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT, AND CAPITAL OUTLAY.

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

WHEREAS, based upon a **Quarterly** Budget Review (**FY 2008/2009**), it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT A)

PASSED AND APPROVED by the City Council, this 27th day of April, 2009.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

EXHIBIT A

Revenue Expenditure

Bond costs related to the SID 1385 located at King Avenue East included administration costs of 11% for Engineering, Finance and the Revolving Fund, as well as a bond discount and bond sale fees. Also capitalized interest costs were transferred from the Construction Fund to the Debt Service Fund for SID 1385. Bond proceeds will fund these amendments.

432-3110-431-9310		\$600,000	Roads/Streets
432-3110-431-8255		\$266,530	Transfer to Debt Service
832-1572-383-7514	\$266,530		Transfer from SID Construction

The General Fund-Municipal Court needs a budget amendment for a defendant for the cost of the 90-day examination, transport, and treatment at the State Hospital to determine his fitness to stand trial. This is the responsibility of the Court pursuant to MCA 46-14-221(5).

010-1212-412-3575		\$46,347	Mental Health
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The Parks and Recreation Department will be performing weed abatement services. In the General Fund, the budget for Code Enforcement is decreasing \$20,200, and the budget for Parks and Recreation is increasing \$20,200.

Code Enforcement:

010-4321-419-3586	(\$19,000)	Weed Abatement
010-4321-419-3585	(\$1,200)	Nuisance Abatement

Parks & Recreation:

010-5112-452-2120	\$7,300	Small Items
010-5112-452-2310	\$1,000	Fuel
010-5112-452-2320	\$1,000	Parts
010-5112-452-2330	\$300	Equipment Parts
010-5112-452-1160	\$10,600	Temporary Wages



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Public Hearings for Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Programs and the FY2009-2010 Annual Action Plan

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The City Council is scheduled to hold a public hearing on the allocation of the City of Billings FY2009-2010 CDBG and HOME funding and the fifth (and final) year Consolidated Plan Annual Action Plan for FY2009-2010 on Monday, April 27, 2009. Council action is scheduled on May 11, 2009.

ALTERNATIVES ANALYZED: No additional alternatives have been analyzed. A public hearing is required as a condition of receiving CDBG and HOME funding.

FINANCIAL IMPACT: The public hearing will result in additional public input on the use of CDBG & HOME resources in Billings. In FY2009-2010, City staff estimates minimum allocations of \$700,000 in new CDBG funding and \$500,000 in HOME funding. Program income and funding remaining from completed projects brings the totals available for allocation for this fiscal year to \$984,222 for CDBG and \$606,980 for the HOME program. Federal revenues received for the CDBG and HOME programs are provided through the U.S. Department of Housing and Urban Development. The Community Development Board recommendations are attached and comply with funding limitations.

City staff also anticipates receipt of an additional \$190,430 in CDBG stimulus funding subsequent to the American Recovery and Reinvestment Act. Regulations on how this funding must be used have not been released and program allocations will undergo a separate process.

RECOMMENDATION

Staff recommends the City Council hold a public hearing on April 27, 2009 to gather public input on the allocation of CDBG and HOME funds in the community for FY2009-2010 and the FY2009-2010 Annual Action Plan as the fifth year of the Consolidated Plan for FY2005-2009.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. FY2009-2010 Annual Action Plan (11)
- B. Community Development Board Preliminary Recommendations (3)
- C. CDBG / HOME Application Summary FY2009-2010 (6)
- D. Task Force Priorities (4)
- E. FY2009-2010 Budget Baseline Revenue (1)

INTRODUCTION

The Community Development Board has made preliminary recommendations to City Council on the allocation of CDBG and HOME funding for FY2009-2010 and will finalize recommendations on May 5, 2009. On April 27, the City Council will hold a public hearing to provide public input on the recommendations and the allocation of CDBG and HOME resources in the community. Additional background on the Community Development Board's recommendation will be provided to the City Council prior to the public hearing during a work session on April 20, 2009.

Also to be considered is the FY2009-2010 Annual Action Plan, representing the fifth year of planning for the FY2005-2009 Consolidated Plan. The purpose of the Consolidated Plan is to identify the housing and community development needs of low-income households in Billings and develop strategies for addressing those needs in a comprehensive, coordinated fashion utilizing available federal and non-federal resources. The Annual Action Plan for FY2009-2010 will serve as the planning tool for the City's CDBG and HOME Programs.

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

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

The City Council is asked to consider the input that is received and make a final decision on the FY2009-2010 CDBG and HOME budgets and FY2009-2010 Annual Action Plan on Monday, May 11, 2009.

PROCEDURAL HISTORY

The City of Billings has been receiving CDBG funds since the mid-1970s and HOME funds since the early 1990s. These funds are provided by the federal government and are primarily targeted in Billings to address the affordable housing and neighborhood revitalization needs of the community. The FY2009-2010 budget represents the fifth year Action Plan to implement the City's Five-Year Consolidated Plan. The Consolidated Plan identifies strategies for the use of housing and community development resources in the community.

In allocating CDBG and HOME resources, the Community Development Division facilitates an extensive process to gather public input on the use of federal funds. This year's applications were available at the beginning of December and due at the end of January. Task force input was requested in February and March. The Community Development Board held budget hearings on the use of the CDBG and HOME resources on March 19 and 20 and prepared preliminary recommendations on April 7. A copy of the priorities of the task forces, as received during this process, is included in Attachment D.

The City Council public hearing is required by the Federal government and is part of the 30-day public comment period on the program beginning April 10 and extending to May 11. The City Council is scheduled to act on the CDBG and HOME programs on May 11. An application will then be submitted by HUD's May 15, 2009 deadline for review and, pending HUD approval, the program year will begin July 1, 2009.

BACKGROUND

The April 27 public hearing on the FY2009-2010 CDBG / HOME budget and the FY2009-2010 Annual Action Plan is part of the public input process for the use of federal funds in the community. Each year the City of Billings requests application for the use of federal funds for housing and community development activities. Applications are then forwarded to the Community Development Board and recommendations are prepared for the City Council consideration.

The City is required to provide no more than 20% of its CDBG funding for administration, fair housing and planning type activities (estimated at \$168,821) and **must** provide 15% (estimated at \$81,000) of its annual HOME allocation for activities carried out by Community Housing Development Organizations (CHDOs). The City is required to provide no more than 10% of HOME funding for administration activities (estimated at \$50,000). The City can allocate up to 15% of CDBG resources (estimated at \$122,268) to nonprofit organizations or other projects classified as public service activities, ranging from daycare to crime prevention activities.

The City received 14 applications for housing and neighborhood activities and 14 applications for public service funding. Project summaries for activities proposed this year are included as Attachment C. CDBG and HOME resources represent the main federal commitment to communities to address the need to preserve the existing supply of affordable housing and promote the development of new affordable housing. Few other federal, state or local resources are available to address these housing needs.

REVENUE ESTIMATES

Nationally, CDBG funding allocations have increased by 1% and HOME funding by 11%. Entitlement communities may not receive allocation increases. Therefore, staff and Community Development Board recommend utilizing conservative estimates for budget allocations yet to be determined by the U.S. Department of Housing and Urban Development.

	CDBG	HOME
Final Revenue 08-09 (current year)	\$701,191	\$483,959
National Program Increases	1%	11%
Preliminary Estimates	\$710,657	\$537,195
BUDGET BASELINES	\$700,000	\$500,000

ADDITIONAL RECOMMENDATIONS

CDBG funding allocated over the estimated \$700,000 budget baseline is recommended for allocation to support Administration and Professional Services costs within the limits of the 20% administration cap (maximum estimated at \$2,131).

Additional funding eligible for Public Services (maximum estimated at \$1,599) is recommended for equal division and allocation to Forever Families and Volunteers of America in compliance with the 15% maximum Public Services cap (\$799 each).

HOME funding allocated over the estimated \$500,000 budget baseline is recommended for allocation to support Administration costs as per the 10% administration cap (maximum estimated at \$3,720).

Allocation recommendations for Community Housing Development Organizations (CHDOs) have been based on the maximum estimate for HOME allocation, and must be a minimum of 15% of the new HOME allocation for the year (15% of \$537,195 is \$80,579, therefore the recommendation for CHDO budget is \$81,000).

Remaining CDBG and HOME funding is recommended for allocation to the First Time Homebuyer Program (CDBG maximum estimated at \$6,927 and HOME \$33,475), which is expected to assist an additional five homebuyers.

PUBLIC COMMENT

Comments of the speakers at the public hearings may relate to the change in public service funding allocations. Following extensive review processes and planning, the Community Development Board is following City Council policy guidance to fund approximately five public service awards per year for three-year projects with a minimum request of \$15,000 to a maximum request of \$30,000.

Comments may also be made in support or against the Community Development Board’s decision to not fund the Washington Street Infrastructure Water Line project as proposed. Following extensive public review, the Community Development Board encourages the water line application be submitted through the Affordable Housing Development Program.

ALTERNATIVES ANALYZED

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

STAKEHOLDERS

Stakeholders for the CDBG and HOME programs include:

1. Applicants for funding - The City receives applications from a variety of organizations which apply for public service funding or for housing funding, such as, Living Independently for Today and Tomorrow and Volunteers of America. A summary of the applicants is included as Attachment C and applications are available online:
<http://www.ci.billings.mt.us/index.asp?nid=761> .
2. Neighborhood Task Forces – The task forces communicate neighborhood needs and solutions to those needs utilizing both CDBG and HOME resources. Task forces are also asked to prioritize housing and neighborhood applications. These priorities have been provided in Attachment D for your review. Funding recommendations are in alignment with Task Force priorities including emphasis on First Time Homebuyer, Housing Rehabilitation and Affordable Housing programs.
3. The Community Development Board, as an advisory body to the City Council, provides detailed oversight to both the CDBG and HOME programs throughout the year and facilitates an extensive process to prepare recommendations for the City Council consideration.

CONSISTENCY WITH ADOPTED POLICIES OR PLAN

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

The work and input from neighborhood groups and community partners resulted in the identification of the following four characteristics of the community that the City of Billings will attempt to address with housing and community development activities: (1) Increasing housing cost compared to income and its effect on low income renters and homeowners in achieving safe, decent & affordable housing; (2) An aging population and

the associated increase in the percentage of the population with disabilities; (3) A slight decrease in the price of rental housing and short term concern over the number of multi-family units scheduled to be constructed; and (4) The age and condition of the community's affordable housing stock, particularly in the older neighborhoods surrounding the City's Central Business District.

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

Strategy #1

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

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

Strategy #2

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

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

Strategy #3

Promote new affordable housing opportunities by:

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

Strategy #4

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

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

Strategy #5

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

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

Proposed goals and objectives for each of these strategies for FY2009-2010 are identified in the Annual Action Plan included as Attachment A. The complete FY2005-2009 Consolidated Plan, the 2005 MSU-B Housing Needs Assessment and the drafted 2009-2010 Annual Action Plan is available for review online: <http://www.ci.billings.mt.us/index.asp?nid=500> .

SUMMARY

N/A

RECOMMENDATION

Staff recommends the City Council hold a public hearing on April 27 to gather public input on the allocation of CDBG and HOME funds in the community for FY2009-2010 and the FY2009-2010 Annual Action Plan as the fifth year of the Consolidated Plan for FY2005-2009.

ATTACHMENTS

- A. FY2009-2010 Annual Action Plan (11)
- B. Community Development Board Preliminary Recommendations (3)
- C. CDBG / HOME Application Summary FY2009-2010 (6)
- D. Task Force Priorities (4)

E. FY2009-2010 Budget Baseline Revenue (1)

City of Billings, Montana
ANNUAL ACTION PLAN FY 2009-2010
CDBG / HOME Programs

EXECUTIVE SUMMARY

This is the City of Billings' last year Action Plan of a five-year strategic plan that identifies activities it will undertake in 2009-2010 to address priority needs in the community. The draft Annual Action Plan was open for public comment extending from April 10 through May 11, 2009. A public hearing was held on April 27, 2009 during the Billings City Council meeting to accept public comments on the Annual Action Plan and Community Development Board recommendations for funding. The Action Plan for FY 2009-2010 serves as the budget for the City's Community Development Block Grant (CDBG) Program and HOME Investment Partnerships Program (HOME). Projects proposed for this year are found in Appendix A and funded projects can be found in Appendix G.

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

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

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

which promote long-term economic and social viability and empowering lower-income persons in federally assisted and public housing to achieve self-sufficiency.

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

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

Available Funding, Expenditure Limits and Match Requirements - REVISE ALL NUMBERS POST FINAL BUDGET NOTIFICATION

CDBG administration and planning activities are budgeted at \$168,821 which is 20% of the new CDBG allocation (estimated at \$700,000) in addition to eligible program income (\$144,103). The proposed budget also includes \$140,119 in projects which have been cancelled or completed (cannot be included in administration costs). One hundred percent of available funding will be used to benefit the low to moderate income households.

The estimated amount of funding available for Public Service Activities is \$122,268. This amount represents 15% of prior year income (15% of \$115,121 is \$17,268) and the estimated new CDBG allocation (15% of \$700,000 is \$105,000), and no additional reprogrammed funding from Public Services from prior years.

HOME administration activities are budgeted at \$50,000 which includes 10% of estimated new HOME revenue (10% of \$500,000 is \$50,000). As First Time Homebuyer funding returned to the City prior to the affordability period expiring is considered "recaptured" funding, no additional "program income" has been received and considered eligible for additional administration expenses.

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

Neighborhood Stabilization Program Plan

The City of Billings approved a Substantial Amendment to the City of Billings' Annual Action Plan for FY2008-2009 on January 26, 2009 to utilize funds provided under the Housing and Economic Recovery Act of 2008 (HERA) (Pub.L.110-289, 122 Stat. 2654, enacted July 30, 2008) through the HUD Neighborhood Stabilization Program (NSP). The geographic area covered in the Action Plan and amendment is the City of Billings municipal boundaries, with priority emphasis on areas with a high foreclosure risk in low income task force areas.

The NSP provides \$19.6 million in CDBG funds to the Montana Department of Commerce (MDOC) to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight within its communities. In addition, the funds can be used to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes in order to stabilize neighborhoods and stem the decline of house values of neighboring homes.

The City of Billings intends to utilize granted funding in a manner that complies with regulations established by HUD as published in the Federal Register on October 6, 2008. This includes obligating funding via contract for service within 18 months of HUD's approval of the MDOC's Action Plan Amendment and full expenditure of obligated funds within 48 months of HUD's approval date.

All projects will be located in the City of Billings municipal limits which have been determined to be eligible for NSP project funding due to city blocks having HUD foreclosure risk scores between five and eight. Periods of affordability will be assigned in accordance with the subsidy amount committed and expended for each project. The City will not undertake activities which will trigger the Uniform Relocation Act. The City will be leveraging funding from available application sources including CDBG, HOME and partner-provided funding sources to facilitate NSP activities.

In general, the City will undertake the following activities, to be funded in part with NSP funding:

- Acquisition, rehabilitation (including infrastructure as part of redevelopment) and resale of foreclosed or abandoned homes to income qualified homebuyers as their primary residence;
- Financial assistance to income qualified homebuyers who are purchasing an abandoned or foreclosed home; and
- Acquisition of properties and demolition of existing structures that meet the definition of blight in the community. These properties will be redeveloped in the future for use as permanent affordable housing.

