

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

November 13, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE – Mayor Tooley

INVOCATION – Mayor Ron Tussing

ROLL CALL

MINUTES – October 22, 2007

COURTESIES

PROCLAMATIONS

- Benjamin C. Steele Day – November 17, 2007
- Salvation Army Red Kettle Week – November 19 – 24, 2007

BOARD & COMMISSION REPORTS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #4, & #5

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. **Approval of Appointments to the Downtown Transit Center Ad Hoc Committee**, Randy Hafer; Kim Barnett; Stephen Wahrlich; Geoffrey Parkins; Greg Krueger; and Kimberly Watson.
[\(Corresponding Staff Memo A\)](#)

B. Bid Awards:

(1) **Cold Storage Steel Building.** (Opened 10/23/07) Recommend Hardy Construction, \$88,000.00.
[\(Corresponding Staff Memo B1\)](#)

(2) **Sale of Two (2) Aircraft Rescue Fire Fighting Trucks.** (Opened 10/30/07). Recommend Crash Rescue Equipment Service, Inc., \$86,104.00.

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

C. Change Order No. 2 - W.O. 06-18 Broadwater Subdivision, Phase V,
JTL Group, Inc., \$3,525.00.

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

D. Amendment No. 8 – SID 1379, Utility and Street Improvements to King Avenue West from S. 31st Street West to Shiloh Road, HDR Engineering, Inc., an amount not to exceed \$343,642.00.

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

E. Contract for Professional Services, W.O. 08-01 2008 Water and Sewer Replacement Project, Morrison-Maierle, Inc., an amount not to exceed \$926,713.00.

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

F. Resolution terminating the Downtown Tax Increment District and **Allocating Funds and Development Agreement** with Downtown Billings Partnership.

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

G. Annual Agreement with Yellowstone County to provide Law Enforcement Data Processing Services, \$85,779.00.

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

H. Annual Agreement with Yellowstone County for City-County Special Investigations Unit (CCSIU), with no additional cost to the City of Billings.

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

I. Construction Agreements (3) with MT Department of Transportation City Maintained Routes, with no cost to the City of Billings.

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

J. Vehicle Lease Agreement with Underriner Motors for an Internet Crimes Against Children (ICAC) Task Force Lease Vehicle, 12/1/07 – 2/29/09, \$5,250.00.

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

K. Assignment and Transfer of West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Drew C. and/or Jennifer R. White.

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

L. Commercial Terminal Building Lease with ARINC Incorporated, 10/1/07 – 10/1/08, first year revenue \$3,110.48.

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

M. Limited Commercial Ground Lease with Aerotronics, Inc., 10/1/07 – 9/30/27, first year revenue \$17,456.52.

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

N. Amendment of Lease for office space to the Transportation Security Administration (TSA), additional revenue of \$15,705.96, for annual lease rental of \$52,598.07.

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

O. Airline Operating Permit with ExpressJet Airlines.

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

P. Acknowledging Receipt of Request to Annex #07-05: 13.4 acres of a portion of park land along Zimmerman Trail right-of-way and a portion of Zimmerman Trail right-of-way between Highway 3 and Rimrock Road; City of Billings, requester, and setting a public hearing date for 12/10/07.

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

Q. Acknowledging Receipt of Request to Annex #07-11: a 3.74-acre portion of Broadwater Avenue right-of-way west of 30th Street West; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

R. Acknowledging Receipt of Request to Annex #07-12: a 1.69-acre portion of Bell Avenue right-of-way west of Shiloh Road; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

S. Acknowledging Receipt of Request to Annex #07-13: a 1.89-acre portion of Grand Avenue and Zimmerman Trail right-of-way; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

T. Acknowledging Receipt of Request to Annex #07-14: a 4.86-acre portion of Cove Avenue right-of-way between 46th and 50th Streets West; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

U. Acknowledging Receipt of Request to Annex #07-16: a 0.359-acre portion of Grand Avenue right-of-way east of 56th Street West; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

V. Acknowledging Receipt of Request to Annex #07-18: a portion of 56th Street West and Broadwater Avenue rights-of-way; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

W. Acknowledging Receipt of Request to Annex #07-19: a 6.832-acre portion of Rimrock Road right-of-way from 62nd Street West to the city limits; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

X. Acknowledging Receipt of Request to Annex #07-25: a 2.457-acre portion of 44th Street West right-of-way south of King Avenue West; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

Y. Acknowledging Receipt of Petition to Vacate a portion of Henry Road right-of-way fronting property located at 1125 Henry Road; John Glenn, owner and petitioner, and setting a public hearing date of 12/10/07.

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

Z. Acceptance of Donation: Approval and acceptance of donation from Northwestern Energy to the Cobb Field Fundraising Project, \$2,000.00.

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

AA. Resolution of Intent to create a South Billings Boulevard Urban Renewal District with tax increment authority; declaring the existence of blight within the South Billings Boulevard Urban Renewal Area; and setting a public hearing date of 11/26/07.

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

BB. Resolution relating to financing of the South Billings Boulevard Tax Increment Financing District; establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

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

CC. Resolution of Intent to create Special Improvement District 1380, Terra West Subdivision, 3rd and 4th Filings, for Monad Road Street Frontage Improvements, and set a public hearing date of 12/10/07.

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

DD. Resolution of Intent to create Special Improvement Maintenance District No. 4038, Terra West Subdivision, 3rd and 4th Filings, Monad Road Street Frontage Improvements, and set a public hearing date of 12/10/07.

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

EE. Resolution of Intent to create Park Maintenance District No. 4035, Bitterroot Heights Subdivision, and set a public hearing date of 12/10/07.

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

FF. Second/Final Reading Ordinance for Zone Change #822: A zone change from Residential 9600 to Residential 7000 Restricted on a 400-acre property north and west of High Sierra Subdivision and Lake Hills Subdivision. Dover Ranch, owner.

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

GG. Final Plat of Grand Avenue School Subdivision, Amended Lot 1, Block 1.

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

HH. Bills and payroll.

(1) October 5, 2007

[\(Corresponding Staff Memo HH1\)](#)

(2) October 12, 2007

[\(Corresponding Staff Memo HH2\)](#)

(3) October 19, 2007

[\(Corresponding Staff Memo HH3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. ELECTION of Deputy Mayor.

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

3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property: a 5-acre parcel described as: Tract 1B, Certificate of Survey 1335, Amended, Hanser Capital Holdings LLC, owner. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

4. PUBLIC HEARING AND RESOLUTION exchanging property described as Lots 19-24, Block 60, Original Town of Billings, with Yellowstone County for adjacent property owned by Yellowstone County to facilitate the construction of a MET Transit Transfer Center. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

5. AGREEMENT with Lockwood Area/Yellowstone County Water and Sewer District for treatment and disposal of wastewater. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

6. (A) PUBLIC HEARING AND RESOLUTION approving and adopting a budget amendment for Fiscal Year 2007/2008. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

(B) RESOLUTION directing payment and budgeting for the Firefighter Lawsuit Judgment. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

(C) PROPOSAL from Koch Financial Corporation to finance the majority of the Firefighter lawsuit. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

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

A

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, November 13, 2007

TITLE: Approval of the Appointments to the Downtown Transit Center Ad Hoc Committee

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: During the September 10, 2007, City Council meeting, a Resolution was approved to create a Downtown Transit Center Ad Hoc Committee composed of one (1) City Council member (Nancy Boyer), one (1) Aviation and Transit Commission member (Mark Kennedy), and seven (7) citizens that may have interest in this project. The Committee's purpose is to review the various design concepts and operational characteristics developed by the design team for the new Transit Center and recommend a preferred design to the City Council.

The closing date for the requests to serve has now expired and applications were received from the following individuals:

- Randy Hafer – Architect
- Kim Barnett – GSA
- Stephen Wahrlich – Clocktower Inn Operator
- Geoffrey Parkins – HDR Engineer
- Greg Krueger – Urban Renewal
- Kimberly Watson – MET Rider

FINANCIAL IMPACT: There is no financial impact from this action.

RECOMMENDATION

Since only six (6) requests to serve were received for the seven (7) open positions, staff recommends that each applicant be appointed to serve on the Downtown Transit Center Ad Hoc Committee.

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

B1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, November 13th, 2007

TITLE: Cold Storage Steel Building Bid Award
DEPARTMENT: Public Works Street/Traffic Division
PRESENTED BY: Dave D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for a new cold storage building for the Street/Traffic Division for the Public Works Department on October 23, 2007. This building consists of a 60' x 40' steel building to be installed on a pre-existing concrete slab located at the BOC complex, 4848 Midland Road. This building will be used to store emergency storm water supplies and off seasonal street traffic equipment such as snow plow blades and blower attachments in the summer months. Summer equipment will be stored in the building in the winter months.

ALTERNATIVES ANALYZED:

1. Award the contract to Hardy Construction in the amount of \$88,000.00; or
2. Reject all bids and do not award a contract for the cold storage building.

FINANCIAL IMPACT: Funding for the cold storage steel building is from the street maintenance funds and the storm water funds. This project is in the approved CIP for FY08. Two bids were received as follows:

<u>Bidder</u>	<u>Bids</u>
Hardy Construction	\$ 88,000.00
Williams Brother Construction	\$121,100.00

RECOMMENDATION

Staff recommends that council award the bid for Hardy Construction in the amount of \$88,000.00.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, November 13, 2007

TITLE: Bid Award for the Sale of Two (2) Aircraft Rescue Fire Fighting Trucks
DEPARTMENT: Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The Aviation and Transit Department recently placed in service the two (2) new Aircraft Rescue Fire Fighting (ARFF) trucks, which replaced two similar units that were purchased with a 1992 Airport Improvement Program (AIP) Grant. Since the City's "Federal obligation" to retain and maintain the 1992 fire trucks has now expired, the two old trucks were declared surplus equipment by the City Council on October 9, and staff proceeded to advertise for competitive bids for these two trucks. The Call for Sealed Bids was advertised in the *Billings Times* on October 11 and 18, 2007, and posted on the City's Web site on October 11. Additionally, bid packets were mailed to parties interested in the fire trucks.

FINANCIAL IMPACT: Bids were opened on October 30, 2007. The following bids were received:

<u>Name of Bidder</u>	<u>Bid Amount</u>	<u>Bid Item #</u>
Crash Rescue Equipment Service, Inc.	\$43,621	C-1
Fire House 66, Inc.	\$22,550	C-1
Crash Rescue Equipment Service, Inc.	\$42,483	C-2
Fire House 66, Inc.	\$21,250	C-2

RECOMMENDATION

Staff recommends that the City Council approve the award of bids for surplus fire truck Units #1712 (Bid Item C-1) and #1713 (Bid Item C-2) to the highest bidder, Crash Rescue Equipment Service, Inc. in the total amount of \$86,104.

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

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C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, November 13, 2007

TITLE: W.O. 06-18, Broadwater Subdivision – Phase V, Curb/Gutter and Street Reconstruction, Change Order #2

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: This project consists of reconstructing the streets in Broadwater Subdivision and removing/replacing or installing any defective or nonexistent curb/gutter and sidewalk. Added to this project through Change Order #2 will be the installation of 150 lineal feet of 36" inch high chain link fence. The purpose of this fence is to provide added pedestrian safety in areas between handicap ramps and the inlets on the top of the City-County Drain. This project already included Change Order #1 for the addition of structural alley crossings to facilitate garbage truck traffic over the City-County Drain. Change Order #1 and #2 combine for an overall change in the original contract of more than 10% and therefore, City Council action is required for the approval of Change Order #2.

ALTERNATIVES ANALYZED:

1. Approve Change Order #2 in the amount of \$3,525.00; or
2. Do not approve Change Order #2.

FINANCIAL IMPACT: A breakdown of the project funds is listed below:

Broadwater Phase V Improvements Funding

Storm Drain Funds	\$ 109,400.00
Gas Tax Funds	\$ 415,000.00
Property Assessments (Construction Only)	\$ 194,800.00
Previous Encumbrance	\$ (10,000.00)
Original Contract Amount	\$ (594,500.00)
Change Order #1	\$ (59,400.00)
<u>Change Order #2 (This Memo)</u>	\$ (3,525.00)
Remaining Funds	\$ 51,775.00

RECOMMENDATION

Staff recommends that Council approve Change Order #2 in the amount of \$3,525.00 for W.O. 06-18 Broadwater Subdivision – Phase V.

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

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: SID 1379 – Utility and Street Improvements to King Avenue West from South 31st Street West to Shiloh Road

DEPARTMENT: Public Works - Engineering Division

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

PROBLEM/ISSUE STATEMENT: Mayor and Council are asked to consider authorizing Amendment No. 8 to the professional services contract with HDR Engineering in the amount of \$343,642.00 to provide design and construction administration services for water and sewer main and lift station elements of SID 1379. A contract amendment is recommended since HDR designed these King Avenue water and sewer improvements under previous W.O. 04-27. That project was not bid or constructed, and HDR has updated the design using left over funds to include a lift station; this amendment would allow remaining engineering work to be completed.

ALTERNATIVES ANALYZED:

1. Authorize the Mayor to sign an amendment to the contract with HDR Engineering as set forth in this staff memorandum.
2. Do not authorize the Mayor to sign an amendment to the contract with HDR Engineering as set forth in this staff memorandum.

FINANCIAL IMPACT: Funding for this project has been approved in the CIP projects – Water Main Replacement and Sanitary Sewer Replacement. Funding is sufficient for the engineering services, which are now under consideration, as well as for construction of the lift station which is planned for bidding in early 2008.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign a contract amendment for professional services to provide engineering services for water and sewer main and lift station improvements of SID 1379 in the amount not to exceed \$343,642.00.

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

ATTACHMENT

A. Amendment No. 8 to the HDR Engineering, Inc. Agreement (4 pages)

INTRODUCTION

HDR Engineering would be enabled by this services agreement amendment to provide water and sewer utility construction support and final design services for the SID 1379--Utility and Street Improvements to King Avenue West from South 31st Street West to Shiloh Road project as well as provide construction administration, inspection, and final design services for the future construction of the King Avenue lift station project.

PROCEDURAL HISTORY

Completed Items:

- HDR Engineering was previously retained to design and provide construction administration services on King Avenue water and sewer utility improvements under W.O. 04-27, but that project was not bid or constructed. Major portions of this original water and sewer design as well as new design features have already been incorporated into SID 1379 using funds left over from W.O. 04-27. A construction contract for SID 1379 has been recently awarded to The JTL Group to complete designed improvements.

Items to be Completed:

- HDR can provide water and sewer utility construction support and final design services to the City for the construction of water and sewer mains under the recently awarded JTL construction contract.
- Changing demand conditions and recent alternatives analyses have shown that the sewer design should incorporate a lift station rather than extend about 4000 feet of deep sewer. HDR has incorporated most of these design changes and can provide remaining design services, construction administration, and inspection services on the future lift station project.
- Council authorizing the Mayor to sign the Amendment to HDR's Agreement.

BACKGROUND

Segments of 16-inch water line currently exist in King Av. W. between 32nd St. W. and Shiloh Rd. that serve single-family, multi-family, assisted living residential, and commercial development; these segments will be connected with approximately 2,500 feet of water main.

Sewer in this area consists of 27-inch main that extends about from about 250 feet east of Shiloh Rd. to about 1,750 feet west of Shiloh Rd. Flow through the 27-inch main currently feeds into a temporary private lift station in Montana Sapphire Subdivision. Wastewater from the lift station is pumped through a force main that discharges into an 8-inch sewer in Olympic Boulevard. The 27-inch sewer main will be extended approximately 700 feet further east in King Ave. W. and will empty into a new lift station. Force mains from the lift station will be extended east approximately 3,100 feet and feed into a new 24-inch gravity sewer which will be extended approximately 2,000 feet further east to tie into a 42-inch sewer at 32nd St. W.

Construction of the King Avenue water and sewer mains and street improvements has already been awarded to JTL. HDR would provide water and sewer utility construction support and final design services to the City for the construction of these improvements. Design and construction of a future lift station is not complete. HDR would provide the remaining design services,

construction administration, and inspection services to the City for the lift station which is projected to be bid for construction in early 2008.

Water quality, pressure, system integrity, and fire flow capacities will all be improved in the area as a result of connectivity achieved by project. Sewer main and lift station construction in this area will provide sewer service to areas south of King Av. W. between 36th St. W. and Shiloh Rd. as well as to a large area both north and south of King Av. W. west of Shiloh Rd. Development as far north as Central Avenue to about 2,000 feet south of King Av. W. to 72nd Street West could be served as a result of this project.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign a contract amendment for professional services to provide engineering services for water and sewer main and lift station improvements of SID 1379 in the amount not to exceed \$343,642.00.

ATTACHMENT

- A. Amendment No. 8 to the HDR Engineering, Inc. Agreement (4 pages)

**AMENDMENT NUMBER EIGHT
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
THE CITY OF BILLINGS, MONTANA
AND
HDR ENGINEERING, INC.**

THIS AMENDMENT NUMBER EIGHT, made and entered into this ____ day of ____, 2007, modifies the Agreement for Professional Services by and between the City of Billings, Montana, and HDR Engineering, Inc., dated May 10, 1999. The Agreement is modified as follows:

Item 1: Page 5, add the following tasks to paragraph 6 for Phase VIII – Water Mains and Sewer Mains, TIME OF BEGINNING AND COMPLETION:

“Task 500 – 2007-08 King Avenue West Waterline, Sewer Lines and Roadway Construction Services (365 days)

Task 600 – 2007-08 King Avenue West Lift Station Construction Services (365 days)”

Item 2: Page 8, paragraph 12.1.4.1.4, increase the total payment for services by \$343,642.00.

Item 3: Exhibit A – Consultant’s Scope of Services; Page 2 – Add the following to the summary of Phase VIII – Water Mains and Sewer Mains major work tasks.

- ◆ Task 500 – 2007-08 King Avenue West Waterline, Sewer Lines and Roadway Construction Services
- ◆ Task 600 – 2007-08 King Avenue West Lift Station Construction Services

Item 4: Exhibit A – Consultant’s Scope of Services: Page 2, DETAILED SCOPE OF SERVICES. ADD the following task and detailed scope items for Phase VIII:

**Task 500 – 2007-08 King Avenue West Waterline, Sewer Lines and
Roadway Construction Services**

- ◆ Provide Contract Documents to the City for execution of contract
- ◆ Provide Issue for Construction Documents
- ◆ Attend Pre-Construction Meeting
- ◆ Attend weekly construction meetings
- ◆ Review shop drawings
- ◆ Provide construction staking
- ◆ Assist the City in contractor coordination and interpretation of drawings and specifications
- ◆ Provide change order preparation assistance
- ◆ Provide startup and testing assistance

- ◆ Assist the City in developing a punch list and follow up to the punch list
- ◆ Prepare record drawings
- ◆ Provide warranty services

Scope does not include providing any resident project representative services.

Task 600 – 2007-08 King Avenue Lift Station Construction Services

- ◆ Provide Contract Documents to the City for execution of contract
- ◆ Provide Issue for Construction Documents
- ◆ Attend Pre-Construction Meeting
- ◆ Attend weekly construction meetings
- ◆ Review shop drawings
- ◆ Provide construction staking
- ◆ Provide a resident project representative for construction observation services at half time for 18 weeks or 360 hours.
- ◆ Assist the City in contractor coordination and interpretation of drawings and specifications
- ◆ Provide change order preparation assistance
- ◆ Provide startup and testing assistance
- ◆ Assist the City in developing a punch list and follow up to the punch list
- ◆ Prepare record drawings
- ◆ Provide warranty services

All provisions of the Agreement dated May 10, 1999, shall remain in full force and effect except as amended herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number Eight (8) as of the day and year first above written.

CONSULTANT

HDR Engineering, Inc.

BY:

R. Bradley Martin, VP

TITLE: Vice President

DATE: _____

ATTEST:

CITY

City of Billings

BY:

Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
City Attorney

**SUPPLEMENT TO EXHIBIT B
PHASE VIII PROJECT TASK ADDITIONS
ESTIMATED FEES**

<u>Project Task Additions</u>	<u>Estimated Fee</u>
Task 500 – 2007-08 King Avenue West Waterline, Sewer Lines and Roadway Construction Services	\$ 244,799.00
Task 600 – 2007-08 King Avenue West Lift Station Construction Services	\$ <u>98,843.00</u>
<u>TOTAL</u>	<u>\$ 343,642.00</u>

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Work Order 08-01 – Contract for Professional Engineering Services, 2008 Water and Sewer Replacement Projects

DEPARTMENT: Public Works - Engineering Division

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

PROBLEM/ISSUE STATEMENT: Mayor and Council are asked to consider authorizing a Contract for Professional Services with Morrison-Maierle, Inc. in the amount of \$926,713.00 for engineering design services and construction administration on the 2008 Water and Sewer Replacement Projects. Water and sewer mains would be replaced in various city locations as identified by City staff. Morrison-Maierle, Inc. was selected in 2006 to perform these services according to the City's Request for Proposals and Consultant Selection policy for a period of up to three years.