As required, all NSP funding must be committed within an 18 month timeframe and must be carried out within four years. The projects will begin in early 2009 and will be continued until early 2013. This timeframe commences upon formal execution of the grant agreement between HUD and the State of Montana which occurred on March 19, 2009.

CDBG Stimulus Funding

The City anticipates receiving HUD notice of an additional \$190,430 in stimulus funding subsequent to the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) signed into law by President Obama on February 17, 2009. The Community Development Division does not anticipate receiving other stimulus funding directly. This funding must be committed via written contract within 120 days of HUD notification to the office. Projects and activities eligible for this funding include...(waiting for HUD notification)

The City plans on using the stimulus funding for...(will undergo a separate public allocation process)

Staff recommendation - First Time Homebuyer Program

Past Performance

The City of Billings received comments from the U.S. Department of Housing and Urban Development regarding Comprehensive Annual Performance Evaluation Report (CAPER) in October 2008. The overall evaluation concluded the City of Billings CDBG and HOME programs are making strides in providing affordable housing and addressing community needs.

FFY2005-2009 CONSOLIDATED PLAN SUMMARY

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

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

1. Increasing housing cost compared to income and its effect on low-income renters and homeowners in achieving safe, decent and affordable housing;

2. An aging population and the associated increase in the percentage of the population with disabilities;
3. A slight decrease in the price of rental housing and short-term concern over the number of multi-family units scheduled to be constructed in 2005; and
4. The age and condition of the community's affordable housing stock, particularly in the older neighborhoods surrounding the City's Central Business District.

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

<i>FEDERAL FISCAL YEAR (FFY) 2005-2009 STRATEGIC PLAN</i>
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The following five strategies are proposed by the City of Billings in its FY2005-2009 Consolidated Plan to address Billings' housing and community development needs.

Strategy #1

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

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

Strategy #2

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

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

Strategy #3

Promote new affordable housing opportunities, by:

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

Strategy #4

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

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

Strategy #5

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

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

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

<http://www.ci.billings.mt.us/index.asp?nid=500>

<i>FFY 2009-2010 ANNUAL PLAN</i>		
Strategy #1 - Promote the preservation of the existing supply of affordable housing in the community.		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2009-2010 Goals</i>
Provide affordable financing to lower income homeowners to perform needed repairs.	Complete substantial rehabilitation ¹ work through the Housing Rehabilitation Loan Program.	15 homes
	Complete minor rehabilitation work through the Minor Home Repair Program.	15 homes
	Provide funding for single purpose rehabilitation projects targeted to elderly and special needs lower income homeowners. Providing funding to organizations increases the total leveraged funding available for repair programs.	Assist with repairs for the elderly and disabled by working with non-profit organizations such as: LIFTT (7 ramps) and Rebuilding Together (4 homes).
	Pursue grant and private funding to support activities that increase resources available for housing rehabilitation activities.	Staff support & coordination to Rebuilding Together and other organizations performing rehabilitation.
Provide affordable financing to rehabilitate rental units affordable to lower income residents.	Complete substantial rehabilitation work to rental units for occupancy by lower income, elderly and special needs households through the Affordable Housing Development Program.	5 rental units
Reduce the loss of existing standard housing units affordable to lower income households due to redevelopment activities.	Continue to work with organizations involved with redevelopment activities to promote the preservation of the existing supply of affordable housing and to mitigate the effects of demolition or conversion when it does occur.	Continue working with the Housing Needs Analysis Subcommittee of the Affordable Housing Task Force to continue work on housing guidelines ² .

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

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

Utilize the State of Montana's Neighborhood Stabilization Program (NSP).	Pursue project opportunities to utilize the NSP program to purchase and renovate homes that have been abandoned and foreclosed.	5 homes
Strategy #2 - Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2009-2010 Goals</i>
Preserve the housing stock in older lower income neighborhoods.	See also implementation plan for strategy #1.	-
	Support house painting program for lower income homeowners.	5 homes
	Support Tree Program to remove and replace diseased or dangerous trees for lower income homeowners.	6 trees through public service activity
	Support activities that help preserve historic properties.	Support annual Yellowstone Historic Preservation Board work plan.
Provide incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods.	See also implementation plan for strategy #3.	-
	Provide support for the Affordable Housing Task Force to make recommendations for a developer incentive program in conjunction with the Planning Department's Smart Growth initiative.	The Affordable Housing Task Force will review incentive programs for infill and affordable housing development.
Support activities that provide amenities and address the infrastructure needs of older lower income neighborhoods.	Support planned neighborhood improvements included in City's Capital Improvement Plan (CIP).	Implement City's FY2009-2010 CIP and projects funded through CDBG.
	Provide Special Assessment Grants for lower income households to help pay for Special Improvement District Assessments (SIDs) resulting from the City's public improvement projects.	30 homeowners
	Encourage the redevelopment of the South 27 th Street Corridor.	Complete one new redevelopment project (500, 700 and 1000 blocks of South 27 th Street).
	Encourage the implementation of the Heritage Trail Bike Plan in lower income areas in conjunction with the Healthy Communities "Built Environment" initiative.	Plan and seek funding for needed improvements in task force neighborhoods.
	Promote historic preservation activities in a coordinated manner through Historic Preservation Organizations.	Support annual Yellowstone Historic Preservation Board work plan.
Support efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities.	Support Neighborhood Planning efforts and provide on-going support for monthly task force meetings.	Staff support for newsletter monthly mailings.
		Facilitate task force initiatives through applications to CDBG and HOME.

Utilize the State of Montana's Neighborhood Stabilization Program (NSP).	Pursue project opportunities to utilize the NSP program to demolish units built prior to 1978 requiring more than \$25,000 in rehabilitation.	3 homes
Strategy #3 - Promote new affordable housing opportunities.		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2009-2010 Goals</i>
Encourage the development of new affordable single family, and multi-family, special needs housing in the community through private developers and non-profits.	Provide funding through the Affordable Housing Development Program to encourage the development of new affordable housing in the community emphasizing new / converted: <ul style="list-style-type: none"> • Elderly and Disabled housing • Special needs housing • Housing in lower income neighborhoods (Strategy #2) • Housing for very low and extremely low-income renters 	20 units
Promote homeownership.	Provide capacity building and funding to Community Development Housing Development Organizations (CHDOs) to undertake activities to meet priority affordable housing needs.	10 units
	Complete Phase II & III of the Kings Green Affordable Housing Project.	14 units Complete Phase III of Kings Green, utilize the Affordable Housing Task Force to make recommendations regarding infrastructure development post Phase III.
	Work to address loss of mobile / manufactured housing affordable to lower income households.	Establish work groups through the Affordable Housing Task Force to study & make recommendations for housing options.
	Work with Affordable Housing Task Force to identify and address barriers to affordable housing and to encourage infill development.	
	Support activities of the Housing Authority of Billings (HAB) and other assisted housing providers to meet the needs of very low-income households.	Support implementation of HAB's 5-Year Plan.
	Provide funding for support services to address the needs of the homeless, elderly, and special needs populations.	Provide staff support for the new Mayor's Committee on Homelessness.
	Assist lower income households achieve home ownership through the City's First Time Homebuyer program in partnership with Montana Board of Housing (MBOH).	50 homebuyers & \$4 million in set aside financing.
	Support homebuyer education in partnership with Montana Homeownership Network.	150 households

	Support Billings Partners for American Indian Homeownership effort to increase homeownership rates for American Indians and other minorities in the community.	Implementation of partnership goals to increase the homeownership rate for American Indians in Billings.
	Support efforts to increase homeownership rates for Hispanic Americans and other minorities in the community.	Implementation of partnership goal to increase the homeownership rate for Hispanic Americans and other minorities in Billings.
Utilize the State of Montana's Neighborhood Stabilization Program (NSP).	Provide land banking opportunities for lots where homes have been demolished for non-profit organizations.	3 lots
Strategy #4 - Work as an active partner with non-profits, neighborhood groups, and others to address housing & community development needs.		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2009-2010 Goals</i>
Encourage housing & community and development organizations to work together to build strong community structures to better address needs and respond to opportunities.	Sponsor the Affordable Housing Task Force which brings together organizations such as the Housing Authority of Billings, Habitat for Humanity, HRDC, Big Sky EDA, homeWORD, realtors and lenders to address affordable housing issues of common concerns.	Complete work on the strategic plan and implement the plan through subcommittees.
	Sponsor the Adjacent Neighborhood Committee which brings together the City's neighborhood task forces and Downtown Billings Partnership.	Host bi-monthly meetings and provide staff support for task force initiatives.
	Support the activities of the Billings American Indian Homeownership Partnership which brings together approximately 20 organizations to increase the homeownership rate for American Indians.	Implementation of partnership goal to increase the homeownership rate for American Indians in Billings.
	Support Neighborhood Task Forces to identify and address neighborhood needs.	Complete neighborhood plans & support distribution of monthly newsletters.
Support activities and organizations promoting fair housing and increase awareness of the rights and responsibilities of protected classes.	Undertake fair housing activities in a coordinated manner with organizations with an interest in promoting fair housing.	Implement new strategies designed in response to the new 2007 Analysis of Impediments to Fair Housing Choice's FY2008-2012 Fair Housing Plan through the FY 2009-2010 Fair Housing Action Plan.
		Facilitate partnerships to ensure an application for the Fair Housing Initiatives Program (FHIP) funding through HUD is put forth in 2009 for calendar year 2010.
	Complete new Analysis of Impediments to Fair Housing Choice for the Billings community in 2007 and develop new a Fair Housing Plan for FY2008-2012.	Implement the five-year fair housing plan for 2008 to 2012, which is based on results of the Analysis of Impediments to Fair Housing Choice.

Strategy #5 - Improve the economic conditions of lower income households in the community.		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2009-2010 Goals</i>
Support efforts of community organizations to address the human service needs of lower income residents of the community in general and lower income neighborhoods in particular.	Utilize up to 15% of CDBG funding for public service activities to improve the economic conditions of lower income households.	Continue to implement performance measures to determine impact of assisted activities.
Support the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.	Provide technical assistance to lower income households interested in starting or expanding an existing business.	Provide technical assistance to 100 lower income households. Implement performance measures to determine impact of assisted activities.
	Promote Hispanic American Homeownership	Provide staff support to establish new group to increase economic opportunities and homeownership for Hispanic Americans in Billings.
Utilize the State of Montana's Neighborhood Stabilization Program (NSP).	Purchase and rehabilitate an abandoned building downtown in order to provide housing and economic opportunities for low income households.	1 building

**CD BOARD RECOMMENDATIONS
HOUSING & NEIGHBORHOOD ACTIVITIES
2009-2010**

CDBG/HOME GRANT HISTORY		2007-2008	2008-2009	2009-2010	Staff Recommendation		CD Board Preliminary Recommendation			
				ONE YEAR Requests	CDBG	HOME	CDBG	HOME		
Admin / Planning	HN - 1	CDBG Administration	\$168,592	\$156,950	\$175,000	\$168,821	-	\$168,821	-	
	HN - 2	HOME Administration	\$67,489	\$62,921	\$65,000	-	\$50,000	-	\$50,000	
	HN - 3	Professional Services	\$0	\$0	\$25,000	\$0	-	\$0	-	
Affordable Housing Activities	HN - 4	Housing Rehabilitation Loan Program	\$287,207	\$300,000	\$300,000	\$262,633	-	\$300,000	-	
	HN - 5	HOME/CDBG Affordable Housing Support	\$300,000	\$200,000	\$300,000	\$100,000	\$150,000	\$150,000	\$150,000	
	HN - 6	First Time Home Buyer Program	\$341,329	\$283,690	\$450,000	\$100,000	\$325,980	\$120,633	\$325,980	
	HN - 7	Set-Aside for CHDOs - min. must be 15% of HOME	\$75,126	\$72,594	\$75,000	-	\$81,000	-	\$81,000	
	HN - 8	Neighborhood Stabilization Program	\$0	\$0	\$50,000	\$50,000	-	\$50,000	-	
	HN - 9	Living Independently for Today & Tomorrow	\$12,500	\$12,500	\$30,000	\$12,500	-	\$12,500	-	
	HN - 10	Rebuilding Together	\$10,000	\$10,000	\$10,000	\$10,000	-	\$10,000	-	
	HN - 11	Paint Program - Revised for FY09-10	\$0	\$0	\$10,000	\$10,000	-	\$10,000	-	
	Neighborhood Activities	HN - 12	Property Management - Including NSP Properties	\$8,000	\$5,000	\$20,000	\$15,000	-	\$15,000	-
		HN - 13	Special Assessment Grants	\$47,500	\$44,796	\$50,000	\$25,000	-	\$25,000	-
HN - 14		Washington Street Infrastructure - Water Line	\$0	\$0	\$108,000	\$108,000	-	\$0	-	
Total Funded (includes projects not listed):		\$1,470,243	\$1,148,451	\$1,668,000	\$861,954	\$606,980	\$861,954	\$606,980		
Total Available:					\$861,954	\$606,980	\$861,954	\$606,980		

**CD BOARD RECOMMENDATIONS
PUBLIC SERVICE ACTIVITIES
2009-2010**

<i>CDBG GRANT HISTORY</i>		2007-2008	2008-2009	THREE YEAR Requests	CD Board Preliminary Recommendation	
PUBLIC SERVICES	PS - 1	Boys & Girls Club - Gang Prevention Project	\$3,300	\$0	\$30,000	\$0
	PS - 2	Community Housing Resource Board	\$6,600	\$5,000	\$15,000	\$0
	PS - 3	Crisis Center - Seeds of Success	\$0	\$0	\$22,477	\$0
	PS - 4	Forever Families	\$8,250	\$0	\$30,000	\$22,634
	PS - 5	Housing Montana	\$0	\$0	\$30,000	\$0
	PS - 6	HRDC - Growth Thru Art & Various Programs, FY09-10 Application is for Emergency Services	\$6,600	\$5,000	\$30,000	\$0
			\$4,125 <i>IDAs</i>	\$8,000 <i>Harmony</i>		
	PS - 7	Interfaith Hospitality Network	\$0	\$0	\$30,000	\$0
	PS - 8	Project Homeless Connect	\$0	\$0	\$30,000	\$0
	PS - 9	Scottish Rite Clinic - Pediatric Therapy	\$0	\$5,000	\$26,000	\$0
	PS - 10	Southgate Cop Shop	\$4,125	\$2,000	\$15,000	\$0
	PS - 11	Volunteers of America - Independence Hall	\$0	\$0	\$30,000	\$22,634
	PS - 12	Yellowstone Health Partnership - Med Assistance Program	\$7,425	\$7,431	\$27,000	\$27,000
	PS - 13	Young Families Early Head Start	\$7,425	\$15,000	\$30,000	\$30,000
PS - 14	YWCA Gateway House	\$6,600	\$6,600	\$20,000	\$20,000	
Total Funded (includes projects not listed):		\$136,111	\$118,081	\$365,477	\$122,268	
Total Available:					\$122,268	

Nationally, CDBG funding allocations have increased by 1% and HOME funding by 11%. Entitlement communities may not receive allocation increases. Therefore, staff and Community Development Board recommend utilizing conservative estimates for budget allocations yet to be determined by the U.S. Department of Housing and Urban Development.