ALTERNATIVES ANALYZED:

3. Authorize the Mayor to sign a contract with Morrison-Maierle, Inc. as set forth in this staff memorandum.
4. Do not authorize the Mayor to sign a contract with Morrison-Maierle, Inc. as set forth in this staff memorandum.

FINANCIAL IMPACT: Funding for this project has been approved in the CIP projects – Water Main Replacement and Sanitary Sewer Replacement. Funding is sufficient for the engineering design and construction administration portion of the project which is now under consideration, as well as for project construction, which is planned for bidding in May of 2008.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the design and construction administration portion of the 2008 Water and Sewer Replacement Projects with Morrison-Maierle, Inc. in the amount not to exceed \$926,713.00.

Approved By: **City Administrator** **City Attorney**
INTRODUCTION

This project would replace water and sanitary sewer lines in various areas of Billings. The water and sewer main replacement program is a long-standing annual program that was developed to maintain the integrity of the utility lines serving the residents of Billings.

PROCEDURAL HISTORY

Completed Items:

- Morrison-Maierle, Inc. was chosen by a selection committee in 2006 to perform engineering services on City water and sewer replacement projects for up to three consecutive years; this selection was completed utilizing the Request for Proposals and Consultant Selection policy.

Items to be Completed:

- Council authorizes the Mayor to sign the Contract with Morrison-Maierle, Inc.
- Morrison-Maierle, Inc. completes the design and performs construction administration of the project once it is bid and awarded.

BACKGROUND

Each year, the City identifies areas in need of replacement based on data collected related to the frequency of main failures in various areas throughout Billings.

Approximately 11,400 linear feet of sewer main and 5,500 feet of water main will be designed for replacement by the 2008 City of Billings projects. Because some projects were designed in previous years and some are being designed for construction in future years or as potential substitutes for other projects this year, design and actual replacement footages are not equivalent. Approximately 11,300 linear feet of sewer and 9,300 feet of water main will be replaced in 2008.

ALTERNATIVES ANALYSIS

If the annual rehabilitation project is not constructed, the City runs the risk of failed utility lines and interruption of services to the residents of Billings.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the 2008 Water & Sewer Replacement Project with Morrison-Maierle, Inc. in the amount not to exceed \$926,713.00.

ATTACHMENT

- A. Professional Services Contract and Basic Services of Engineer (18 pages)

Contract for Professional Engineering Services

Project – City of Billings W.O. 08-01 2008 City of Billings Water and Sewer Replacement Project

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

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 8 pages (Basic Services of Engineer);

Appendix B consisting of 1 page (Methods and Times of Payment);

Appendix C consisting of 1 page (Additional Services of Engineer);

Appendix D consisting of 3 pages (Schedule of Professional Fees);

Appendix E consisting of 1 page (Project Schedule);

Appendix F consisting of 4 pages (Certificate(s) of Insurance)

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Engineer" means Morrison Maierle, Inc.

Section 2. Scope of Services.

- A. The Engineer shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Engineer in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Engineer may provide, at its own expense, any other services that are consistent with this Contract. Additional services may be provided with agreement by both parties as discussed in Appendix C.

- D. The Engineer shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 90 days after the project substantial completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Engineer shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Engineer shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2008.

Section 4. Compensation; Method of Payment.

- A. Subject to the Engineer's satisfactory performance, Billings shall pay the Engineer no more than Nine Hundred Twenty Six Thousand Seven Hundred Thirteen and No/100 DOLLARS (\$926,713.00) in accordance with this Section.
- B. The Engineer is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Engineer shall have paid all City taxes currently due and owing by the Engineer.

Section 5. Termination of the Engineer 's Services.

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

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

Section 6. Duties Upon Termination

- A. If Billings terminates the Engineer's services for convenience, Billings shall pay the Engineer for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and

unfinished documents and materials prepared by the Engineer shall become the property of Billings.

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

Section 7. Insurance.

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

policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings: City Engineer (Debi Meling)
City of Billings
Department Public Works
510 North Broadway – 4th Floor
Billings, Montana 59101 FAX: (406) 657-8252 / PHONE: (406) 657-3097

Engineer: Morrison-Maierle, Inc.
Carl J. Anderson, PE, Vice President
315 North 25th Street, Ste. 102
Billings, MT. 59101 FAX: (406) 656-3432 / Phone : (406) 656-6000

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

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

Section 13. Financial Management System.

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

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Engineer's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;

- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Engineer;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

PART II

GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

The Engineer shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Engineer under this Contract shall comply with all applicable statutes,

ordinances, rules and regulations. The Engineer shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Engineer: Carl J. Anderson, PE, Vice President
(title of position)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

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

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

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

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

Section 10. Inspection and Retention of Records.

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

records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Engineer to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

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

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

City of Billings

Engineer

City Council or Designee

Name: _____

Date:

Title: _____

Date:

ATTEST:

IRS Tax ID #

Cari Martin
City Clerk

Date:

STATE OF MONTANA)
:SS.
COUNTY OF YELLOWSTONE)

On this _____ day of _____, 2007, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

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

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

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

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

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

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Randy Straus, PE working under the City Engineer, Debi Meling, PE.

Section 3. Scope of Work.

- 1.1. The Engineer shall perform the work outlined within this agreement that includes the completion of design and construction phase services for Utility Replacement and Rehabilitation; Engineer shall assist Billings identify areas where utilities alignments best serve the needs of the project area. Engineer will coordinate work efforts with other related or unrelated improvement projects expected to be completed concurrently in the project area. Design work for the 2008 City of Billings water and sewer replacement project has approximately 11,400 linear feet of sewer main and 5,500 linear feet of water main; and, construction phase work has approximately 11,300 linear feet of sewer main and 9,300 linear feet of water main.

Completion of said design shall include the following tasks:

A. Preliminary Engineering Services (30% Design)

- 1. Coordinate the Montana State Revolving Fund (SRF) loan program process on behalf of Billings. Complete all program requirements including submittal of application materials, engineering reports, and other materials as required.
- 2. Field surveys within the project limits and extending to appropriate match lines. Data collection shall include establishment of permanent horizontal and vertical control, topographic features and existing property pins. Engineer will provide appropriate temporary traffic control measures for all data collection completed in traffic areas. Field survey data will be utilized by the Engineer to develop preliminary project base mapping.

3. Research will be performed to verify existing right-of-way locations utilizing platted information, ownership records and found property pins. Determine locations where additional right-of-way must be secured and coordinate obtaining necessary construction permits.
4. Apply for all permits, licenses, and approvals necessary to construct the project; this includes, at a minimum, stormwater permits and water/sewer extension approvals from the Montana Department of Environmental Quality will be necessary. All permit and licensing fees will be paid by Billings.
5. Geotechnical engineering shall include field sampling, laboratory testing and review of subsurface soils to determine appropriate pavement section design alternatives, subgrade treatment, groundwater conditions, and foundations for utility installations. Recommendations for specific construction materials and groundwater management established in this review will be included in the project plans and specifications.
6. Coordination with Billings staff and other public and private stakeholders in the development of roadway and utility improvements.
7. Coordination with property owners adjacent to the project.
8. Planning and facilitating one (1) public informational meeting.
9. Design of utility alignments and cross-section; water main; sewer main; storm drainage; and related improvements.
10. Coordination with owners residents in piping or abandonment alternatives within the right-of-way. This may include verification of user(s).
11. Confirm appropriate utility sizing within the project limits. Design replacement of existing utilities.
12. Coordinating the identification and potential relocation of private utilities including, but not limited to, overhead and underground power, cable TV, underground telephone and communications, petroleum oil, and natural gas.
13. Prepare and submit of a Preliminary Design Report, report shall summarize project related design parameters, public utility improvements, right-of-way impacts, stakeholder impacts, traffic operations and traffic control measures, pedestrian improvements, and preliminary construction costs. Up to two (2) conceptual alternatives may also be considered for certain utility improvements. The report will also include a preliminary environmental evaluation, which reviews historical data related to the project area, including hazardous waste research and other known environmental issues. Five (5) copies of the Preliminary Design Report

and three (3) full-size preliminary water and sewer utility plan and profile plan sets will be provided to Billings for review.

B. Preliminary Engineering Services (70% Design)

1. The 70% design package will incorporate Billings' comments pertaining to the Preliminary Design Report and preliminary public utility plans. Updated roadway plan and profile sheets will be presented, as well as further development of the water main, sewer main, and other recommended improvements.

Five (5) full-size plan sets, two (2) half-size sets, and three (3) project specifications will be provided to Billings for review.

2. Attend periodic design review meetings with Billings.
3. Send 70% construction plans to the private utilities for review and comment, and hold a subsequent coordination meeting with the private utilities to assemble and evaluate comments.

C. Final Engineering Services (90% & Final 100% Design).

1. The 90% design package will incorporate comments received from Billings, after the 70% design package submittal and periodic design review meetings are complete. The plan package will include design of the plan and profile utilities drawings, related traffic control measures, water main, sewer main, and other recommended improvements.

Five (5) full-size plan sets and three (3) project specifications will be provided to Billings for review.

2. Attend periodic design review meetings with Billings.
3. Engineer will provide final design services upon receiving Billings' approval of the 90% plan package submittal. Plans and specifications will be prepared in accordance with the Montana Public Works Standard Specifications, Fifth Edition, March 2003 and City of Billings Standard Modifications, March 1, 2006. This will be completed as follows:
 4. Stamp and sign all plans and specifications with seal of Professional Engineer in charge.
 5. Computation of project construction quantities and preparation of an engineer's opinion of probable construction cost.
 6. Prepare and supply of all project specifications and bidding documents necessary for bidding and construction. Bid advertisement text will be provided to Billings for publication. Schedule and hold a pre-bid

conference, publish meeting minutes and prepare any necessary addenda. Conduct a pre-bid field review with contractors as necessary. Attend the bid opening, analyze bids, submit a bid tabulation, and make a construction contract award recommendation.

7. Preparation of a complete construction traffic control plan. The plan will show required detours, required signing, applicable construction phasing.
8. Submittal of ten (10) half-size and two (2) full-sized plan sets.
9. Submittal of six (6) copies of project specifications and contract bidding documents.
10. Electronic submittal of construction plans and bid documents.
11. Submittal of two (2) copies of the project specifications, two (2) half-size plan sets, contract-bidding documents, design report and certified water and sewer checklists to Montana Department of Environmental Quality (MDEQ) for approval. Also to include permit (including fees) for Storm Water Associated with Construction Activity issued by MDEQ.

D. Construction Services

1. Construction Layout and Control.
 - i. Provide personnel, equipment, and supplies for construction layout and control. Construction layout shall include, but not be limited to, measurements, lines, locations, and grades necessary for construction.
 - ii. Reference and preserve all existing survey monuments and benchmarks. All monuments required within the project shall be punched and elevations shown on as-built drawings.
2. Inspection and Testing.
 - i. Coordinate appropriate testing of materials intended for incorporation into the project and require documentation of testing results.
 - ii. Provide review of construction to check the Contractor's work for compliance with the drawings, specifications, and other applicable documents, codes, or standards. Review of work shall be made on a full-time basis while any major item of work is in progress. Major items of work shall be water, sanitary sewer, storm drain, and irrigation utilities; subgrade preparation; gravel base course preparation; concrete pouring and finishing; paving; signalization, lighting, and striping. The Engineer shall provide a minimum of **48** hours notice for Billings personnel when specific inspections or testing require their presence on the project. Each daily review shall be documented in permanent reproducible form and kept in consecutive order with the project file. Copies of the daily review

reports shall be furnished to Billings as requested during construction. Engineer will notify Billings immediately of contract problems or deviation from approved plans.

- iii. Provide the services of a qualified materials engineering technician who will observe construction and provide representative tests. Provide direct coordination of laboratory and field quality assurance testing and geotechnical engineering between the project engineer, field inspector, and a project construction materials engineer. Geotechnical and materials engineering shall include interpretation and recommendations for the Engineer and Billings based upon field observation.
- iv. The Engineer shall record the location of all underground utilities (including, but not limited to, conduit for all street lighting, signalization, or flasher assemblies) installed under and on the surface within the public right-of-way and show these facilities, together with a representation of the general corridors in which other underground utilities are located, on the record drawings.

3. Submittal Review and Document Preparation.

- i. Review the construction operations and the traffic controls for construction, prior to the start of work. Engineer shall ascertain that the Contractor has all needed permits to accomplish his work during construction.
- ii. Check shop drawings, samples, equipment, asphaltic concrete mix design, concrete mix design, aggregate, and other data submitted by the Contractor for compliance with drawings and specifications.
- iii. Prepare change orders that do not require additional engineering design or inspection.
- iv. Prepare monthly pay estimates and final pay estimates for construction and prepare contract administration forms on a monthly basis. These will be submitted in Billings' approved format.
- v. Issue notice to the Contractor to suspend work in whole or in part when, at the recommendation of the Engineer, it is the opinion of Billings that work is not being performed or cannot be performed in accordance with the contract documents and specifications.
- vi. Contact Billings for any proposed plan or specification changes when required due to initial design and engineering deficiencies in order to complete the project in its original concept. Plan and specification changes shall be prepared by the design engineer.
- vii. Prepare and recommend work change directives and change orders when necessary due to conditions encountered during construction. The Engineer is not authorized to order additional work without the approval of Billings' Task Director. Any work resulting in contract overages will be processed by approved change orders using Billings standard forms.

4. Public Involvement Services.

- i. Schedule and hold a neighborhood meeting at the beginning of the project. At a minimum, all affected property owners and businesses shall be invited to attend. Engineer will develop a mailing list to be used for notification.
- ii. Develop an overall public involvement plan to be used during construction. At a minimum, plan will include provisions for providing information to Billings to be included in monthly newsletters; press releases and road closure notifications; weekly construction meetings; and Contractor handouts. Plan to be approved by Billings prior to implementation. Additional approvals by Billings may be required for release of public involvement plan materials to the public.
- iii. In addition to holding one (1) informational meeting during the design phase of the project, schedule and hold a minimum of two (2) public meetings during the course of construction. Meeting times and locations are to be determined by Engineer and approved by Billings.
- iv. Additional meetings if requested by Billings would be compensated for in accordance with the provisions of this contract.

E. Final Services

1. Prepare record drawings (As-Built) and furnish Billings with one (1) paper set for review and comment.
2. Following receipt of review comments from Billings, make necessary changes and furnish Billings with a sepia and two (2) paper prints of any sheet involving traffic control devices, signals, signing or striping, and utilities plans. Furnish Billings with two (2) sets of reproducible mylars and one (1) electronic set, in AutoCAD (*.dwg) format, of record drawings.
 - a) Offset distances measured from the centerline of the right-of-way to all public water mains and sanitary sewers.
 - b) Invert elevations marked for each manhole, structure, and each connection thereto, as well as at the end of each stubbed sanitary sewer line, stubbed wastewater service line, stubbed water main, stubbed water service line and stubbed fire line.
 - c) Locations of water and sewer services based on measurements from property lines.
 - d) Elevations indicating the depth of bury of all public water mains and sanitary sewers. These elevations shall be shown at each street or right-of-way intersection and at such intervals along the public water mains and sanitary sewers as may be deemed appropriate by the City Engineer.
 - e) Permanent bench marks shown.

- f) Record drawings and traffic control submissions are due within 60 days of Contractor's final payment and before final payment to the Engineer.
- 3. Provide one (1) bound copy (may include multiple volumes) of a project manual through final completion. At a minimum, the project manual shall include: project specifications and contract documents, pay estimates, correspondence, any change orders, Contractor submittals, test reports, daily inspection reports, public involvement plan and documentation, and other appropriate project records as determined by Billings.
- 4. Schedule and make final inspection with Billings and certify to Billings all construction items were constructed according to plans and specifications and are acceptable to the Engineer.
- 5. Schedule and make an inspection with Billings prior to the expiration of the construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to Billings and Contractor and continue until acceptable.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Resolution Terminating the Downtown Tax Increment District and Allocating Funds and Development Agreement with the Downtown Billings Partnership

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Downtown Billings tax increment district (TID) will sunset in March, 2008, when the final bond payment is made. State law requires that funds remaining in the City's tax increment account after the district sunsets be distributed to the taxing jurisdictions according to their respective levies. State law also allows the City to retain these funds for allowable TID expenses if the Council adopts a resolution that commits the funds to projects that will extend beyond the sunset date. The Downtown Billings Partnership (DBP) is proposing a development agreement with the City to advocate for and administer three priority projects. The Council is being asked to consider and approve the Resolution and the Development Agreement that will commit the remaining TID funds.

ALTERNATIVES ANALYZED: The Council may consider the following alternatives:

- Approve the Resolution and Development Agreement with the DBP and use the funds for priority projects that will be completed after the district sunsets.
- Approve the Resolution committing funds to priority projects but do not approve the Development Agreement and administer the projects with City staff.
- Approve the Resolution committing funds to different projects than the recommended ones and either approve or disapprove the Development Agreement.
- Do not approve the Resolution or Development Agreement and allow the funds remaining in the TID account to be redistributed to the taxing entities according to their respective tax levies.

FINANCIAL IMPACT: The estimated account balance will be \$2,500,000 after the final bond payment is made. Those funds may be allocated to 1) the GSA/federal courthouse project to purchase land and to construct parking or other public improvements, 2) to construct the intersection improvements that are needed to create a railroad quiet zone or 3) to convert one-way streets to two-way streets or for other allowable projects that are identified by the Council. DBP estimates their administrative costs to be \$220,000 for completing the projects. If the funds

are returned to the taxing entities, the approximate payments would be City - \$625,000, County - \$360,000, State - \$405,000 (education), and Schools (SD 2 and Co. transport. & retirement) - \$1,100,000. The City's portion would be distributed to the General, Public Safety, Library, MET and debt Funds.

RECOMMENDATION

Staff recommends that Council approve the Resolution that allocates the remaining tax increment funds to priority projects and approve the Development Agreement with the Downtown Billings Partnership to administer the projects.

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

ATTACHMENT

A: Resolution terminating tax increment district and allocating funds

ATTACHMENT A

RESOLUTION RELATING TO CITY OF BILLINGS DOWNTOWN URBAN RENEWAL DISTRICT; PROVIDING FOR TERMINATION OF TAX INCREMENT FINANCING; AND ALLOCATING FUNDS.

BE IT RESOLVED by the City Council of the City of Billings, Montana (the “City”), as follows:

SECTION I: RECITALS

1.01. Pursuant to Title 9, Chapter 14, Part 43, (the Act”) and Resolution No. ____, (the “Resolution”) the City, on December 18, 1978 established its Downtown Urban Renewal District (the “District”), approved an Urban Renewal Plan and elected to use tax increment financing to implement the goals of the Plan.

1.02. Pursuant to Section 7-15-4292 of the Act, the tax increment financing for the District is to terminate on the later of (a) fifteen years from the date of its adoption or (b) the date on which any bonds issued under the Act secured by the tax increment from the District are fully paid or discharged. Pursuant to the Act, the Tax Increment Financing provision for the District shall terminate on March 1, 2008, which is the date on which the last remaining bonds of the District issued by the City in the amount of \$_____ and payable from tax increment derived in the District will be discharged.

1.03. Pursuant to the Act, for the fiscal year beginning July 1, 2008 the taxes levied against the incremental taxable revenues of the District will be allocated to all taxing jurisdictions based on the respective number of mills levied and no additional funds from taxes levied after July 1, 2008 against properties located in the District shall be deposited in the Tax Increment Fund. The taxing jurisdictions levying mills against the property in the District are: the City of Billings, Yellowstone County, School District 2, the Big Sky Economic Development Authority and the State of Montana (the “Taxing Jurisdictions”).

1.04. Pursuant to 7-15-4292 of the Act, upon termination of a tax increment district, a municipality may retain and use in accordance with the provisions of the urban renewal plan any tax increment remaining in the Tax Increment Fund related to a binding loan commitment, construction contract or development agreement for an approved urban renewal project that a municipality entered into before the termination of a tax increment provision.

SECTION II: FINDINGS, DETERMINATION, ALLOCATING FUND FOR PROJECTS AND PROVIDING FOR THE REMITTANCE OF EXCESS TAX INCREMENT REVENUE

2.01. The City has approved and allocated tax increment funds for the projects in the District as shown on Schedule 1 (the “Projects”) and costs associated with administering those Projects through completion.

2.02. The City has entered into a development agreement with the Downtown Billings Partnership (the “DBP”) to complete each of the Projects. It is anticipated that some but not all of the Projects will be completed by July 1, 2008.