	CDBG	HOME
Final Revenue 08-09 (current year)	\$701,191	\$483,959
National Increases	1%	11%
Preliminary Estimates	\$710,657	\$537,195
BUDGET BASELINES	\$700,000	\$500,000

Additional Recommendations:

CDBG funding allocated over the estimated \$700,000 budget baseline is recommended for allocation to support Administration and Professional Services costs within the limits of the 20% administration cap (maximum estimated at \$2,131).

Additional funding eligible for Public Services (maximum estimated at \$1,599) is recommended for equal division and allocation to Forever Families and Volunteers of America in compliance with the 15% maximum Public Services cap (\$799 each).

HOME funding allocated over the estimated \$500,000 budget baseline is recommended for allocation to support Administration costs as per the 10% administration cap (maximum estimated at \$3,720).

Allocation recommendations for Community Housing Development Organizations (CHDOs) have been based on the maximum estimate for HOME allocation, and must be a minimum of 15% of the new HOME allocation for the year (15% of \$537,195 is \$80,579, therefore the recommendation for CHDO budget is \$81,000).

Remaining CDBG and HOME funding is recommended for allocation to the First Time Homebuyer Program (CDBG maximum estimated at \$6,927 and HOME \$33,475), which is expected to assist an additional five homebuyers.

HOUSING & NEIGHBORHOOD ACTIVITIES
FY 2009 – 2010 APPLICATION SUMMARY

ADMINISTRATION/PLANNING

	<u>Amount</u>
1. CDBG Administration	\$ 175,000
2. HOME Administration	65,000
3. Professional Services	25,000

AFFORDABLE HOUSING ACTIVITIES

4. Housing Rehabilitation Loan Program	300,000
5. HOME / CDBG Affordable Housing Support	300,000
6. First Time Home Buyer Program	450,000
7. Set-Aside for CHDOs – Must be 15% of HOME funds	75,000
8. Neighborhood Stabilization Program	50,000
9. Living Independently For Today & Tomorrow – Ramp Program	30,000
10. Rebuilding Together – Home Rehabilitation	10,000

NEIGHBORHOOD PROJECTS

11. Paint Program	10,000
12. Property Management – Including NSP Properties	20,000
13. Special Assessment Grants	50,000
14. Washington Street Infrastructure – Water Line	<u>108,000</u>

Total Requested **\$1,668,000**

*HOUSING & NEIGHBORHOOD ACTIVITIES
FY 2009 – 2010 APPLICATION SUMMARY*

ADMINISTRATION / PLANNING / FAIR HOUSING ACTIVITIES		
HN - 1	<i>CDBG Administration</i>	\$175,000
	Funds are requested for general administration expenditures for CDBG Program including office space, salaries and benefits for various staff positions. CDBG also provides the resources for administration for other grant programs related to Community Development received by the City.	
HN - 2	<i>HOME Administration</i>	\$65,000
	Funds are requested for general HOME administration expenditures and salary and benefits for the HOME Program Coordinator.	
HN - 3	<i>Professional Services</i>	\$25,000
	Funds are requested for (1) the 2009 Housing Needs Analysis in the amount of \$20,000; and (2) assistance with the Mayor's Committee on Homelessness in the amount of \$5,000.	
AFFORDABLE HOUSING ACTIVITIES		
HN - 4	<i>Housing Rehabilitation Loan Program</i>	\$300,000
	Funds are requested to rehabilitate up to 15 homes throughout the City of Billings. The program is intended to provide affordable financing to low / moderate income applicants to provide substantial improvements that help preserve the City's affordable housing stock and revitalize older neighborhoods. Funds will be used to partially fund the CD Grants Coordinator position.	
HN - 5	<i>HOME / CDBG Affordable Housing Support Program</i>	\$300,000
	Funds are requested to encourage the development of affordable housing for lower-income households in the City of Billings. Applicants for this program can be for-profit developers or non-profit agencies.	
HN - 6	<i>First Time Home Buyer Program</i>	\$450,000
	Funds are requested to assist low-income families in the purchase of their first home. The program is designed to provide financial assistance to help qualify for traditional housing financial programs to purchase a home. Funds will be used to provide down payment assistance, closing costs, and minor repairs and for related project administration expense.	
HN - 7	<i>HOME Set-Aside Community Development Organizations (CHDO)</i>	\$75,000
	As a recipient of HOME funds, the City of Billings must provide at least 15% of its funding for CHDO activities. CHDO funds will be made available by the City of Billings through an application and approval process. This funding is requested for CHDOs to develop affordable housing in the community.	
HN - 8	<i>Neighborhood Stabilization Program</i>	\$50,000
	Funds are requested to provide up-front funding for project costs in appraisals, engineering, inspection, and consulting services to determine feasibility of specific properties for purchase through this foreclosure intervention program.	
HN - 9	<i>Living Independently for Today and Tomorrow (LIFTT)</i>	\$30,000
	Funds are requested to construct or provide maintenance work on ramps for low-income persons with disabilities to access their homes.	
HN - 10	<i>Rebuilding Together – Home Rehabilitation</i>	\$10,000
	Funds are requested for building materials and construction costs to assist up to five low-income households. Volunteers paint, clean, weatherize, and perform carpentry work.	

	Plumbing, roofing, and electrical work is completed by certified and licensed professionals.	
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HN - 11	Exterior Paint Program	\$10,000
	Funds will be used to assist up to 5 low-income homeowners with exterior painting projects to their owner-occupied stick built or mobile / manufactured homes. The program targets those households at or below 60% of the area median income. The maximum assistance for supplies and labor for each project is \$2,000 and will incorporate the use of lead-safe work methods if needed.	

NEIGHBORHOOD PROJECTS

HN - 12	Property Management	\$20,000
	Funds are requested to pay existing SIDs and maintain weeds and snow on property previously acquired through the CDBG program. These properties are primarily located along South 27 th Street which were purchased specifically for re-development. This program will also be utilized for property management expenses incurred in the Neighborhood Stabilization Program.	
HN - 13	Special Assessment Grants	\$50,000
	Funds are requested to provide grant funds to lower-income households impacted by Special Improvement District assessments for public improvements such as curb, gutter, and sidewalk projects in lower income areas.	
HN - 14	Washington Street Infrastructure	\$108,000
	Funds are requested for infrastructure construction costs to extend 12" water main on Washington 810 feet to the south property line of Lot 7, Willis Subdivision. This water main extension will support a proposed 18-unit affordable housing project to be located at 307 Washington Street directed at serving tenants at or below 60% AMI. Additionally, the water main extension will support current adjacent properties along the extended line. CDBG funding will support this effort to initiate infrastructure development in a high need area and is consistent with the stated strategies of the Consolidated Plan and goals and objectives of the 2003 Growth Policy. Hope is to expand city water services to LMI areas for future development.	

*PUBLIC SERVICE ACTIVITIES
FY 2009 – 2010 APPLICATION SUMMARY*

Amount

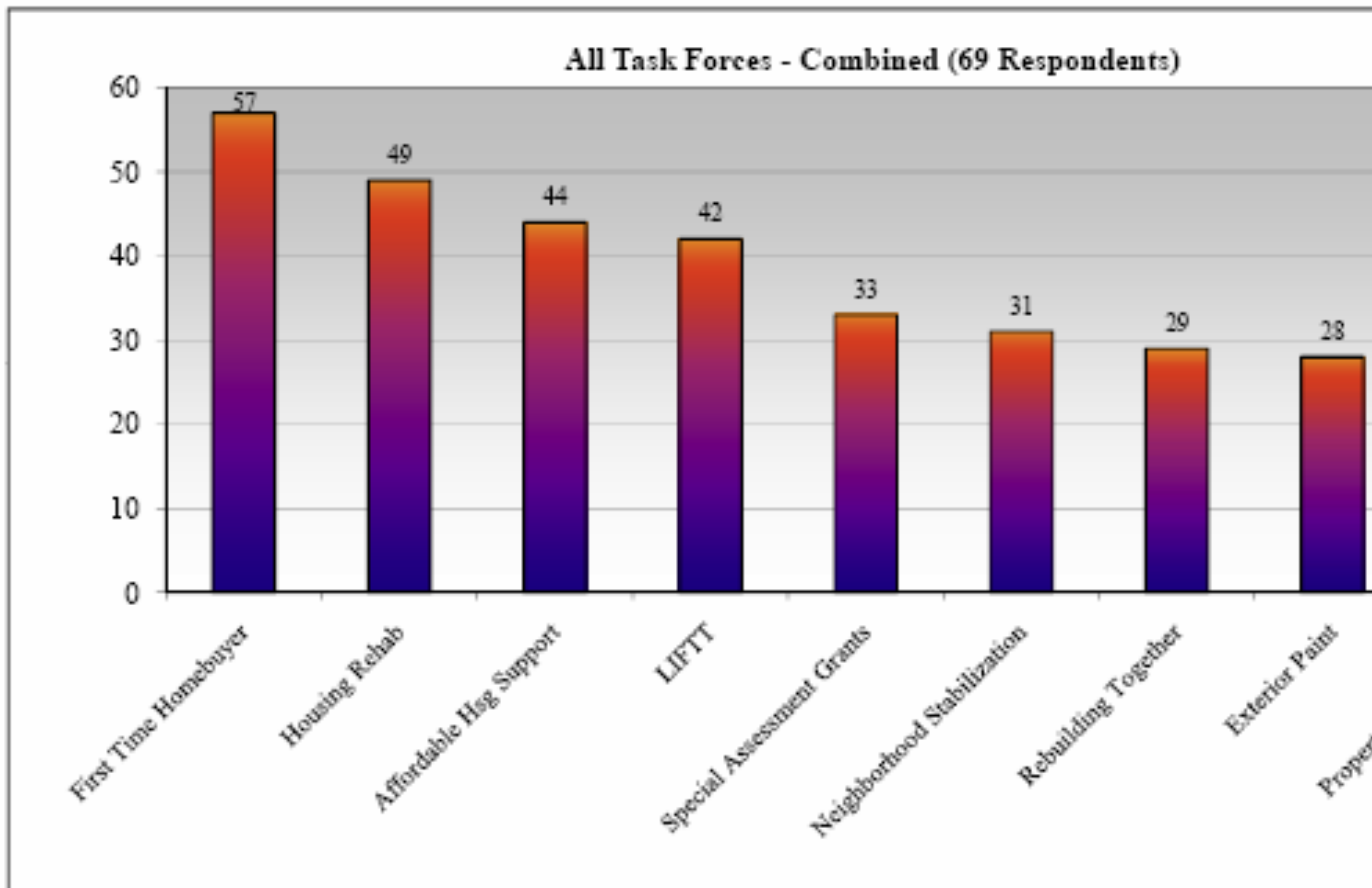
1. Boys & Girls Club – Gang Prevention & Graffiti Removal Pilot	\$ 30,000
2. Community Crises Center – Seeds for Success	\$ 22,477
3. Community Housing Resource Board – Fair Housing Outreach	\$ 15,000
4. Forever Families – Resource Center	\$ 30,000
5. Housing Montana – HomeOwnership Center	\$ 30,000
6. HRDC – Emergency Assistance	\$ 30,000
7. Interfaith Hospitality Network – Partners’ Home	\$ 30,000
8. Mayor’s Committee on Homelessness – Project Homeless Connect	\$ 30,000
9. Scottish Rite Clinic – Pediatric Therapy Program	\$ 26,000
10. Southgate Cop Shop – Facilities Rent, Utilities, Maintenance	\$ 15,000
11. Volunteers of America – Independence Hall Enrichment	\$ 30,000
12. Yellowstone Health Partnership – Medication Assistance Program	\$ 27,000
13. Young Families Early Head Start – Personal Financial Classes	\$ 30,000
14. YWCA - Gateway House	\$ <u>20,000</u>
Total Requested	<u>\$365,477</u>

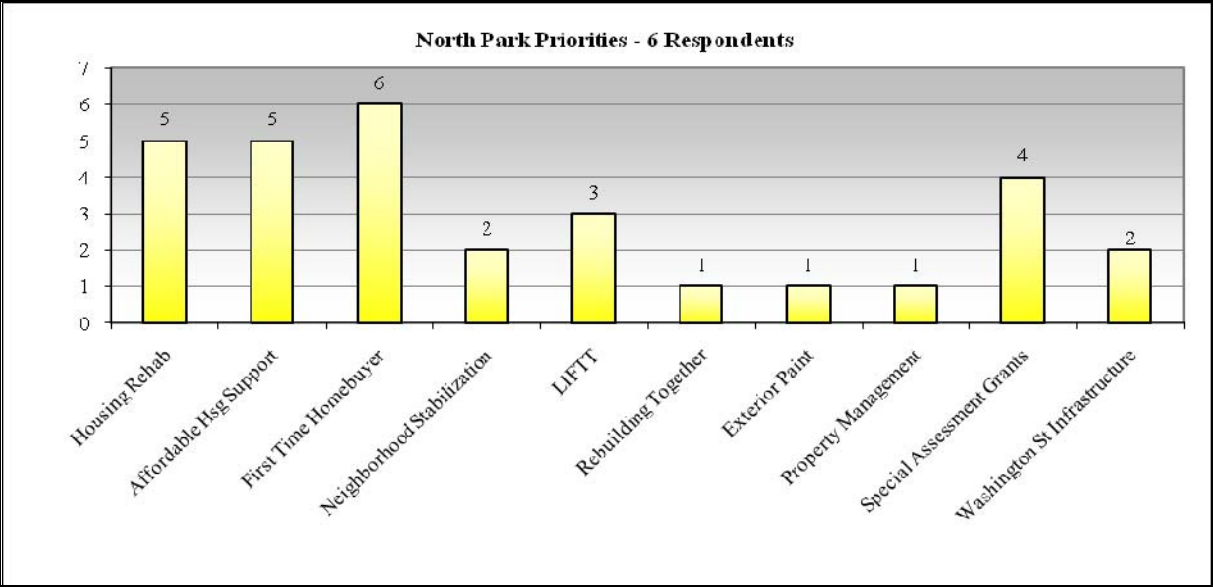
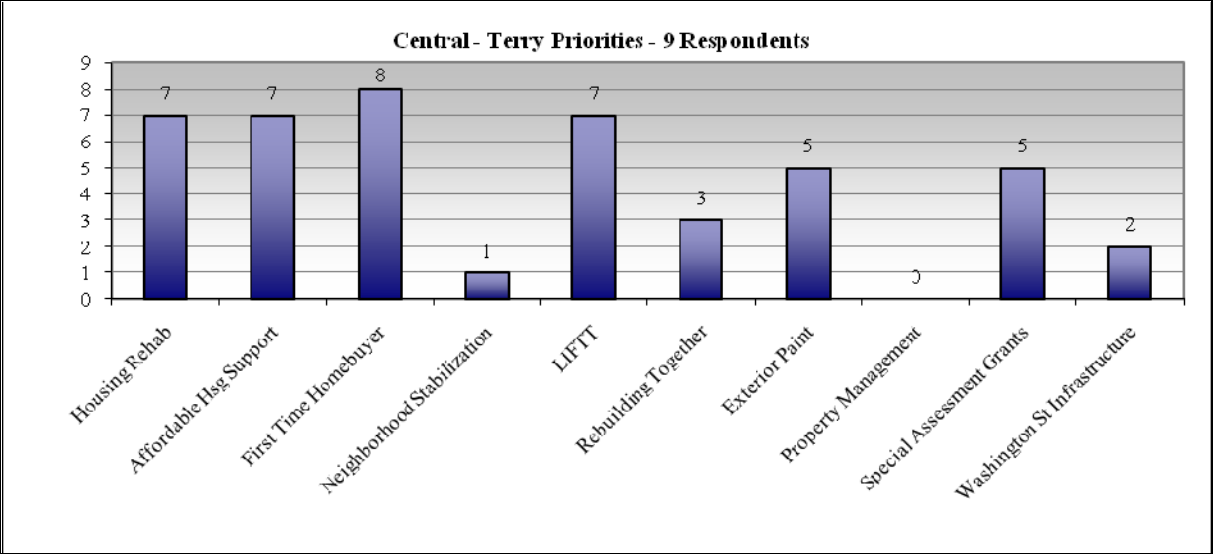
*PUBLIC SERVICE ACTIVITIES
FY 2009 – 2010 APPLICATION SUMMARY*