2.03. Pursuant to Section 7-15-4292 of the Act and under authority of this Resolution, the City shall retain on July 1, 2008 tax increment revenues on hand for the completion of each of the Projects shown in Schedule 1, administrative costs related thereto and administrative costs of closing out the District, and effective June 30, 2008, such funds shall be transferred to a Projects and Close Out Account to be maintained by the City.

2.04. If upon completion of any of the Projects, there is a contingency amount remaining and if any other Project currently under contract not yet complete requires additional money to complete, the City may authorize the use of such excess money for such Project. Upon completion of the Projects and the payment in full of all costs of the Projects, including the costs of all administrative activities associated with the Projects and closing out the District, any unexpended moneys shall be remitted to the Yellowstone County Treasurer for distribution to the Taxing Jurisdictions in accordance with the law.

SECTION III: TERMINATION OF DISTRICT AND PLAN

3.01. Upon completion of the Projects herein described and the close out of all District accounts and business, the DBP shall notify the City that the work of the Partnership with respect to the District is complete. The City shall certify the amounts, if any, then on hand in the Project and Close Out Account, which shall then be transferred to the County Treasurer as provided in Section 2.04.

3.02. As of that date, the District and the Plan shall no longer be in effect and neither the City nor the DBP shall have any obligation with respect to the implementation of the Plan in the District.

3.03. Nothing herein shall preclude the City from including in other tax increment districts as may be authorized by law or transferring to other duly created districts land that was originally included in the District as long as such land meets the requirements for inclusion in a new or existing tax increment district.

SECTION IV: EFFECTIVE DATE

4.01. This Resolution shall become effective on the date of adoption hereof.

Passed by the City Council of the City of Billings, Montana, this 13th day of November, 2007.

BY: _____
Ron Tussing, Mayor

ATTEST: _____
Cari Martin, City Clerk

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G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, November 13, 2007

TITLE: City of Billings/Yellowstone County Agreement to provide Law Enforcement Data Processing Services for the period July 1, 2007, through June 30, 2008

DEPARTMENT: Administrative Services – Information Technology Division

PRESENTED BY: David Watterson, Information Technology Manager

PROBLEM/ISSUE STATEMENT: Approve the annual Data Processing Agreement between the City of Billings and the Yellowstone County Sheriff's Department. The City of Billings has contracted with Yellowstone County for the past several years to provide the Sheriff's Department with New World Public Safety access, disk storage, computer processing, program maintenance and operations to support their existing data processing requirements in exchange for a charge based on the actual cost of resources used during the prior fiscal year. This is an annual agreement.

FINANCIAL IMPACT: The annual charge for July 1, 2007, through June 30, 2008, is \$85,779.00. The annual charge for the prior year was \$83,970.00. The increase of \$1,809.00 is due to the increased usage of the Public Safety Systems.

RECOMMENDATION

Staff recommends that Council approve the agreement to provide data processing services for the Yellowstone County Sheriff's Department in the amount of \$85,779.00.

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

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H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: City-County Special Investigations Unit (CCSIU) Agreement
DEPARTMENT: Police Department
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: Each calendar year the CCSIU Agreement with Yellowstone County needs to be approved. The current agreement will expire on December 31, 2007. It is now time to approve the agreement for the year 2008. This agreement has been reviewed with Undersheriff Jay Bell of the Yellowstone County Sheriffs Office. When the Council approves this agreement, it will then be sent over to Yellowstone County for the Commissioners' approval.

FINANCIAL IMPACT: There will be no additional financial impact to the City since the officers involved are currently included in the Police Department budget and Fund 718 is where all expenditures are budgeted for CCSIU.

RECOMMENDATION

Staff recommends that Council approve and authorize the Mayor to sign the CCSIU agreement with Yellowstone County.

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

ATTACHMENT

A-CCSIU Agreement w/Yellowstone County – 4 pages

AGREEMENT

CITY-COUNTY SPECIAL INVESTIGATIONS UNIT (CCSIU)

This Agreement establishes and governs the operation of the **CITY-COUNTY SPECIAL INVESTIGATIONS UNIT (CCSIU)**:

The undersigned public agencies are charged with enforcing the law and protecting their citizens from illegal activity. Recognizing that resources are limited and that such limitations are detrimental to combating crime within Yellowstone County and the City of Billings, and recognizing that the problem can be most effectively resolved by pooling of resources and the joint exercise of respective authorities, a joint CCSIU is established.

PARTIES: This Agreement is between:

- (1) Billings Police Department
- (2) Yellowstone County Sheriff's Office

DURATION: This Agreement is in effect from January 1, 2008 through December 31, 2008.

PROJECT DESCRIPTION:

It is proposed that a joint City-County Special Investigations Unit be established. This Unit will be comprised of personnel assigned from the Yellowstone County Sheriff's Office and the Billings Police Department. It is agreed that full-time investigative personnel will be assigned to the Unit. The CCSIU will be a component of the Rocky Mountain High Intensity Drug Traffic Area (RMHIDTA). Either agency may withdraw from the Unit at any time with 30 days notice.

STRUCTURE AND ORGANIZATION:

The Unit Supervisor and Unit members will be determined by mutual agreement between both agencies. The Unit Supervisor shall be responsible to keep both agencies informed on all matters relating to the operations, including expenditures, accomplishments, problems and all other issues involving the CCSIU.

All persons assigned to the Unit shall work under the immediate supervision and direction of the Unit Supervisor. City Detectives will be indirectly supervised and evaluated by the Captain of Investigations or his designee. All persons assigned to the Unit shall adhere to the rules and regulations as set forth in the Unit's Policy and Procedures Manual, as well as their individual departmental rules, policies and procedures.

For the purpose of indemnification of participating jurisdictions against losses, damages, or liabilities arising out of the services and activities of the Unit, the personnel so assigned by any

jurisdiction shall be deemed to be continuing under the employment of that jurisdiction and its police department.

Each agency contributing personnel to the Unit will continue that employee as an employee of the contributing agency and will be solely responsible for that employee, including wages and benefits.

Any duly sworn peace officer, while assigned to duty with the Unit as herein provided and working at the direction of the Unit Supervisor, shall have the same powers, duties, privileges, protections and immunities as are conferred upon him/her as a peace officer in his/her own jurisdiction. Billings Police Officers will be deputized as Yellowstone County Sheriff's Deputies while assigned, even on a temporary basis, to the CCSIU.

CONTEMPLATED UNIT TASKS:

At the direction of the Unit Supervisor, the CCSIU will concentrate efforts on local cases. Investigations will center around narcotics trafficking and organized criminal activities. In circumstances where a determination of specific priorities of these investigations must be made, the Unit Supervisor will make the determination in consultation with the Sheriff and Police Chief, or their designees.

UNIT OBJECTIVES:

This section identifies specific targeted objectives to be attained by the CCSIU during the program year. Objectives will be reviewed and revised as necessary by December 1, 2008.

- 1) Disrupt illegal drugs, drug/gang and organized criminal activities within the City, County and State.
- 2) Gather and report intelligence data relating to illegal drugs, drug/gang and organized criminal activities within the City, County and State.
- 3) Make arrests that will impact all levels of drug and organized criminal activities.
- 4) Effectively prosecute drug traffickers and organized criminal activity participants.
- 5) Promote law enforcement cooperation through joint investigations and close coordination with other police agencies and task forces.

PETTY CASH AND FORFEITURE FUND:

Agencies involved in the City-County Special Investigations Unit will each place **SIX THOUSAND DOLLARS** (\$6,000.00) into the Petty Cash Fund. The monies will be utilized by the Unit for buys and informants. As financial transactions take place, an equal amount of monies will be deducted from each agency's monies. The Supervisor of the Unit will be responsible for administering the monies as needed and keeping a running log of all

expenditures, to include incident numbers and reason for purchase(s). The money log will be audited by the Yellowstone County Auditor or his/her representative, on a quarterly basis. A copy of the audit will be submitted to the Captain of Investigations or his designee.

Replacement of the Petty Cash Fund will be accomplished by the following procedures:

CITY OF BILLINGS:

The Unit Supervisor will make a written request through the Captain in charge of Investigations or his designee, who, in turn, will approve the request and submit it to the City Finance & Administrative Services Department. The City Financial Services Manager will direct monies to the Unit Supervisor, who will deposit the reimbursement back to the Petty Cash Fund.

YELLOWSTONE COUNTY:

The Unit Supervisor will make a written request to the Yellowstone County purchasing department to replenish their portion of the fund.

Forfeiture vehicles that are to be sold at auction will be sold at either the Yellowstone County Sheriff's Sale or at auction by the Billings Police Department. Any forfeiture monies acquired by the Unit from any source will be split equally between the agencies. All forfeiture procedures will be handled by the Unit Supervisor and the Yellowstone County Attorney's Office, at no cost to the City.

INDEMNITY CLAUSE:

The City shall have the duty to defend Yellowstone County and shall indemnify and hold harmless Yellowstone County and its agents and employees from and against all claims, liabilities, damages, losses, judgments and expenses, including attorney's fees, arising out of or resulting from this contract provided that any such claims, liability, damage, loss, judgment or expense is caused in whole or in part, by a negligent act, error or omission of the City, its employees or agents.

Yellowstone County shall have the duty to defend the City and shall indemnify and hold harmless the City and its agents and employees from and against all claims, liabilities, damages, losses, judgments and expenses, including attorney's fees, arising out of or resulting from this contract provided that any such claim, liability, damage, loss or expense is caused in whole or in part by any negligent act, error, or omission of Yellowstone County, its employees, officials or agents.

RESOURCES:

All available resources that are currently available in the City of Billings Investigations Division and in the Yellowstone County Investigations Division will be made available to the CCSIU. Any specialized equipment that is not being kept at the location of the CCSIU office will need to be borrowed by an assigned CCSIU detective from that agency.

THIS AGREEMENT IS EXECUTED THIS ____ DAY OF _____, 2007.

SIGNED:

MAYOR, CITY OF BILLINGS

DATE_____

COUNTY COMMISSIONER

DATE_____

COUNTY COMMISSIONER

DATE_____

COUNTY COMMISSIONER

DATE_____

ATTEST:

CARI MARTIN, CITY CLERK
CITY OF BILLINGS

TONY NAVE
CLERK AND RECORDER
YELLOWSTONE COUNTY

APPROVED AS TO FORM:

BRENT BROOKS, CITY ATTORNEY
CITY OF BILLINGS

02.CCSIU AGREEMENT 2008 =

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Construction Agreements with Montana Department of Transportation
City Maintained Routes

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: The Montana Department of Transportation (MDT) and the City of Billings propose to construct certain improvements on urban routes in and through the City. The three routes were selected by City Staff due to condition and are Broadwater Ave from Division to 12th Street West; Broadwater Ave from 28th to Shiloh Road; and Yellowstone River Road from Bench to Iristen. The improvements consist of milling and overlaying. An agreement between the City and MDT is necessary to outline the scope of the project and the responsibility of maintenance for the City. All streets are currently being maintained by the City.

ALTERNATIVES ANALYZED:

- Approve the agreement between the Montana Department of Transportation and the City of Billings
- Do not approve the agreement between the Montana Department of Transportation and the City of Billings

FINANCIAL IMPACT: These projects are 100% funded by MDT with MDT funds and Federal funds. There is not monetary obligation for the City of Billings.

RECOMMENDATION

Staff recommends that Council approve the Construction Agreements between the City of Billings and the Montana Department of Transportation.

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

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J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

SUBJECT: Vehicle Lease Agreement with Underriner Motors for Montana Internet Crimes Against Children (ICAC) Task Force Lease Vehicle

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: The City has been awarded an Internet Crimes Against Children (ICAC) Grant in the amount of \$250,000, which will provide monies to form a task force to serve the State of Montana, creating satellite offices in Helena and Missoula; hire a task force coordinator/forensic examiner on a contract basis; enlarge the Billings office at the FBI location; secure office furniture, equipment, training, supplies and phone services. The lease vehicle will be for the use of the coordinator/forensic examiner. Underriner Motors has agreed to a lease agreement which will run from December 1, 2007, thru February 29, 2009. City Council is being asked to approve this vehicle lease agreement in the amount of \$5,250 for the ICAC Task Force.

FINANCIAL IMPACT: The cost of leasing this vehicle will be \$5,250 (\$350 per month), and the dollars are budgeted in the grant.

RECOMMENDATION

Staff recommends Council approval of the attached lease agreement between Underriner Motors and the City of Billings to lease one (1) vehicle for the Internet Crimes Against Children Task Force from December 1, 2007, through February 29, 2009, in the amount of \$5,250.

Approved By: City Administrator City Attorney

ATTACHMENT

A - Lease Agreement with Underriner Motors – 5 pages

AUTOMOBILE LEASE AGREEMENT

This AGREEMENT made November 13, 2007 by and between **UNDERRINER MOTORS** with its principal place of business at 523 North 29th Street, Billings, Montana (the LESSOR), and **THE BILLINGS MONTANA POLICE DEPARTMENT**, P. O. Box 1554, Billings, MT 59103 (the LESSEE), for the lease of one (1) vehicle for the Internet Crimes Against Children (ICAC) Task Force.

The terms of this agreement is for a period of 15 months from December 1, 2007 through February 29, 2009 with the terms and conditions set forth below:

1) **RENTAL:** The LESSEE shall pay to the LESSOR a monthly rental of THREE HUNDRED FIFTY DOLLARS (\$350.00) per vehicle for a total of FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,250.00).

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

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

4) **INSURANCE:**

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

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

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

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

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

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

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

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

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

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

13) **INDEMNITY:** LESSOR assumes no liability for any acts or omissions of the LESSEE or the LESSEE'S agents. The LESSEE hereby releases and agrees to indemnify the LESSOR and hold the LESSOR harmless from any and all claims against the LESSOR of any kind or nature whatsoever, arising out of or resulting from the use and/or operation of the leased vehicles by the LESSEE, including any expenses and attorneys' fees which the LESSOR may incur in defending any such claims, except such claims or portions thereof as are covered by

applicable insurance as otherwise herein provided. However, Lessee does not release and indemnify LESSOR for any negligent act or omission of LESSOR arising from this lease.

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

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

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

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

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

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

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

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

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

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

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

LESSEE:

CITY OF BILLINGS

BY _____
RON TUSSING, MAYOR

LESSOR:

UNDERRINER MOTORS

BY _____
BILL UNDERRINER
ITS: OWNER

ATTEST BY:

CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

BRENT BROOKS, CITY ATTORNEY

175. VEHICLE LEASE AGRMT FOR ICAC TASK FORCE

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Assignment and Transfer of West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Drew C. and/or Jennifer R. White

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On May 29, 2007, John M. and/or Marcia A. Nash entered into two (2) twenty-year, West End Hangar Ground Leases with the City of Billings, and subsequently built a 7,200 square foot duplex-style hangar containing two 3,600 square foot units on a leased parcel in Township 1 North, Range 25 East, Section 25, referred to as Lots 10 and 11. This is the second hangar of this size and style built by Mr. and Mrs. Nash. The Nashes have opted to sell one-half of this second hangar, Hangar unit #2807, to Drew C. and/or Jennifer R. White. This Assignment and Transfer will formally transfer the Ground Lease on Lot 11 from John M. and/or Marcia A. Nash to Drew C. and/or Jennifer R. White. The Nashes sold the other one-half of this hangar to James C. and/or Gail G. Heatherly. The Assignment and Transfer to Mr. and Mrs. Heatherly was approved on October 9, 2007.

FINANCIAL IMPACT: There is no financial impact from this action. The name on the Lease is all that changes with this Assignment and Transfer; all other terms and conditions remain in full force and effect.

RECOMMENDATION

Staff recommends that Council approve the Assignment and Transfer of the West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Drew C. and/or Jennifer R. White.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Commercial Terminal Building Lease with ARINC Incorporated
DEPARTMENT: Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: ARINC Incorporated wishes to lease space in the Terminal Building in which to place equipment for ground-based communication links for support of the Transportation Security Administration (TSA). The twenty-five (25) square foot Lease provides a space for the location of the telecommunications equipment on the west side of the Terminal Building and a rooftop antenna. This Lease will be the third lease for placement of equipment of this type. ARINC will install and maintain the equipment at no cost to the City. Standard insurance and indemnification language is included in the Lease. The Lease term is for one year, with automatic annual renewals.

FINANCIAL IMPACT: The first year of this Lease will generate \$3,110.48 of revenue for the City's Airport. Subsequent years will be adjusted on the anniversary date, using the Consumer Price Index - Urban to keep pace with annual inflation.

RECOMMENDATION

Staff recommends that Council approve the one year Lease with ARINC Incorporated. The term will commence November 1, 2007, and will be automatically renewed annually, until cancelled by either party.

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

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

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, November 13, 2007

TITLE: Approval of Limited Commercial Ground Lease with Aerotronics, Inc.

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Aerotronics, Inc. has been a long-term tenant of Billings Logan International Airport and recently experienced a change of ownership of the corporation. The new owners requested a new, long-term lease over which to amortize their purchase costs. Additionally, Aerotronics has requested some additional property from its current southern boundary to the security fence. This new twenty (20) year ground Lease would be for 95,915 square feet. Aerotronics is also planning to make future capital improvements in its facility and to repave around the facility. The Lease identifies that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language.

FINANCIAL IMPACT: This ground Lease will generate \$17,456.52 in the first year of the Lease. The ground Lease rate of \$0.182 per square foot per annum is in line with the rate being paid by other ground lease tenants located in this area. Future Lease year rentals will be adjusted annually by the Consumer Price Index for all Urban Consumers (CPI-U).

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a new twenty-year Limited Commercial Aviation Ground Lease at Billings Logan International Airport with Aerotronics, Inc. beginning October 1, 2007, and terminating September 30, 2027.

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

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

N

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Amendment of Lease for Office Space to the Transportation Security Administration (TSA)

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On September 8, 2003, City Council approved a Lease with the U.S. General Services Administration (GSA) for the remodeling and use of Airport Terminal Building space, for use by the Transportation Security Administration (TSA) security screening staff, providing a total of 1,101.20 square feet of usable space for TSA operations. On April 24, 2006, the City Council approved a Lease Amendment for 177 square feet of additional space to store supplies at the Airport Terminal Building, and to provide a private office for their supervisors to handle employee issues, customer complaints, etc. The TSA has requested a second amendment to add 523.53 square feet of space in the basement of the Terminal Building for additional office and storage space.

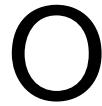
FINANCIAL IMPACT: The additional 523.53 square feet of space will add \$15,705.96 to the annual Lease rate paid to the City by the TSA. This Amendment increases the total leased space to 1,801.73 square feet, and the total annual Lease rental to \$52,598.07. In this particular GSA Lease, the rate is fixed until the Lease expires on May 31, 2009.

RECOMMENDATION

Staff recommends that Council approve and the Mayor execute the Lease Amendment for the TSA office and storage space.

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

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Airline Operating Permit with ExpressJet Airlines

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: ExpressJet Airlines has entered into an agreement with Frontier Airlines, Inc. and will implement daily service to Billings effective November 15, 2007. ExpressJet will provide this service in the interim, as Frontier transitions to its Lynx operation. To ensure that specific operating requirements will be met, a Scheduled Airline Operating Permit between the City of Billings and ExpressJet is required. This is a standard Operating Permit that is used for various airlines that operate occasionally for the Signatory Airlines that are based in Billings. The Operating Permit ensures that the airline follows certain operating parameters and procedures, including providing proof that the proper insurance coverage is in place.

FINANCIAL IMPACT: There will be no financial impact from this operation because the City is already receiving landing fees from Frontier Airlines. ExpressJet will merely be replacing Frontier's aircraft with its own.

RECOMMENDATION

Staff recommends that Council approve and the Mayor execute the Scheduled Airline Operating Permit with ExpressJet Airlines.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Road Right-Of-Way and Park Land Annexation Request #07-05,
Acknowledge Request, Approve Resolution of Intent to Annex, Set a
Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex a portion of park land along the Zimmerman Trail road right-of-way and portion of the Zimmerman Trail right-of-way to the City of Billings under 7-2-4401, et seq. MCA (See Attachment D). The total property is 13.4 acres in size. Yellowstone County recently quit claim deeded the 4.2 acre parcel of park land to the City and in 2005 quit claim deeded the road right-of-way (See Attachment C). The property borders and includes the Zimmerman Trail road right-of-way as it climbs the rim rocks to Highway 3 (See Attachment B).