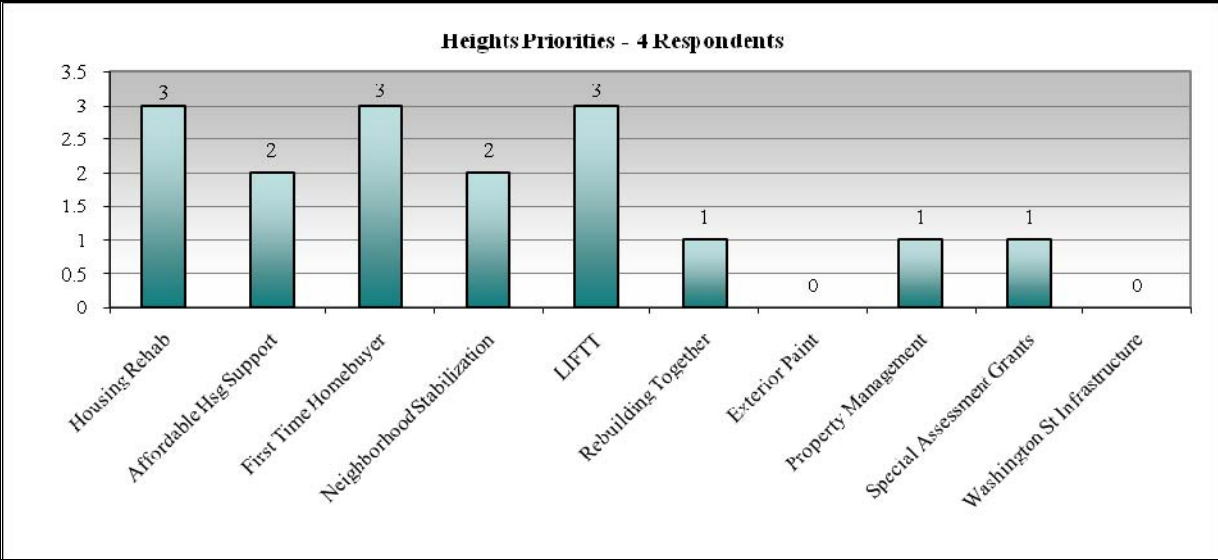
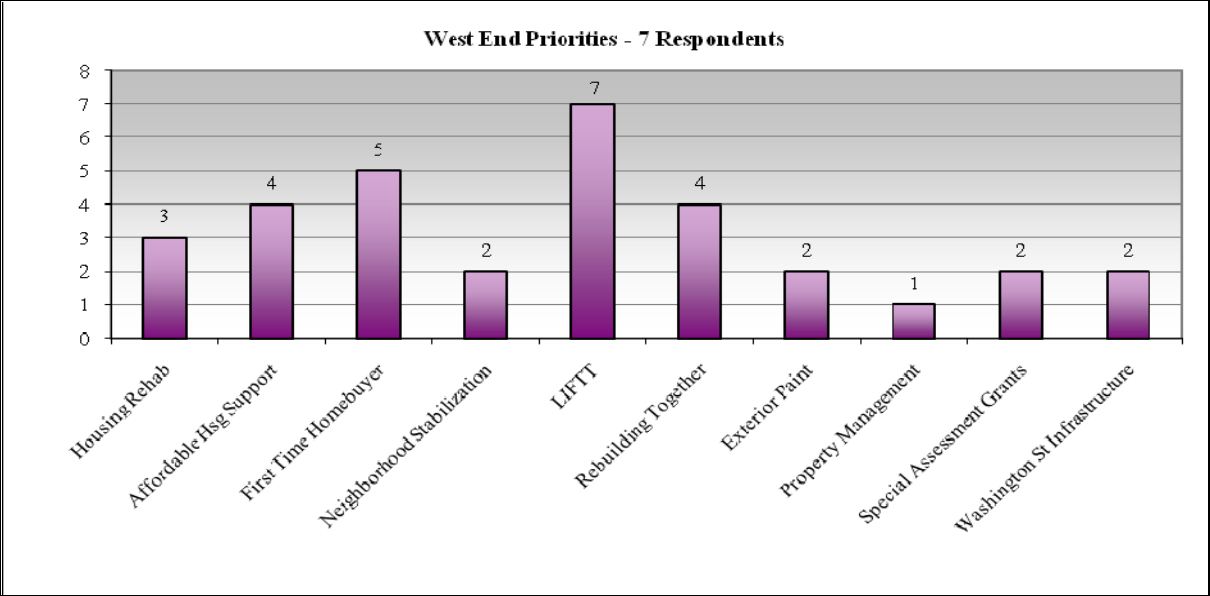
	<i>Boys & Girls Club – Gang Prevention & Graffiti Removal Pilot</i>	
PS - 1	Funds are requested to support the Gang Prevention programming at the Bair Family Clubhouse and to conduct 10 graffiti removal projects during the Summer Programs each of the next three summers.	\$30,000
	<i>Community Housing Resource Board</i>	
PS - 2	Funds are requested to support a contractor position and supplies to provide direct services to consumers in the form of workshops and distribution of fair housing materials. This includes public service announcements and news articles and on data collection activities designed to create a community-wide picture of fair housing issues in the community.	\$15,000
	<i>Community Crisis Center – Seeds for Success</i>	
PS - 3	Funds are requested to purchase 8 new computers, software, HIPAA approved screen covers and to purchase a newer used passenger van, insurance & license plates for the year, as well as filing cabinets to store our confidential data. The Community Crisis Center is an overnight shelter for the homeless.	\$22,477
	<i>Forever Families Resource Center</i>	
PS - 4	Funds are requested to cover operating expenses such as rent, utilities, insurance, and maintenance. Funds will also be used to expand projects and services provided in the past and to promote new activities for this foster family resource center.	\$30,000
	<i>Housing Montana – Home Ownership Center</i>	
PS - 5	Funds are requested to purchase equipment including tables, chairs, electronic equipment for visual learning, consumable supplies including purchased preprinted materials, handouts, training tools for participants, support continuing education requirements for instructors, financial services for reporting requirements, printing and postage for mailings and outreach materials, as well as salary support for educators and counseling services.	\$30,000
	<i>HRDC – Emergency Assistance</i>	
PS - 6	Funds are requested to cover direct service which can include rental assistance, damage deposit, mortgage payment, and food vouchers, averaging \$400-\$450 per household.	\$30,000
	<i>Interfaith Hospitality Network</i>	
PS - 7	Funds are requested to cover case management, travel & training, child care for parents attending classes, subsidy/emergency costs, computer equipment, and postage	\$30,000
	<i>Project Homeless Connect</i>	
PS - 8	Funds are requested for one consultant position and administrative costs for one year to facilitate capacity-building for this one-day homeless service event. After the first year, the position will be self-sustaining through grant writing and fundraising.	\$30,000
PS - 9	<i>Scottish Rite Clinic – Pediatric Therapy Program</i>	

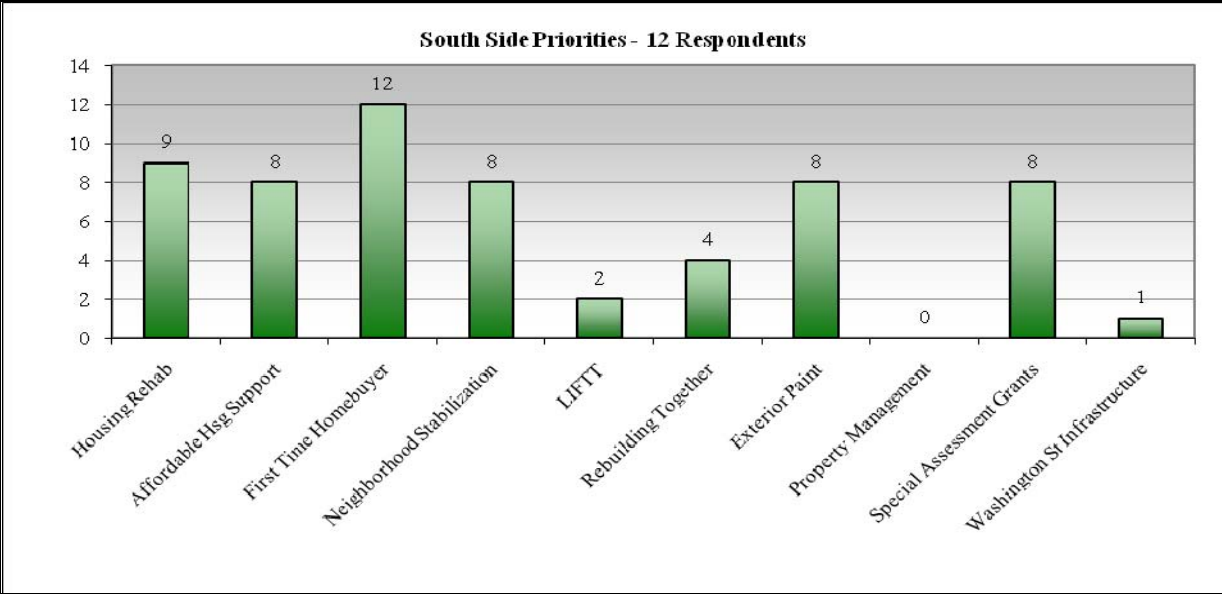
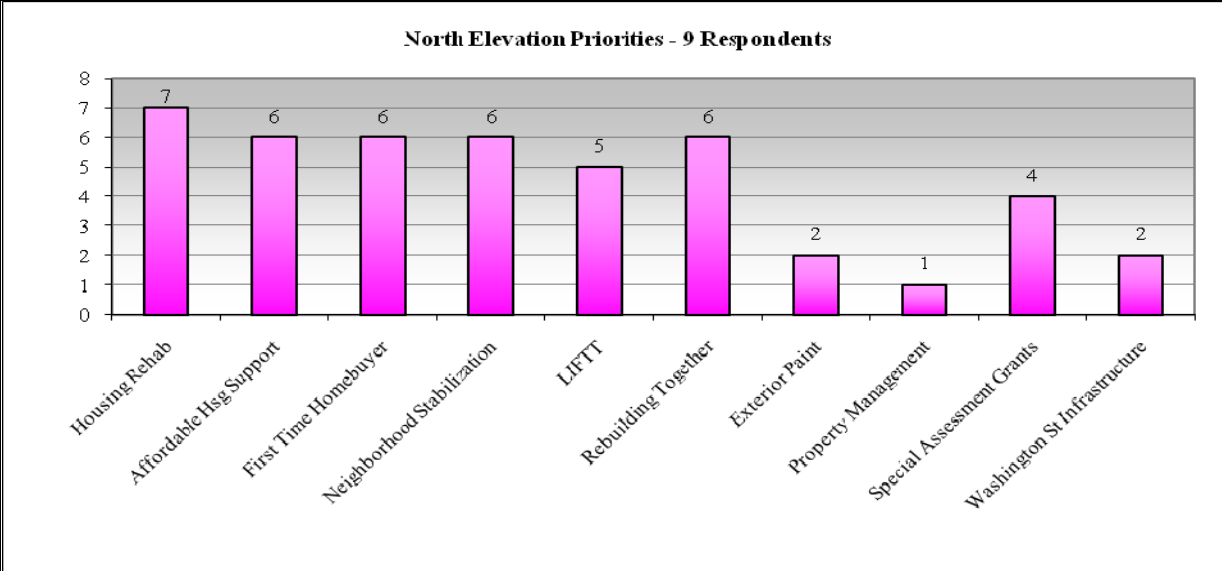
	Funds are requested to pay for therapeutic intervention expenses, operating, and therapeutic equipment expenses needed to provide evaluation and therapy services to children with disabilities.	\$26,000
PS - 10	<i>Southgate Cop Shop</i>	
	Funding is requested to assist with rent, utilities and insurance for this neighborhood cop shop.	\$15,000
PS - 11	<i>Volunteers of America – Independence Hall</i>	
	Funding is requested to purchase furniture, fixtures and equipment for the Independence Hall transitional living facility at 700 Lake Elmo Road, Billings, Montana.	\$30,000
PS - 12	<i>Yellowstone Health Partnership - Medication Assistance Program</i>	
	Funds are requested for salaries of staff for the Medication Assistance Program (MAP) over a three year period at the Deering Clinic site.	\$27,000
PS - 13	<i>Young Families Early Head Start</i>	
	Funding is requested to provide furniture/equipment/supplies for three additional classrooms; family case management services for 12-24 additional children; and for new personal financial planning classes for all parents in the program.	\$30,000
PS-14	<i>YWCA - Gateway House Domestic Violence & Sexual Assault Services</i>	
	Funding is requested to support general operating expenses of the program, which includes utilities, phones, taxes, supplies, security, building repairs, and accountant contracted services. Gateway services include housing, support, education, and advocacy for victims of domestic violence and sexual assault.	\$20,000

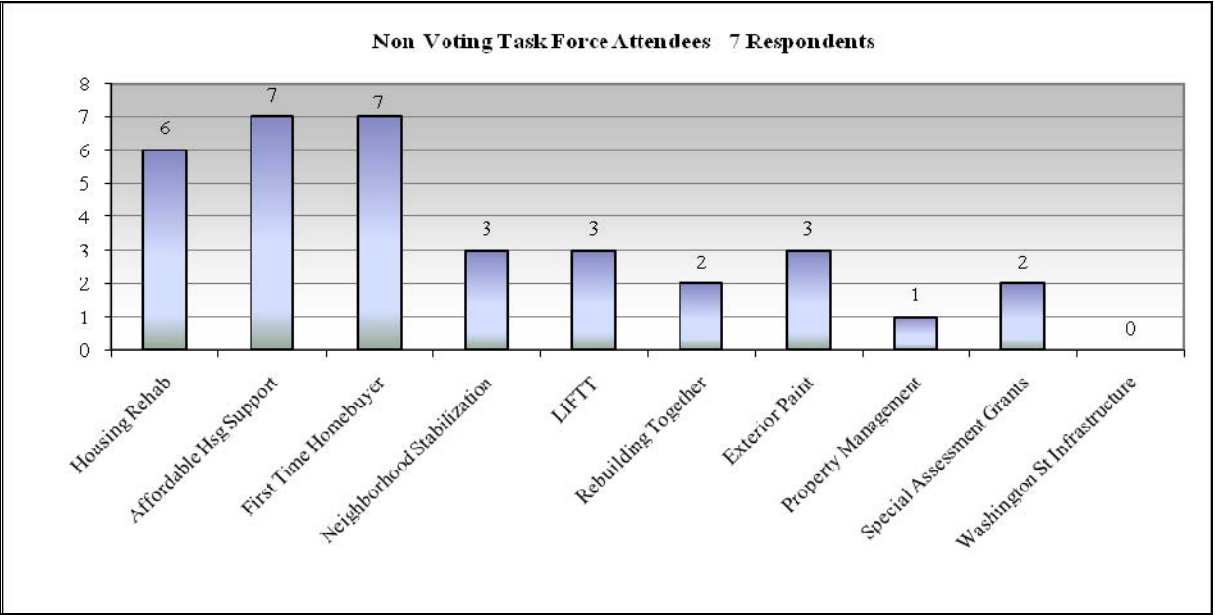
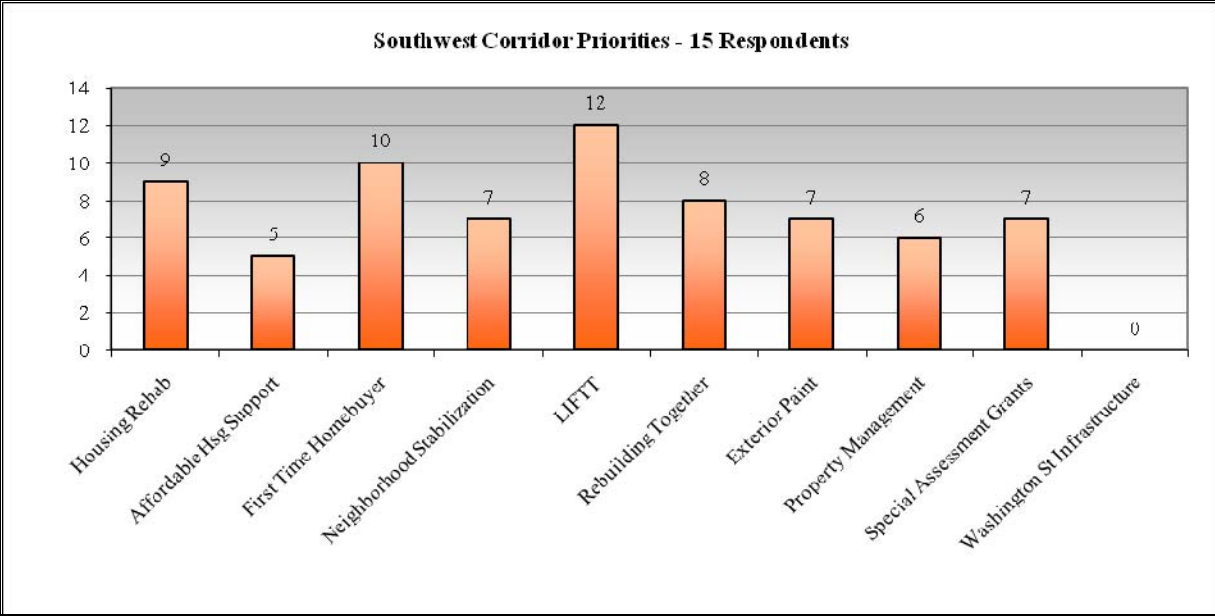
CDBG / HOME FY 2009-2010













CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Public Hearing and Resolution for Annexation #09-02
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: Owner and petitioner, MCS Properties, LLC, is requesting annexation of a property legally described as Lot 26, Block 19, Lillis Heights Subdivision into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located at 4739 Rimrock Road, on the northwest corner of Rimrock Road and Rim Point Drive. The petitioner is requesting annexation in order to obtain city sewer services for the existing residence on the property. The subject property currently receives city water services, but the existing individual septic system has failed and requires on-going pumping. The Council acknowledged receipt of the petition at its April 13, 2009, meeting. The Council will hold a public hearing and take action on the annexation request at this meeting.

ALTERNATIVES ANALYZED: The City Council may approve or deny a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT: The City can provide municipal services to the subject property. If the proposed annexation is approved, the property will contribute tax revenue to the City.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing Lot 26, Block 19, Lillis Heights Subdivision, subject to the following condition of approval:

- Prior to extension of sewer services to the property, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements, and a Waiver of Right to Protest the Creation of SIDs shall be recorded.

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

ATTACHMENT
A. Resolution

INTRODUCTION

Owner and petitioner, MCS Properties, LLC, is requesting annexation of a property legally described as Lot 26, Block 19, Lillis Heights Subdivision into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located at 4739 Rimrock Road, on the northwest corner of Rimrock Road and Rim Point Drive. The petitioner is requesting annexation in order to obtain city sewer services for the existing residence on the property. The subject property currently receives city water services, but the existing individual septic system has failed and requires on-going pumping.

PROCEDURAL HISTORY

- On March 5, 2009, the annexation petition was submitted to the Planning Division.
- On April 13, 2009, the City Council acknowledged receipt of the annexation petition and set a public hearing date for April 27, 2009.
- On April 27, 2009, the City Council will conduct the public hearing for the annexation and may take action on the request.
- On May 11, 2009, if the resolution to annex is approved by the City Council, a public hearing and first reading of an ordinance to expand the Ward IV City Council boundary will be conducted.
- On May 26, 2009, the City Council will conduct the second and final reading for the ordinance expanding the ward boundary.

BACKGROUND

The 0.25-acre subject property is located on the north side of Rimrock Road, at its intersection with Rim Point Drive, just south of LDS temple. The annexation resolution also takes in all adjacent Rimrock Road and Rim Point Drive right-of-way. It is surrounded by properties within the City limits to the north and east, and is within the red boundary of the limits of annexation as specified by the Annexation Map adopted by the City Council on March 10, 2008.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns regarding how annexing additional properties may affect the City's ability to provide services to new developments without diminishing the services provided to existing City residents. To address these concerns, the City Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements will be required to meet City standards.
4. As part of the Development Agreement, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.

5. The proposed land use may conform to the goals of the City of Billings and Yellowstone County Growth Policy.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City and County Departments were given the opportunity to comment on this annexation. All City departments responded favorably. Of the County Departments that were informed, only the County Public Works Department responded, indicating that there are no issues with this annexation request.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

- **Water:** The City currently provides water services to the subject property from an existing main in Rimrock Road.
- **Sewer:** The Public Works—Distribution and Collection Division has been working with the landowner regarding sanitary sewer service. The owner will be allowed to install a temporary service line from the existing home to the manhole on Rim Point Drive until a main line is installed in the Rimrock Road frontage in the future. The owner will, as a condition of approval, sign a waiver of right to protest a future Special Improvement District if one is formed for sanitary sewer for the remaining homes on the north side of Rimrock Road, between Rim Point Drive and Clear View Drive.
- **Stormwater:** All storm water improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Public Works Department. City Engineering staff does not see any issues with the annexation.
- **Transportation:** The subject property has frontage on Rimrock Road, which is a principal arterial street, and on Rim Point Drive, which is a local street. The lot has an established residence on it, with an existing access off of Rim Point Drive. No issues have been identified by City Engineering or Street and Traffic staffs.
- **Fire Stations:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is Station #7 located at 54th St. W. and Grand Ave., which is approximately 1.5 miles from the subject property.

- **Parks:** Parkland dedication requirements were met when the plat was originally platted in 1957. Rim Point Park is a 7.3-acre park area just east of the subject property.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. Rimrock Road is identified as a primary bikeway within the Plan and a new multi-use path is in the process of being constructed along this section of Rimrock between Shiloh Road and 54th St. West.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property.

- **Transit:** MET transit system operators have no objections with the annexation request. The nearest bus route stops at Rimrock and Shiloh Rd, approximately one mile east of the property.
- **Fire:** The Fire Department currently provides fire protection to the County parcel as it is within the BUFSA. Upon annexation it is not anticipated that the required services would be increased, since the property is already developed. The Department indicates that they are capable of serving this property in the future.
- **Police:** The Police Department states that the subject property is located in an established patrol area, however, continued annexation and development will adversely affect the department's ability to provide service without additional resources.
- **Public Utilities:** The Public Works-- Distribution and Collection Division had no objection with the annexation request as long as the owner agrees to fund the necessary sewer connection costs, and sign a waiver of protest for a future SID.
- **Public Works -Street and Traffic Division:** The Street and Traffic Division expressed concerns over the ability to adequately service this property due to budget reductions.
- **Public Works-Solid Waste:** The Solid Waste Division notes that it can serve the property when developed but noted that because there currently is a private trash collection service to the one existing residential property they would be required to wait to serve the property for five years.

- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as the Legal and Finance Departments should not be negatively impacted by this annexation, however, no comments were received from them by the time this report was prepared.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on April 10, 2009, and published in the Billings Times on April 9, 2009. The Planning Division has received no public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Annexation of this property would adhere to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2008 Growth Policy*:

- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 8).
- More housing and business choices within each neighborhood (Land Use Goal, page 9).
- Improved public services and facilities (Economic Development Goal, page 10).
- Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land (Natural Resources Goal, page 13).
- Protect public lives and property (Public Facilities and Services Goal, page 18).
- Sanitary and safe properties (Public Facilities and Services Goal, page 18).

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing Lot 26, Block 19, Lillis Heights Subdivision, subject to the following condition of approval:

- Prior to extension of sewer services to the property, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements, and a Waiver of Right to Protest the Creation of SIDs shall be recorded.

ATTACHMENT
A. Resolution

RESOLUTION NO. 09-

A RESOLUTION OF THE CITY OF
BILLINGS APPROVING PETITIONS FOR
ANNEXATION AND ANNEXING
TERRITORY TO THE CITY.

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

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

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

Tracts of land situated in the SE1/4 of Section 29, T.1N., R.25E., P.M.M., and the NE1/4 of Section 32, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Lot 26, Block 19, Lillis Heights Subdivision, Recorded February 19, 1957, under Document No. 578193, Records of Yellowstone County; including all adjacent right-of-way of Rim Point Drive and Rimrock Road.

Containing 0.740 gross acres and 0.255 net acres.

(# 09-02) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved, subject to the following condition:

- Prior to extension of sewer services to the property, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements, and a Waiver of Right to Protest the Creation of SIDs shall be recorded.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 27th day of April, 2009.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

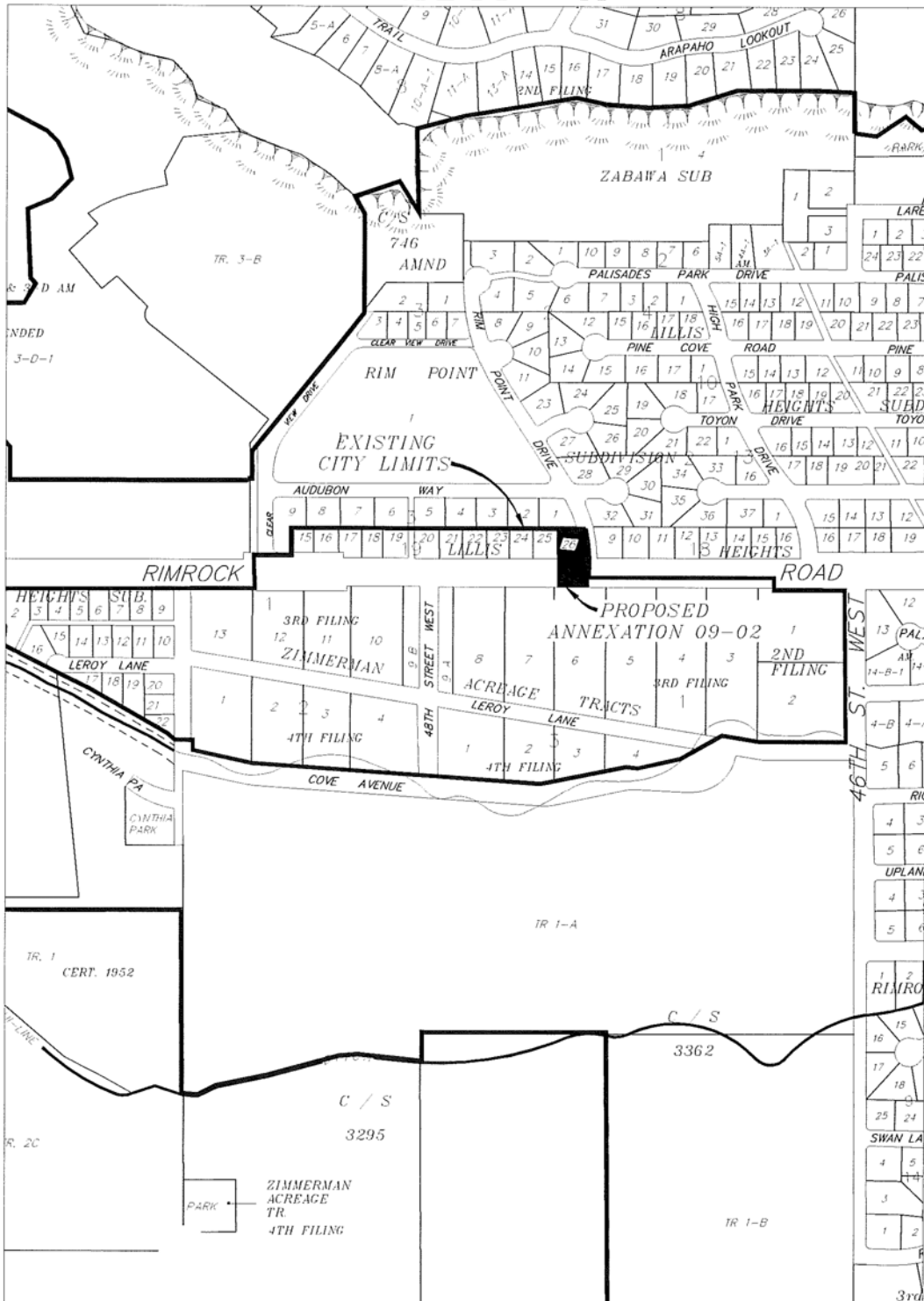
ATTEST:

BY: _____

CITY CLERK

(AN# 09-02)

EXHIBIT "A"





CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 27, 2009

TITLE: Development (Reimbursement) Agreement with First Interstate Bank
 DEPARTMENT: Administration
 PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: First Interstate Bank (FIB) is constructing a new operations center on 6th Avenue North at N. 19th Street. The bank is requesting that it be reimbursed for a portion of the costs of site preparation and installing certain site improvements that support the project and that may have a public benefit. The improvements include demolition, environmental remediation, utility relocations and extensions, landscaping, parking and other site improvements that total \$3.92 million. The source for the reimbursement would be tax increment from the East Billings Urban Renewal Area.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the agreement
- Modify the funding and/or schedule and approve the agreement
- Reject the agreement

FINANCIAL IMPACT: The new building is expected to cost at least \$13 million to construct. By FY 2011, the property may produce \$150,000 - \$200,000/year in tax increment. The agreement would reimburse FIB up to 45% of that amount, or up to 45% of the district tax increment, whichever is less and no more than \$1.1 million would be paid during the agreement's term. The payments would continue until the earlier of the district sunset date or until the bank is fully reimbursed. The remainder of the increment could be used for district management and projects.