The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City from the County in areas where annexations are occurring. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. Since the County has quit claim deeded the road right-of-way and the adjacent park land to the City, and the City limits border these properties to the east, the City now is ready to annex the properties as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property on behalf of the city. The only alternative that is

consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the right-of-way and park land annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

Approved by: _____ City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. Park Land and Right-Of-Way Quit Claim Deeds
- D. City Annexation Request Letter

ATTACHMENT A
RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION**

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in Section 27, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Zimmerman Trail between Rimrock Road and State Highway No. 3, as recorded in Book 342, Page 349, Recorded May 11, 1949, Under Document No. 450203, Records of Yellowstone County, also described under Quitclaim Deed, Yellowstone County to the City of Billings, Recorded December 5, 2005, Under Document No. 3359157, Records of Yellowstone County, being a strip of land 100.0 feet in width to the following described centerline:

Beginning at a point on the south line of Section 27, Township 1 North, Range 25 East M.P.M. which point is 2904.9 feet west of the southeast corner of said section; thence due North, 1105 feet; thence Northeast 382.6 feet on a $17^{\circ}28'$ curve right ($\Delta=67^{\circ}28'$); thence Easterly 165.9 feet on a $25^{\circ}43'$ curve right ($\Delta=42^{\circ}40'$); thence South $69^{\circ}52'$ East, 96.5 feet; thence South $69^{\circ}0'$ East, 202.4 feet; thence Easterly 351.2 feet on an $8^{\circ}18'$ curve left ($\Delta=29^{\circ}09'$); thence North $81^{\circ}51'$ East, 66.0 feet; thence North $85^{\circ}18'$ East, 110.3 feet; thence Northeasterly 376.1 feet on a $6^{\circ}0'$ curve left, ($\Delta=22^{\circ}34'$); thence North $62^{\circ}44'$ East, 90.3 feet; thence Northeasterly, 183.9 feet on a $41^{\circ}0'$ curve left ($\Delta=75^{\circ}25'$); thence North $12^{\circ}41'$ West, 219.8 feet; thence N. $19^{\circ}01'$ West, 388.0 feet; thence Northwesterly 392 feet on a $24^{\circ}0'$ curve left ($\Delta=92^{\circ}21'$); thence S. $68^{\circ}38'$ West, 232 feet; thence Northwesterly 450 feet on a $19^{\circ}0'$ curve right ($\Delta=85^{\circ}30'$); thence Northeasterly 371.7 feet on a $15^{\circ}0'$ curve right ($\Delta=55^{\circ}45'$); thence North $29^{\circ}53'$ East, 93.3 feet, more or less to the

intersection with the center line of the new Billings-Broadview road (now known as State Highway No. 3), including all adjacent right-of-way of State Highway No. 3;

Also that portion of Yellowstone County Park land wholly surrounded by the previously described portion of Zimmerman Trail to the west; Durland Heights Subdivision, Recorded September 22, 1951, Under Document No. 482159, Records of Yellowstone County to the south; Wilshire Heights Subdivision 5th Filing, Recorded October 10, 1972, Under Document No. 918177, Records of Yellowstone County, and Wilshire Heights Subdivision 6th Filing, Recorded February 9, 1973, Under Document No. 926987, Records of Yellowstone County to the east; and Wilshire Park of Certificate of Survey No. 972, Recorded September 29, 1964, Under Document No. 739703, Records of Yellowstone County to the north.

Containing 13.401 gross acres and 4.205 net acres, more or less.
(# 07-05) See Exhibit "J" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in MCA, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10th, 2007.
5. PROCEDURE. All procedures as required under MCA, Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

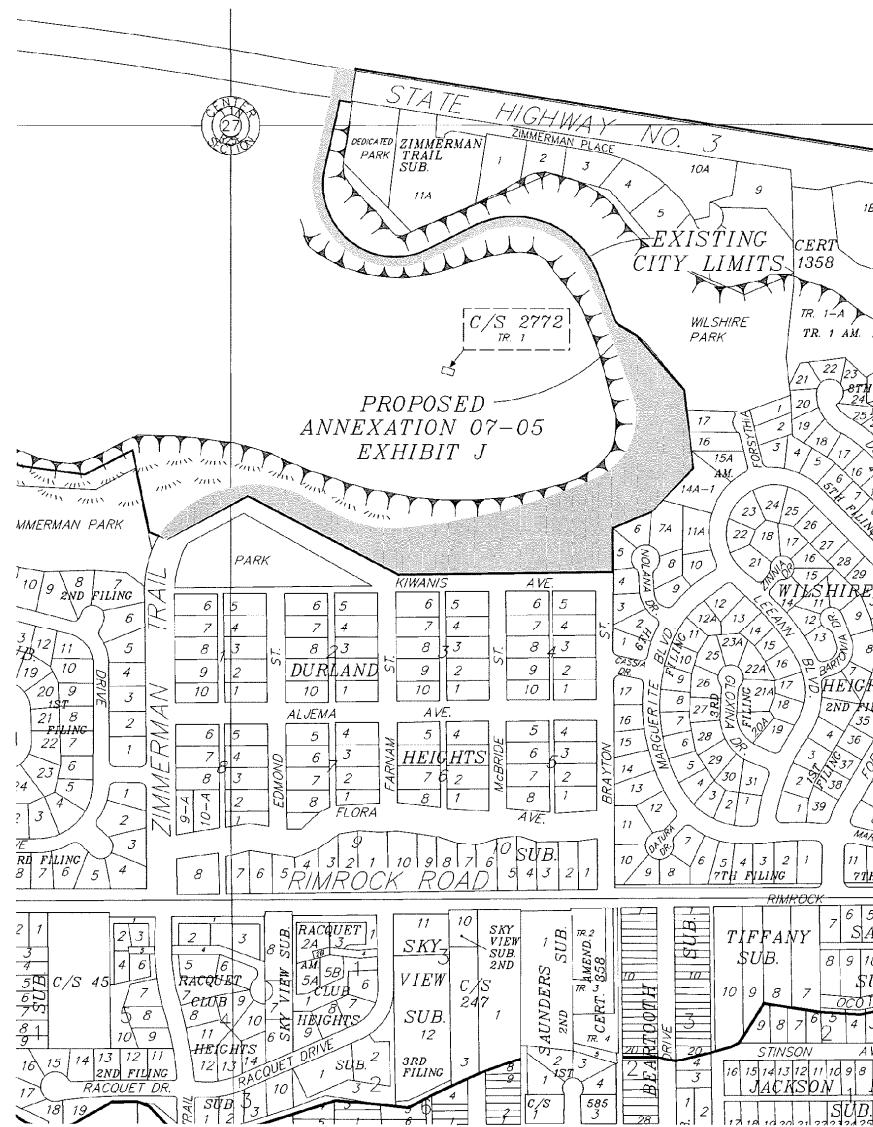
BY: _____

Cari Martin, CITY CLERK

(AN #07-05)

ATTACHMENT B
Annexation Map – Annexation #07-05

EXHIBIT J



ATTACHMENT C

Return to:
City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103



QUITCLAIM DEED

For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Section 27, T.IN., R.25E., P.M.M., Yellowstone County, Montana:

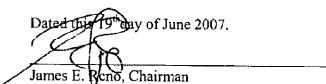
That portion of Yellowstone County Park land wholly surrounded by Zimmerman Trail to the west; Durland Heights Subdivision, Recorded September 22, 1951, Under Document No. 482159, Records of Yellowstone County to the south; Wilshire Heights Subdivision 5th Filing, Recorded October 10, 1972, Under Document No. 918177, Records of Yellowstone County, and Wilshire Heights Subdivision 6th Filing, Recorded February 9, 1973, Under Document No. 926987, Records of Yellowstone County to the east; and Wilshire Park of Certificate of Survey No. 972, Recorded September 29, 1964, Under Document No. 739703, Records of Yellowstone County to the north.

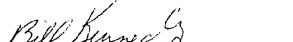
Said Tract containing 4.205 acres more or less.

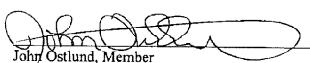
AS SHOWN BY EXHIBIT "A", consisting of one sheet, attached hereto and made a part of.

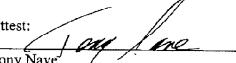
The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its June 19, 2007 meeting.

Dated this 19th day of June 2007.


James E. Reno, Chairman
Yellowstone County Commissioner


Bill Kennedy, Member
Yellowstone County Commissioner


John Ostlund, Member
Yellowstone County Commissioner

Attest: 
Tony Nave
Yellowstone County Clerk and Recorder



3428327

Page: 2 of 3

06/28/2007 08:22

State of Montana }
County of Yellowstone }
SS.

On June 19, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires 2-27-2010

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires 2-27-2010

(Notarial Seal)



ACKNOWLEDGEMENT AND ACCEPTANCE OF CONVEYANCE

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

Rop Tussing, Mayor, City of Billings
ATTEST:
By: Lari Martin, City Cle

State of Montana }
County of Yellowstone }

On this 21st day of June, 2007, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and Carri Martin, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

Wynnette J Maddox
Wynnette J Maddox
Notary Public for the State of Montana
Residing in Billings, Montana Shepherd
My commission expires 9-16-2010

A circular notary seal for Winnette J. Maddox, Notarial Seal, State of Montana. The seal is black and white with a decorative border. The text "NOTARIAL" is in the center, with "NOTARIAL" above "Seal" and "Seal" above "State of Montana". The name "WINNETTE J. MADDUX" is at the top, and "NOTARIAL SEAL" is at the bottom.



3359157

Page: 1 of 2
12/05/2005 09:51A

RETURN TO:

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

Yellowstone County QCD 0.00

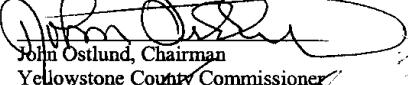
Quit Claim Deed

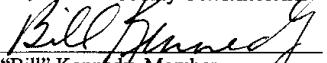
For valuable consider, Yellowstone County, a political subdivision of the State of Montana, through its Board of County Commissioners, conveys and quit claims to the City of Billings, a government entity, all its interest in the property described below that is located in Yellowstone County, Montana:

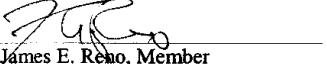
Zimmerman Trail, legally described as a strip of land 100 feet in width in Section 27, Township 1 North, Range 25 East, M.P.M., the center line of which strip of land is more particularly described as follows: beginning at a point on the South line of Section 27, Township 1 North, Range 25 East M.P.M. which point is 2904.9 feet west of the Southeast corner of said section; thence due North, 1105 feet; thence Northeast 382.6 feet on a 17° 28' curve right ($\Delta = 67^\circ 28'$); thence Easterly 165.9 feet on a 25° 43' curve right ($\Delta = 42^\circ 40'$); thence South 69° 52' East, 96.5 feet; thence South 69° 0' East, 202.4 feet; thence Easterly 351.2 feet on an 8° 18' curve left ($\Delta = 29^\circ 09'$); thence North 81° 51' East, 66.0 feet; thence North 85° 18' East, 110.3 feet; thence Northeasterly 376.1 feet on a 6° 0' curve left, ($\Delta = 22^\circ 34'$); thence North 62° 44' East, 90.3 feet; thence Northeasterly, 183.9 feet on a 41° 0' curve left ($\Delta = 75^\circ 25'$); thence North 12° 41' West, 219.8 feet; thence North 19° 01' West, 388.0 feet; thence Northwesterly 392 feet on a 24° 0' curve left ($\Delta = 92^\circ 21'$); thence South 68° 38' West, 232 feet; thence Northwesterly 450 feet on a 19° 0' curve right ($\Delta = 85^\circ 30'$); thence Northeasterly 371.7 feet on a 15° 0' curve right ($\Delta = 55^\circ 45'$); thence North 29° 53' East, 93.3 feet, more or less to intersection with the center line of the new Billings-Broadview road.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2003) at its November 15, 2005 meeting.