RECOMMENDATION

Staff recommends that the City Council approve the Development (Reimbursement) Agreement with First Interstate Bank to reimburse it for a portion of the public improvements cost at its new operations center on 6th Avenue North and North 19th Street.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Development Agreement

INTRODUCTION

First Interstate Bank (FIB) is constructing a new operations center on 6th Avenue North at N. 19th Street. The bank is requesting that it be reimbursed for a portion of the costs of site preparation and installing certain site improvements that support the project and that may have a public benefit. The improvements include demolition, environmental remediation, utility relocations and extensions, landscaping, parking and other site improvements that total \$1.35 million.

BACKGROUND

The Billings City Council adopted an urban renewal plan and created the East Billings Urban Renewal Area (EBURA) in November, 2006. The Council authorized tax increment financing as a way to pay for a portion of the infrastructure and redevelopment needs in the area. The improvements that were identified in the plan include water, sewer, pedestrian and vehicle transportation improvements and especially storm drainage. Once those basic infrastructure needs are met, the plan described a need for mixed use developments and housing. Under a grant secured by the Big Sky Economic Development Authority, there is on-going planning for future private development and public improvements.

The tax increment district (TID) base taxable value was initially reported to be \$1.8 million but it was later adjusted downward to \$1.5 million. The taxable value has continued to decline since the TID's creation, dropping approximately \$250,000 from tax year 2007 to tax year 2008. In addition, demolition on the subject property removed an additional \$13,000 from the district base value. A negative increment means that all taxing jurisdictions are receiving fewer tax dollars from this area in FY 2009 than they received in FY 2008, assuming that the jurisdictions levied the same number of mills both years. In order for the district to produce a positive increment, it must regain the lost taxable value and exceed the original base value. Levies applied to taxable value that is above the base value produce the tax increment that the city receives. The funds may be used for public purposes and improvements within that district.

The FIB agreement would reimburse the bank for up to \$1.1 million. The site improvements that are eligible for reimbursement include site clearance, environmental remediation, the parking lot, landscaping, utility relocations and extensions and other improvements on the building's exterior. The agreement would allow public use of the parking area during non-business hours. The reimbursement payments would be made semi-annually until the district sunsets, which could be as soon as 12 years, or until the bank is fully reimbursed, which ever occurs first.

RECOMMENDATION

Staff recommends that the City Council approve the Development (Reimbursement) Agreement with First Interstate Bank to reimburse it for a portion of the public improvements cost at its new operations center on 6th Avenue North and North 19th Street.

ATTACHMENTS

A: Development Agreement

ATTACHMENT A

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) dated as of ____, day of _____, 2009, is made by and between **First Interstate Bank of Billings, N.A.**, address is 401 N. 31st, Billings, MT 59101 (the “Bank”) and the **CITY OF BILLINGS**, a municipality of the State of Montana whose address is 210 North 27th Street Billings, Montana 59103 (the “City”) (Bank and City are collectively the “Parties”).

WITNESSETH:

WHEREAS, The City has pursuant to Ordinance No. 06-5395 (the “Ordinance”) created the East Billings Urban Renewal District which contains a tax increment provision (the “District”) and

WHEREAS, Bank plans to develop property in the District as an Operations Center upon that property described upon Exhibit “A” (the “Property”) and has provided the District a proposed schedule of development of the Operations Center (the “Project”); and

WHEREAS, the City requires the specification of the rights, duties, obligations and responsibilities in connection with the construction of certain public improvements, consisting of the parking lot, landscaping, lighting, security system exterior to the building, including the all engineering services , architectural service, labor material costs, and other costs associated with the construction and installation thereof, as more particularly set forth in Exhibit “B”, attached hereto and made a part hereof (the “Public Improvements”); and

WHEREAS, it is the intention and desire of the Parties that a portion of the tax increment revenue generated from the Project (the “Project Tax Increment Revenue” as more specifically defined in Section 4) will be used to pay for the costs of the Public Improvements; and

WHEREAS, given the complexities of tax increment bonds and the present lack of tax increment revenues, it is not possible to sell tax increment bonds at this time to pay the costs of the Public Improvements; and

WHEREAS, it is necessary and desirable for the Project that the Bank proceed with construction of the Public Improvements paying for them with private funds; and

WHEREAS, the City has determined pursuant to the Ordinance that the Project and Public Improvements to be constructed therewith are Urban Renewal Projects within the Montana Urban Renewal Law and that such improvements are eligible for tax increment financing; and

WHEREAS, the City has determined that it is appropriate to provide some reimbursement to Bank for the costs of the Public Improvements on a periodic basis; and

WHEREAS, City and Bank wish to enter into an agreement to establish the terms and conditions and methodology by which City will reimburse Bank from Project Tax Increment Revenue.

NOW THEREFORE, for good and valuable consideration, City and Bank agree, covenant and represent as follows:

Section 1. Development of the Project.

- 1.01. The Bank has prepared an application for tax increment financing or funding of the Project dated as of _____, 2009, attached as Exhibit D (“Application”) which includes schematic, site, landscaping and construction plans for the Project and a Project schedule. The Bank will complete the construction of the Project, which consists of a _____ sq. ft. office building, parking lots and incidental improvements as expeditiously as possible. The Bank will complete construction of the Project substantially in conformance with the Application. The Project will be substantially completed no later than _____, 2009.
- 1.02. The Bank shall obtain the approval of the City for all construction on or adjacent to the Project. The Bank shall construct all On-Site Improvements in accordance with City ordinances and other applicable local, state and federal regulations. The proposed development plan shall be in conformance with the current zoning of the Property. All improvements and construction on and adjacent to the Project, including, but not limited to off-site development, building construction, landscaping, and lighting shall be performed in accordance with all local, state, and federal regulations, and as approved by the City. The Bank acknowledges that the Project is subject to applicable utility fees in place at the time a building permit is secured or applied for as to the construction and/or the extension of services to the Project or any portion thereof. Fees shall be due from Bank, at the time of request for service extensions.

Section 2. Construction and Maintenance of the Public Improvements. The Bank will construct the Public Improvements as a part of the construction of the overall Project and shall substantially complete them in conformance with the plans in the Application before occupancy of the Project. The Public Improvements will be maintained by the Bank in a reasonable manner and at no cost to the City. The parking lot that is part of the Public Improvements shall be available for use, at no charge, to the public where the use does not

conflict with the use of the parking lot for those occupying or visiting the Operations Center building. The number of parking spaces adjacent to open areas and incidental improvements that are part of the Public Improvements may be decreased to accommodate the construction of additional office space or commercial space provided that the remaining parking is sufficient to meet the then existing zoning regulations or as otherwise permitted with the consent of the City.

In the event vandalism becomes unreasonably burdensome, all or part of the parking may be removed from public use. The Bank may also provide for reasonable regulation as to the use of the parking area. Bank shall provide City with 30 days advance written notice of any intended removal of all or part of the parking area from public use or the reasonable regulation of such use. In the event Bank removes all or part of the parking area from public use, the Maximum Reimbursement Payment (defined in Section 4.03 below) to the Bank shall be proportionately reduced from and after the reduction of parking spaces available to the public in proportion to the number of restricted parking spaces over the total number of parking spaces previously available to the public. When 20 years has passed since the issuance of an occupancy permit for the Project, the requirement for public use of the parking area shall cease, regardless of whether or not the Bank has been fully reimbursed or not. In addition to the parking space availability to the public, the Bank agrees to permit the public to use its conference room without charge during normal operating hours, when such use does not interfere with the Bank's use thereof. It is understood that the commitment for public use of the conference room is a voluntary act and may be terminated without notice at any time at the Bank's discretion. It is understood that the Bank is not entitled to any reimbursement with respect to the conference space being made available to public use.

Section 3. Assessments and Taxes. The Bank acknowledges and understands that the Project will be assessed for real property taxes and at some time in the future may be assessed with respect to special improvement districts. In this regard, Bank agrees to waive the right to protest the creation of any special improvement district(s) and pay when due all taxes and special improvement district assessments.

Section 4. Reimbursements. The Parties intend that a portion of the Project Tax Increment Revenue be used to reimburse the Bank for costs of the Public Improvements. Subject to the terms and conditions of this Agreement, City agrees to allocate and pay to Bank a portion of the actual Project Tax Increment Revenue by annual payments as follows:

4.01 Calculation of Annual Reimbursement Payment. The City's reimbursement payment to Bank shall be calculated annually for each tax year beginning with tax year 2009, and shall be payable according to Section 4.02, subject to the provisions of Sections 4.03 and 4.04 ("Annual Reimbursement Payment"). The Annual Reimbursement Payment shall be the lesser of: (1) 45% of the Project Tax Increment Revenue; or, (2) 45% of the District Tax Increment Revenue. The Project Tax Increment Revenue shall be calculated by subtracting the 2008 base property tax for the Property of \$11,734.69 from the property

tax for the current tax year as reflected on the Bank's property tax statement. The Project Tax Increment Revenue is intended to reflect the tax increment revenue generated by the Project and actually received by the City from Bank's payment of the related property taxes. The District Tax Increment Revenue shall be the tax increment revenue actually received by the City for the entire District for the related tax year. An example of the calculation of the Annual Reimbursement Payment is set forth on Exhibit C.

4.02 Payment of Annual Reimbursement Payment. The Annual Reimbursement Payment shall first become due for the year in which construction of the Project including the Public Improvements is substantially completed, a certificate of occupancy is issued, and taxes are actually collected for the completed Project. City shall pay Bank the Annual Reimbursement Payment without interest on or before July 1st of each year or within 10 days following Yellowstone County's transfer of the prior year's first and second half tax increment payment/distribution to the City, which ever occurs later.

4.03 Maximum Reimbursement Amount. The total Annual Reimbursement Payments from City to Bank under this Agreement shall not exceed \$1,193,154.09 ("Maximum Reimbursement Amount"). The Maximum Reimbursement Amount is calculated based on 14.2857% of the difference between the MDOR determination of the Property value before Project development and the MDOR determination of the projected Property value after Project development. The calculation is set forth in Exhibit C Subject to the terms of Section 4.04, upon payment by City of the Maximum Reimbursement Amount, City's obligation to reimburse Bank under this Agreement shall be satisfied and shall terminate.

4.04 Limitation and Termination of Reimbursement. In no event shall Bank be reimbursed for more than the actual cost of the Public Improvements as set forth in Exhibit B.

City's obligation to reimburse Bank for the Public Improvements shall terminate, without notice, upon the occurrence of any of the following events:

- a. Sunset of the District, regardless of whether the Maximum Reimbursement Amount has been paid. The Parties acknowledge that the term of the District is presently 15 years commencing on _____; however, the term may be extended by issuance of bonds for the District; or
- b. Payment of the Maximum Reimbursement Amount; or
- c. Bank's failure to make property tax payments for the Property, including any action by Bank that prevents City's regular receipt of payment, such as payment of property taxes under protest; or
- d. Sale of the Property by Bank, where the purchaser does not agree to the terms and conditions of this Agreement; or

- e. Bank's unreasonable restriction or elimination in whole or in part of any of the Public Improvements.

It is understood that the Bank shall be entitled to reimbursements in conformance herewith under c. above when the Bank makes said tax payment and such late paid tax payments or taxes paid under protest are transferred to the City.

Section 5. Obligation of the City. It is the City's intention to reimburse the Bank annually for a portion of Public Improvements costs when and to the extent that the Project Tax Increment Revenues are received.

Section 6. Entire Agreement. This Agreement supercedes all prior written or oral understandings which the parties may have had and constitutes the entire agreement between the parties.

Section 7. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Montana.

Section 8. Construction. If any provision of this Agreement is found invalid to any extent, the remainder of this Agreement shall not be affected thereby, and any provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and assigns. Provided, however, that Bank shall not be entitled to assign its interests under this Agreement, unless any successor or assignee of Bank assumes in writing all of the obligations, stipulations and agreements of Bank under this Agreement.

Section 10. Notices. Any notice, demand or request under this Agreement shall be delivered in person or sent via US Certified Mail, postage prepaid, to the Parties at the following addresses:

City of Billings
210 North 27th Street
Billings, MT 59103
Attn: Financial Services Manager

First Interstate Bank of Billings, N.A.
401 N. 31st Street
Billings, MT 59101
Attn: _____

Section 11. Indemnification and Attorney's Fees. The Bank and the City agree to indemnify, defend and hold harmless each other for any and all claims, demands, lawsuits, judgments, liabilities or damages including reasonable attorneys fees arising out of their respective negligent or intentional acts or omissions.

If it becomes necessary for any Party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement, or to give any notice required herein, then the

prevailing party shall be entitled to recover from the other reasonable attorney fees and costs.

Section 12. Amendments. Amendment or modification of this Agreement or any provisions herein shall be made in writing by the Party requesting the change and upon acceptance and execution by all Parties shall become a part of this Agreement.

Section 13. Force Majeure. For the purposes of this Agreement “Force Majeure” shall mean any act of God, fire, earth movement, flood, explosion, action of the elements, war, invasion insurrection, acts of terrorism, riot, mob violence, sabotage, inability to procure general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions (unless provoked in bad faith violation of any labor laws by the party claiming its obligation or undertaking was prevented or delayed), condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, similar to the foregoing, not within the control of such party, provided, however, Force Majeure, shall not include lack of funds or inability of obtain financing. During any time period in which an element of Force Majeure may exist, the Parties hereto are excused as to any performance substantially affected thereby.

Section 14. Parties to this Agreement. The only parties to this Agreement are the Bank and the City, and except as stated in this section nothing herein should be held to give rise to claims of third parties. This Agreement establishes a right of reimbursement based on the cost of Public Improvements paid by the Bank and the City will honor that obligation.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

CITY OF BILLINGS

By: _____
Mayor

Attest: _____
City Clerk

FIRST INTERSTATE BANK, OF BILLINGS, N.A.

By: _____
Its, _____

ACKNOWLEDGEMENT NEXT PAGE

STATE OF MONTANA)
):ss
County of Yellowstone)

 This instrument was acknowledged before me on the ____ day of _____,
2009, by _____ and _____,
respectively as Mayor and City Clerk or of the City of Billings.

SEAL

Sign: _____
Print Name: _____
Notary Public for the State of Montana
Residing at Billings, MT
My Commission expires: _____

STATE OF MONTANA)
):ss
County of Yellowstone)

 This instrument was acknowledged before me on the ____ day of _____,
2009, by _____, the _____, of
First Interstate Bank of Billings, N. A.

SEAL

Sign: _____
Print Name: _____
Notary Public for the State of Montana
Residing at Billings, MT
My Commission expires: _____

EXHIBIT A – Legal Descriptions of Project Site

Property Tax Detail		Full Cama Detail
Legal Owner:	THE MANAGEMENT GROUP INC	
Geo Code:	33-1033-33-2-03-01-0000	Tax ID: A01909 Tax Status: Active
Prop Type:	Com-Urban	
CAMA Subdivision:	BILLINGS ORIGINAL TOWNSITE	
	Block: 260	Lot: 002
County Legal:	BILLINGS ORIGINAL TOWNSITE, S33, T01 N, R26 E, BLOCK 260, Lot 002, LTS 2 THRU 23 BLK 260 BILLINGS ORIGINAL	

Show on Map **511 N 20TH ST**

Property Tax Detail		Full Cama Detail
Legal Owner:	THE MANAGEMENT GROUP INC	
Geo Code:	33-1033-33-3-43-01-0000	Tax ID: A01910 Tax Status: Active
Prop Type:	Com-Urban	
CAMA Subdivision:	BILLINGS ORIGINAL TOWNSITE	
	Block: 261	Lot: 002
County Legal:	BILLINGS ORIGINAL TOWNSITE, S33, T01 N, R26 E, BLOCK 261, Lot 002, LT 2-23 BLK 261 BILLINGS ORG TOWN	

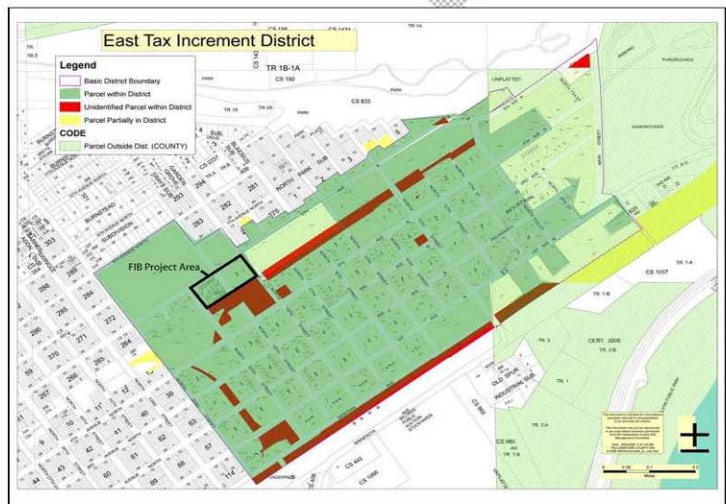


Exhibit B

PROPOSED PUBLIC BENEFIT PROJECT COSTS

<u>Land and Site Improvements (Itemized)</u>	<u>MCA Code Item</u>	<u>Exhibit B UR Plan Item</u>
1. Purchase of Site	<u>\$2,572,210.28</u>	-7-15-4288 – (1) A,B,C,
2. Demo & Abatement	<u>\$108,540.23</u>	-7-15-4288 – (2 & 12) A,C,3a,b,c,d
3. Lighting & Security	<u>\$254,867.00</u>	-7-15-4288 – (4 & 12) C, 3,7
4. Other Security Equipment	<u>\$50,627.00</u>	-7-15-4288 – (4 & 12) C, 3,7
Subtotal		<u>\$2,986,244.51</u>
<u>Construction/Rehabilitation Costs (Use general construction trade divisions)</u>		
1. Improvement of pedestrian areas – landscaping	<u>\$136,060.00</u>	-7-15-4288 – (4) A,C,3b,c,4,6
2. Improvement of off-street parking	<u>\$610,866.00</u>	-7-15-4288 – (4) A,C,4
3. Improvement of curbs/gutters	<u>Included In Item 2</u>	-7-15-4288 – (4) A,C,1,4
4. Improvement of lines <i>(electrical, natural gas, rail, telecommunications)</i>	<u>\$41,075.42</u>	-7-15-4288 – (4) A,C,1,8,9
Subtotal		<u>\$788,001.42</u>
<u>Fees (Exhibit B – Section C)</u>		
1. Architectural design/Supervision	<u>\$146,089.74</u>	-7-15-4233 – 7-15-4288 (5)
Subtotal		<u>\$146,089.74</u>
Total Project Public Benefit Costs:		<u>\$3,920,335.67</u>

EXHIBIT C

Calculation of Maximum Reimbursement Amount and Annual Reimbursement Payment

Maximum Reimbursement Amount

TABLE A sets forth the calculation of the Maximum Reimbursement Amount described in Section 4.03 of the Agreement.

The Maximum Reimbursement Amount for the Project is 14.2857% of the difference between the MDOR determination of the projected Property value after Project development and the MDOR determination of the Property value before Project development based on the 2008 tax year valuation.

Table A		Property Value Maximum Reimbursement Amount
Pre Development Tax Year		2008
Post Development Tax Year		2009
MDOR projected Property value (Post Development)	\$	9,100,000.00
Tax Year 2008 MDOR Property value	\$	747,913.00
Projected Project Growth	\$	8,352,087.00
Multiplier (7 to 1 ratio)		14.2857%
Maximum Reimbursement Amount	\$	1,193,154.09

Annual Reimbursement Payment

TABLE B sets forth an example of the calculation of the Annual Reimbursement Payment described in Section 4.01 of the Agreement.

The Annual Reimbursement Payment for the Project is the lesser of: (1) 45% of the Project Tax Increment Revenue; or, (2) 45% of the District Tax Increment Revenue.

The Project Tax Increment Revenue is calculated by subtracting the 2008 base property tax for the Property (\$11,734.69) from the property tax for the current full year tax levy as reflected on the Bank's annual property tax statement

The District Tax Increment Revenue is the amount of tax increment revenue actually received by the City for the entire District for the related tax year as determined from the MDOR annual certified taxable valuation statement provided to the City pursuant to 15-10-202, MCA, and multiplied by the annual mill rate.

Table B		Reimbursement Payment Calculation
Yellowstone County Annual Tax Statement for Project Property		
TY 2008	A01909	\$ 8,556.77
	A01910	\$ 3,177.92
Total 2008 Base Property Tax Levy Amount		\$ 11,734.69
	current annual Property Tax Levy	\$ 150,000.00 <i>example</i>
	Minus Total 2008 Base Property Tax Levy Amount	\$ (11,734.69)
		\$ 138,265.31
	Multiplier	45%
Maximum Project Reimbursement Payment Amount		\$ 62,219.39
MDOR Annual Certified Taxable Valuation Information Pursuant to 15-10-202 MCA		
Tax Increment District Name	East Billings	\$ 2,328,235.00 <i>example</i>
	x mill rate	0.0618
		\$ 143,884.92
		45%
Maximum District Reimbursement Payment Amount		\$ 64,748.22

Exhibit D

City of Billings E.B.U.R.D.

Project Criteria

For Public/Private Development Projects

Information & Application:
First Interstate Bank Operations Center
*Reviewed, Approved and Submitted for City Council
Consideration by the Board of Directors of
The Billings Industrial Revitalization District, Inc.*



**TAX INCREMENT FINANCING APPLICATION PROCESS
FOR POTENTIAL PUBLIC INFRASTRUCTURE ASSISTANCE VIA A
DEVELOPMENT AGREEMENT AND POSSIBLE ISSUANCE OF TIFD BONDS**

IMPORTANT: The material below outlines the Tax Increment Development Agreement application process and the responsibilities of the APPLICANT and the Billings Industrial Revitalization District, Inc. (BIRD). Please review this information carefully before submitting the application or finalizing your development plans.

INTRODUCTION

The BIRD is responsible for advising the Governing Body of the East Billings Tax Increment District, pursuant to Montana Urban Renewal Law (Title 7 Chapter 15 part 42 Montana Code Annotated, "Urban Renewal." Tax Increment Financing (TIF) is an important element of the program as it provides a means to finance public urban renewal activities that assist and enhance private development opportunities within the district. A TIF program operates by first establishing a base year taxable value for all properties within the urban renewal district. Property taxes continue to be paid to all taxing jurisdictions on the basis of the base year valuation. All increases in property taxes above this base valuation due to new development or reappraisals are assigned to the TIF District. They are then used for district revitalization activities.

The BIRD offers this TIFD assistance consideration for **public benefit infrastructure** components of projects developed within the boundaries of the East Billings TIFD.

TIFD ASSISTANCE PARAMETERS

Each project is unique. Funding availability depends upon the number of years remaining in the district, with or without TIFD Bond extensions beyond the initial 15 year lifetime of the TIFD. TIFD assistance with **public benefit infrastructure** shall be based upon criteria outlined in the Criteria for Review section. **The assistance cannot exceed 45% of the increment generated by the project and may be lower than 45%.** The East Billings Urban Renewal District (EBURD) TIFD was established in 2006. Property improvements are defined as all project costs and MAY include property acquisition. Generally, TIF assistance is advised by the BIRD to be awarded to the eligible PUBLIC PORTION must meet the criteria and approval processes as described herein, and are subject to availability of funds and approval by the Billings City Council.

ELIGIBLE ACTIVITIES

As specified by Title 7 Chapter 15 Part 4288 Montana Code Annotated (please see exhibit A), TIF may be used to finance certain urban renewal activities. Pursuant to this statute, the BIRD will review applications for assistance to projects eligible under the following guidelines. The BIRD will place special emphasis on those projects that exemplify the EAST DISTRICT URBAN RENEWAL PLAN (See Goals/Objectives Summary in Exhibit B), and the Master Plan established for the district.

APPLICATION PROCESS AND TIMELINE

Anyone seeking TIF assistance from the BIRD may submit a written application for each TIF-assisted project. The following procedure has been developed to expedite the review of TIF funding requests.

1. Initial Contact. Contact the BIRD (c/o Downtown Billings Alliance), 2815 2nd Ave. N., Billings, MT 59101 – 406-294-5060 (attn: Greg A. Krueger, Development Director) to discuss the project and determine preliminary eligibility for TIF assistance.
2. Prepare a Written Application. The Applicant shall prepare a written application for each project assistance request. For all TIF requests, the Applicant must complete a “Developer’s Statement of Qualification and Financial Responsibility” which may include submittal of personal financial statements.
3. Staff Review. Upon submittal of all necessary information, the BIRD staff will review the project and the need for funding. At any point in the review process the staff or Board may request more information of the Applicant or solicit comment on the project from other public agencies. Items included in personal financial statements will not be subject to public review or presentation to or comment by other agencies.
4. East District Development Review Team (BIRD BOARD/MEMBERSHIP) Review. The BIRD Board will review the application and staff recommendations. The Board reserves the right to seek additional project review from supporting committees of the BIRD and from other public agencies. The Committee will issue preliminary approval/disapproval of the assistance request or any part thereof and will make a recommendation to the Governing Body (City Council).
5. City Council Review. Projects receiving approval by the BIRD Board of Directors will be forwarded to the Billings City Council for final approval and consideration of a Development Agreement that will clearly spell out the public investment required to be applied towards public infrastructure and/or development improvements within the public right of way. City Council approval is required.
6. Development Agreement. The BIRD, The City of Billings and the Applicant must execute a mutual agreeable legally binding Development Agreement which establishes the terms and conditions of TIF assistance. Sample Development Agreements are available from the Downtown Billings Alliance for reference. The Development Agreement may include, but is not limited to, the following:
 - Complete architectural design specifications and site plan
 - Time frame for project development, construction and completion
 - Specifications for release of funds related to public infrastructure
 - Cash flow and pro forma statements for a minimum of five years of the development
 - Terms and conditions of the various financings
 - Commitment letters and loan documents related to the various financings

- Ownership of completed development
- Events of default; remedies
- Zoning approval
- Tenant commitments
- Nonliability of city officials and BIRD
- Cause for termination

7. Timing. Following the above process for approval, the Applicant can expect a minimum of 90 days between submitting an application to the BIRD and potentially receiving a decision from the City Council.

COMMITMENT OF FUNDS

Upon City Council approval of a project, the BIRD, and the City of Billings will commit funds to the project from the annual East Billings TID project budget subject to availability of funds and/or potential for Tax Increment Bond issuance. Committed funds will be encumbered for a grace period of 180 days, by which time construction must have commenced. Commencement of construction means the date on which the first building permit is issued. Projects that have not commenced construction within 180 days are at risk for losing the committed funds.

Funds will be released as specified by the Development Agreement. Funds may be released according to one of the following method.

1. Release of funds following project completion. Funds will be released upon the project's receipt of a Certificate of Occupancy from the City of Billings. If necessary, the BIRD will encumber funds for additional fiscal years to accommodate construction schedules. This is the BIRD's preferred method for release of funds.

Funds will be released only if the project is developed and constructed essentially as presented in the Development Agreement, or amended Development Agreement.

CRITERIA FOR REVIEW

Materials contained in TIF applications are used to assess the merits of projects in relation to the goals and objectives of the East TIFD Urban Renewal Plan and in relation to other district development and urban renewal projects. The BIRD evaluates projects based on the following criteria. Please prepare a written response and provide supporting documentation for each of the criteria areas.

1. Relevance to the Urban Renewal Plan – Documentation of the project's impact on East District in relation to the goals and objectives of the Urban Renewal Plan, particularly mixed-use development. Urban design elements will also be considered, including pedestrian emphasis, quality of design, and downtown Billings' personality.
2. Economic Stimulus – The amount of economic activity to be generated by the

project is assessed, as well as the leverage ratio of public to private investment. Applications should contain credible, measurable information substantiating Applicant claims of economic stimulus.

3. Tax Generation – The increase in taxable value due to new construction/ rehabilitation is estimated by the County Assessor's office to determine tax increment generation.
4. Employment Generation – Total employment generated by the project assessed in terms of new permanent and part-time jobs, and construction jobs.
5. Elimination of Blight – The project's direct and indirect impact on the physical and fiscal deterioration within the Tax Increment District and the community is documented by the Applicant.
6. Special or Unique Opportunities – The extent to which the project represents a unique opportunity, meets a special need, or addresses specific BIRD or community goals. The restoration of historic property or the provision of an unmet community need are examples of special and unique opportunities.
7. Impact Assessment – The extent of both positive and negative environmental impacts, appropriateness of the project design, and impact on existing businesses or residents.
8. Financial Assistance – Other forms of financing available to the Applicant; i.e. lender participation and state and federal grant monies, are examined to assess the need for TIF assistance.
9. Project Feasibility – A determination of feasibility is made on the strength of the Applicant's demonstration of market demand for the project as contained primarily on the pro forma and financing commitments.
10. Developer Ability to Perform – An assessment of the applicant's capability to undertake the relative complexities of the project based on past performance on similar or comparable projects.
11. Timely Completion – The feasibility of completing the project according to the Applicant's project schedule.
12. Payment of Taxes – All property taxes, special improvement district assessments, and other assessments on the project property must be paid to date.

**BILLINGS INDUSTRIAL REVITALIZATION DISTRICT, INC.
EAST DISTRICT TAX INCREMENT FINANCING (TIF)
APPLICATION**

Project Name: FIB Operations Center Date Submitted: October, 2008

APPLICANT INFORMATION

1. Name: First Interstate Bank.
2. Address: 401 North 31, Billings, MT 59101
3. Telephone Number: 406-255-5000

PROJECT INFORMATION

1. Building Address: Billings Original Townsite, Block 260 Lot 002 & Block 261 Lot 002
2. Tax Code(s) A01909 and A01910
3. Current Ownership: First Interstate Bank
Address: *Same as above*
4. If property is not owned by the Applicant, list leasehold interests: (Attach evidentiary materials:
ie. Lease document.)
Tennant Name: *Not applicable*
Address:
5. ~~Existing~~/Proposed Businesses: First Interstate Bank Operations Center
Business Description: Corporate Operations and Training facility
8. Employment: Existing FTE Jobs 172
New Permanent FTE Jobs created by project 75 - 100 Construction FTE Jobs 50
9. Architectural Firm: CTA Architects and Engineers
Address: 13 North 23, Billings, MT 59101
Representative: Bob La Perle
10. Description of Project: (Attach narrative explanation – ITEM 10.)
11. Rehabilitation/construction Plans and project schedule (Attach schematics, site and landscaping plans and time line – ITEM 11.)

TOTAL PROJECT COSTS/Completed DOR Value

To: Aaron Sparboe

RE: First Interstate Bank, 1810 6th Ave N., Commercial Property located on Billings Original Townsite 613, S33, T01N, R26E. Block 260, Lot 002, Lts 2-23 BLK 260, Lts 2-23 BLK 261 Billings Original & Vacant N/S Alleys & Vacant N. 19th. Billings Montana.

Per our conversation this week this is an estimate of the value of the property for the tax year 2009. We have not completed your valuation models for commercial properties in Yellowstone County as of this date. They will be completed by June of this year at that time we will be mailing out an appraisal of value for the property. This valuation is to help you and the TIF District to have a ball park figure to work with. From the preliminary figures I have used to value the property we are looking at \$9,000,000 to \$9,200,000, the final total value that should fall between these values.

Larry E. Richards
Regional Manager
Region 6 Department of Revenue
Property Assessment Division

PROPOSED PUBLIC BENEFIT PROJECT COSTS

<u>Land and Site Improvements (Itemized)</u>		<u>MCA Code Item</u>	<u>Exhibit B UR Plan Item</u>
1. Purchase of Site	<u>\$2,572,210.28</u>	-7-15-4288 – (1)	A,B,C,
2. Demo & Abatement	<u>\$108,540.23</u>	-7-15-4288 – (2 & 12)	A,C,3a,b,c,d
3. Lighting & Security	<u>\$254,867.00</u>	-7-15-4288 – (4 & 12)	C, 3,7
4. Other Security Equipment	<u>\$50,627.00</u>	-7-15-4288 – (4 & 12)	C, 3,7
Subtotal			<u>\$2,986,244.51</u>
<u>Construction/Rehabilitation Costs (Use general construction trade divisions)</u>			
1. Improvement of pedestrian areas including landscaping	<u>\$136,060.00</u>	-7-15-4288 – (4)	A,C,3b,c,4,6
2. Improvement of off-street parking	<u>\$610,866.00</u>	-7-15-4288 – (4)	A,C,4
3. Improvement of curbs/gutters	<u>Included In Item 2</u>	-7-15-4288 – (4)	A,C,1,4
4. Improvement of lines <i>(electrical, natural gas, rail, telecommunications)</i>	<u>\$41,075.42</u>	-7-15-4288 – (4)	A,C,1,8,9
Subtotal			<u>\$788,001.42</u>
<u>Fees (Exhibit B – Section C)</u>			
1. Architectural design/Supervision	<u>\$146,089.74</u>	-7-15-4233 – 7-15-4288 (5)	
Subtotal			<u>\$146,089.74</u>
Total Project Public Benefit Costs:			<u>\$3,920,335.67</u>

**Attach support narrative here for costs that may be paid by TIF
ITEM 10**

General assumptions: Both the Montana Code for Urban Renewal and the Urban Renewal Plan for the East Billings Urban Renewal District call for blight elimination through land acquisition, vagrancy abatement, crime abatement, remediation of fire hazards, remediation of obsolete platting, landscaping, outdoor lighting, safety measure installation, installation of high tech business requirements such as fiber optics, coaxial cable and DSL copper and brownfield clean-up.

The FIB Operations center will address all of the above.

Off Street Parking – Montana Code allows for funding of off street parking projects. This facility will accommodate, at peak operation, all of the needs of the organization. During times when the parking is not consumed by FIB use, the lighted and monitored parking spaces will be available to the general public. This will enable additional use of North Park. The parking lot will contain 300 approximately spaces.

The facility will support the expansion of the Business Improvement District into the area and allow for adequate accommodations to the Downtown Resource Officer when needed.

This project can claim a public benefit in excess of \$3.9 million. The agreement will limit the TIFD investment to no more than 45% of the increment generated by this project. At this time, we project that amount will not exceed \$1,200,000.00.

Within the building that will house the First Interstate Bank Operations and training center there will be a 6500 sq. ft. conference center along with an additional 3500 sq.ft. of support space for the center which will include restrooms, lobby area, entrance, and catering facilities that will be available for neighborhood organization and other non-profit use. The cost of construction and furnishing of this space will be about \$170.00 psf, and has **NOT** been included in the Public Benefits Cost list.

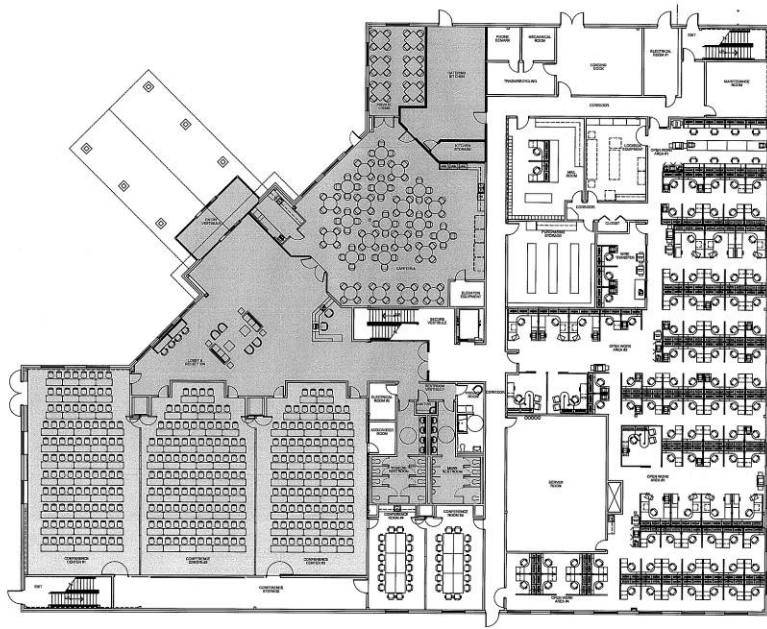
EXHIBIT A – MCA 2007

7-15-4288. Costs that may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development project:

- (1) land acquisition;
- (2) demolition and removal of structures;
- (3) relocation of occupants;
- (4) the acquisition, construction, and improvement of infrastructure, industrial infrastructure, technology infrastructure, or aerospace transportation and technology infrastructure that includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, spaceports for reusable launch vehicles with associated runways and launch, recovery, fuel manufacturing, and cargo holding facilities, publicly owned buildings, and any public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
- (5) costs incurred in connection with the redevelopment activities allowed under [7-15-4233](#);
- (6) acquisition of infrastructure-deficient areas or portions of areas;
- (7) administrative costs associated with the management of the urban renewal area, industrial district, technology district, or aerospace transportation and technology district;
- (8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;
- (9) the compilation and analysis of pertinent information required to adequately determine the infrastructure needs of secondary, value-adding industries in the industrial district, the needs of a technology infrastructure development project in the technology district, or the needs of an aerospace transportation and technology infrastructure development project in the aerospace transportation and technology district;
- (10) the connection of the urban renewal area, industrial district, technology district, or aerospace transportation and technology district to existing infrastructure outside the district;
- (11) the provision of direct assistance, through industrial infrastructure development projects, technology development projects, or aerospace transportation and technology infrastructure development projects, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the district; and
- (12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.

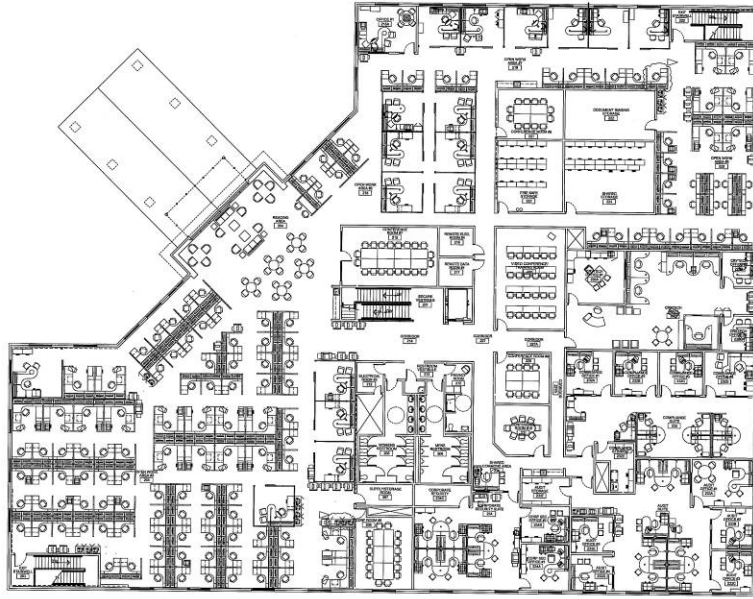
**EXHIBIT B –
SUMMARY OF BUSINESS GOALS/OBJECTIVES OF URBAN RENEWAL (UR) PLAN**

- A. “...spur economic growth and will help create substantial employment opportunities, increase the tax base of the city and other taxing jurisdictions.” *(plan p.32)*
- B. “Tax increment finances shall not be used in the district to promote or exercise eminent domain in the effort to encourage urban renewal. Tax increment, however, can be used in the acquisition of property in the district for market value or above.” *(plan p.32)*
- C. “The tax increment received from the district may be used to pay directly costs of approved development projects as may from time to time be approved by the council” *(plan p.32)*
1. Improvement of underdeveloped utilities *(plan page 24)*
 2. Create substantial employment *(plan page 32)*
 3. Protecting Public Health *(plan pages 24-25)*
 - a. Brownfield cleanup
 - b. Safety
 - c. Social and Economic Factors
 - i. Blight abatement
 - ii. Vagrancy abatement
 - iii. Crime abatement
 - d. Deterioration of Site *(plan page 25)*
 - i. Remediate fire hazards
 - ii. Remediate obsolete platting
 4. Design and Land Use Guidelines *(plan page 29)*
 - a. Building Placement
 - b. Lot size and Setbacks
 - c. Open Space
 - d. Pedestrian Circulation
 - e. Accessibility
 - f. Streetscapes, Landscaping, Grading, Outdoor Lighting, Sidewalk Treatments, Fences and Walls.
 5. Encourage current businesses to flourish *(plan page 39)*
 6. Encourage adaptive reuse development for vacant buildings and infill for vacant lots. *(plan page 39)*
 7. Improve the pedestrian environment by adding well designed streetscape and sidewalks. *(plan page 39)*
 8. Bring up to code water, sanitary sewer, storm sewer, and electrical services. *(plan page 39)*
 9. Provide infrastructure for high tech businesses. *(plan page 39)*
 - a. Fiber optics, DSL copper, coaxial cable and wireless
 10. Increase Mixed-Use Development and Housing *(plan page 41)*
 - a. Promote owner-occupied housing



FIRST FLOOR

<p> BILLINGS OPERATIONS CENTER 1800 BLOCK OF 8TH AVENUE NORTH BILLINGS, MONTANA </p>	<p> CTA INC <small>ARCHITECTS</small> 1000 W. 10TH AVENUE BILLINGS, MONTANA 59102 TEL: (406) 251-1111 FAX: (406) 251-1112 WWW.CTAINC.COM </p>
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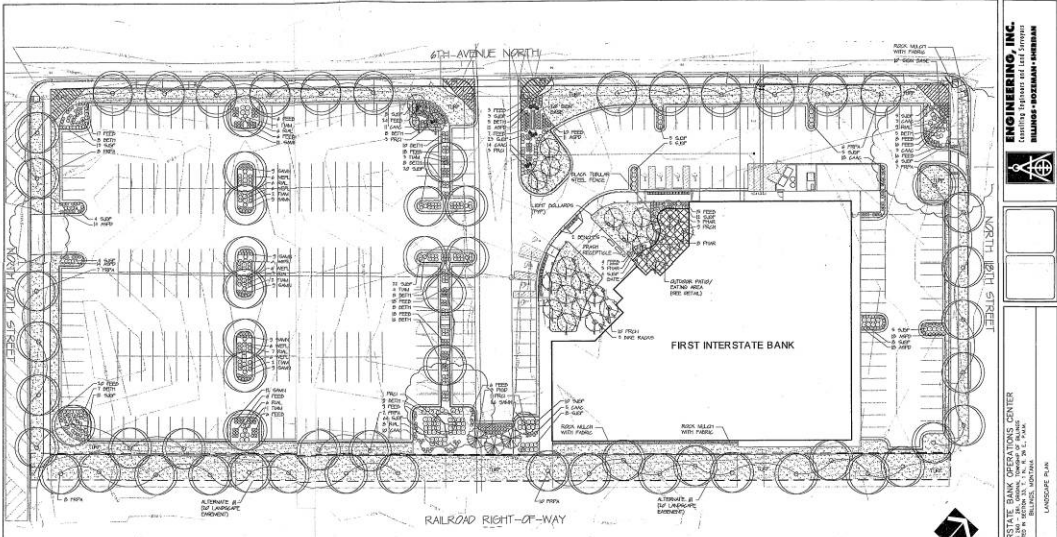
SECOND FLOOR

BILLINGS OPERATIONS CENTER
 1000 BLOCK OF 8TH AVENUE NORTH
 BILLINGS, MONTANA



CTA, INC.
 ARCHITECTS
 1000 1/2 AVENUE NORTH
 BILLINGS, MONTANA 59102
 (406) 253-1111
 WWW.CTAINC.COM





LANDSCAPE PLAN

PLANT LIST

SYMBOL	PLANT NAME	QUANTITY
[Symbol]	1. TAMM	1
[Symbol]	2. MAHOGANY TREE	1
[Symbol]	3. SHRUBS & PERENNIALS	1
[Symbol]	4. PALM TREE	1

PLANT LIST

PLANT NAME	QUANTITY
1. TAMM	1
2. MAHOGANY TREE	1
3. SHRUBS & PERENNIALS	1
4. PALM TREE	1
5.
100.

- PLANTING NOTES**
1. ALL PLANT MATERIALS TO BE SUPPLIED BY THE CONTRACTOR FOR THESE CONDITIONS.
 2. ALL PLANTING SHALL BE ACCORDING TO THE PLANTING MANUAL AND THE U.S. DEPARTMENT OF AGRICULTURE'S PLANTING MANUAL.
 3. ALL PLANTING SHALL BE ACCORDING TO THE PLANTING MANUAL AND THE U.S. DEPARTMENT OF AGRICULTURE'S PLANTING MANUAL.
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SCALE 1" = 30'

ENGINEERING, INC.
 MULLEN - HOFFMAN - HERRMAN
 REGISTERED PROFESSIONAL ENGINEERS
 LICENSE NO. 12345
 1234 MAIN STREET, SUITE 500
 DENVER, COLORADO 80202
 PHONE: (303) 555-1234
 FAX: (303) 555-5678
 E-MAIL: info@mullehoffman.com



JONES CONSTRUCTION, INC.
Project Schedule