Dated this 15th day of November 2005.


John Ostlund, Chairman
Yellowstone County Commissioner


"Bill" Kennedy, Member
Yellowstone County Commissioner


James E. Reno, Member
Yellowstone County Commissioner

Attest:


Tony Nave
Yellowstone County Clerk and Recorder

State of Montana }
 ss.
County of Yellowstone }

I acknowledge that on November 15, 2005, before me, personally appeared John Ostlund, "Bill" Kennedy and James E. Reno, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, the

Quit Claim Deed
Yellowstone County to City of Billings
Zimmerman Trail
1 of 2



Page: 2 of 2
12/05/2005 09:51A

Yellowstone County Clerk and Recorder, and executed the attached quit claim deed on behalf of Yellowstone County in their official capacity as Board Members and the Clerk and Recorder.

Harriett Buckner
Harriett Buckner
Notary Public For the State of Montana
Residing at Billings, Montana.
My commission expires 3-10-2008

(Notarial Seal)



Acknowledgment and Acceptance of Conveyance

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

Charles F. Tooley
Charles F. Tooley
Mayor, City of Billings

Attest: *Susan Shunkler*
Susan Shunkler
Deputy City Clerk

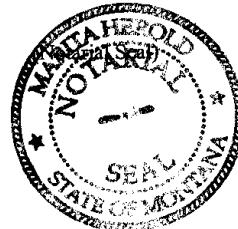
11/28/05
Date



State of Montana }
 ss.
County of Yellowstone }

On this 28th day of November 2005, before me, a notary public in and for the State of Montana, personally appeared Charles F. Tooley as Mayor and Susan Shunkler Deputy City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledged to me that they executed the foregoing instrument. Witness, Whereof, I have hereunto set my hand and my seal the day and year herein above written.

Marita Herold
Marita Herold
Notary Public For the State of Montana
Residing at Billings, Montana.
My commission expires 7/24/2008



ATTACHMENT D



CITY OF BILLINGS OFFICE OF CITY ADMINISTRATOR

P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8433
FAX (406) 657-8390



Memorandum

To: Cari Martin, Billings City Clerk
From: Christina Volek, Billings City Administrator *CPV*
Cc: Wyeth Friday, AICP, Planning Division Manager
Date: 8/16/07
Re: Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 th Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 th Street and 50 th Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 th Street West
#07-17	Portion of 62 nd Street West south of Ironwood Subdivision
#07-18	Portions of 56 th Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 nd Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Road Right-Of-Way Annexation Request #07-11, Acknowledge Request, Approve Resolution of Intent to Annex, Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex this 3.74 acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City from the County in areas where annexations are occurring. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. Property to the south of this property on Broadwater Avenue was annexed previously and all of the Broadwater Avenue right-of-way was not included in previous annexations. The City is now ready to annex this right-of-way property as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: Government officials under 7-2-4403, MCA, are allowed to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

Approved by:

City Administrator _____ **City Attorney** _____

ATTACHMENTS

- E. Resolution of Intent to Annex and Set Public Hearing
- F. Map
- G. City Annexation Request Letter

ATTACHMENT A
RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION**

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the N1/2 of Section 2, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 10-A-2, of Amended Tracts 8-A Through 13-A of Certificate of Survey No. 2314, Recorded January 7, 1992, Under Document No. 1619771, Records of Yellowstone County, Montana, less that portion previously annexed under City of Billings Ordinance No. 4421 Passed by the City Council and Approved by the Mayor February 1, 1982.

Containing 3.741 gross acres.

(# 07-11) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.

2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

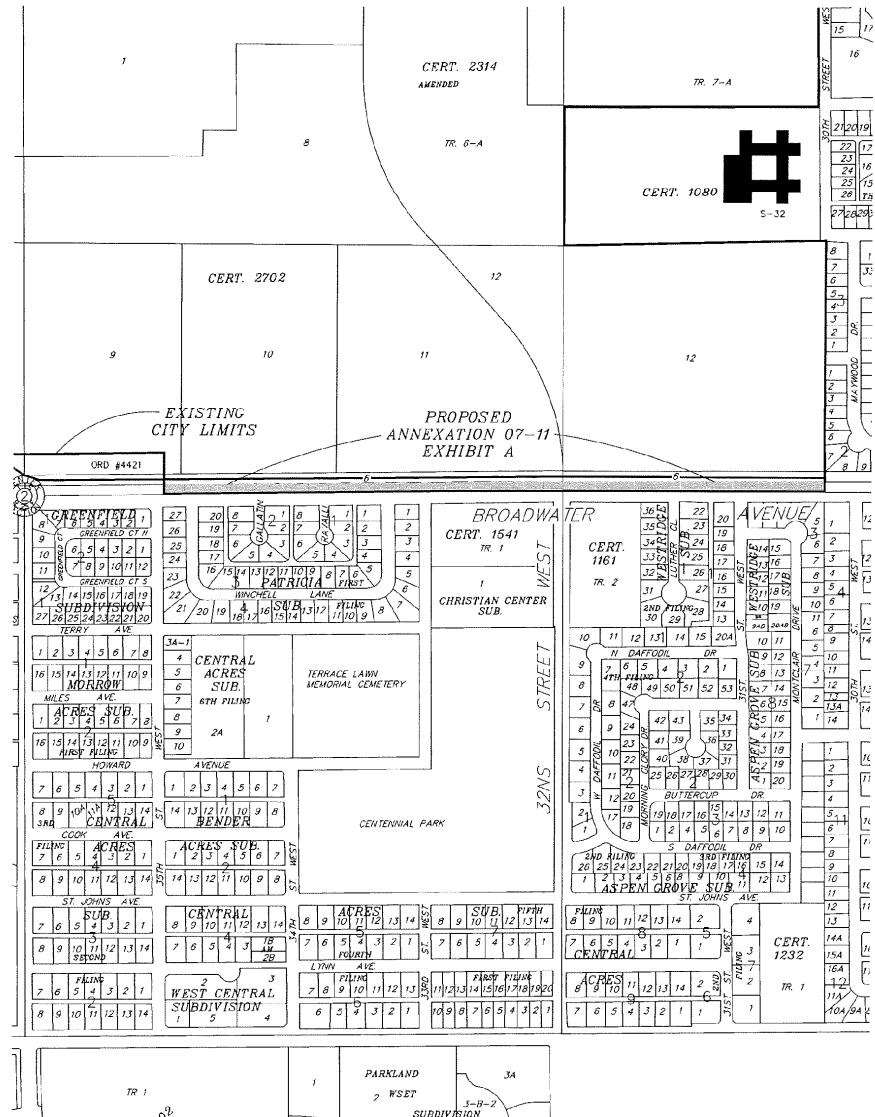
BY: _____

Cari Martin, CITY CLERK

(AN #07-11)

ATTACHMENT B
Annexation Map – Annexation #07-11

EXHIBIT A



ATTACHMENT C



CITY OF BILLINGS OFFICE OF CITY ADMINISTRATOR

P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8433
FAX (406) 657-8390



Memorandum

To: Cari Martin, Billings City Clerk
From: Christina Volek, Billings City Administrator *CFV*
Cc: Wyeth Friday, AICP, Planning Division Manager
Date: 8/16/07
Re: Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 th Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 th Street and 50 th Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 th Street West
#07-17	Portion of 62 nd Street West south of Ironwood Subdivision
#07-18	Portions of 56 th Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 nd Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Road Right-Of-Way Annexation Request #07-12, Acknowledge Request, Approve Resolution of Intent to Annex, Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex this 1.69 acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City by the County. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. This particular property is scheduled to be quit claimed by the County to the City on November 20, 2007, and the City Council is expected to accept this quit claim deed when it considers annexation of this property at its meeting on December 10. Property to the north of this right-of-way property on Bell Avenue was annexed previously and all of the Bell Avenue right-of-way was not included in that annexation. The City is now ready to annex these rights-of-way as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

Approved by:

City Administrator _____ **City Attorney** _____

ATTACHMENTS

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. City Annexation Request Letter

ATTACHMENT A
RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION**

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the NE1/4 of Section 10, T.1S., R.25E., P.M.M., Yellowstone County, Montana, being a portion of Tract 5 (a road Tract) adjacent to the south line of Tract 1 of Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648, Recorded July 20, 1994, Under Document No. 1749237, Records of Yellowstone County, Montana, also adjacent to the south line of Legends West Subdivision, Recorded February 7, 2003, Under Document No. 3214081, Records of Yellowstone County, Montana, and Bell Avenue as shown in Bell Estates Subdivision, Recorded March 27, 2000, Under Document No. 3085059, Records of Yellowstone County, Montana, more particularly described as:

Basis of bearings: Corrected Amendment of Tracts 1 and 3, and Remainder Tract 2 to be Amendment Of Tracts 1, 2 And 3 Certificate of Survey No 1648,

Beginning at the northeast corner of Tract 5, of said Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648; thence N 89°52'00" W a distance of 1248.02 feet; thence S 00°08'00" W a distance of 30.00; thence S 89°52'00" E a distance of 32.67 feet; thence S 00°08'00" W a distance of 30.00 feet to the south Right-Of-Way line of Bell Avenue as shown in said Bell Estates Subdivision; thence S 89°52'00" E a distance of 1215.78 feet to a point on the west line of the Shiloh Drain; thence N 00°16'30" W a distance of 60.00 feet to the Point of Beginning.

Containing 1.697 gross acres.
(# 07-12) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

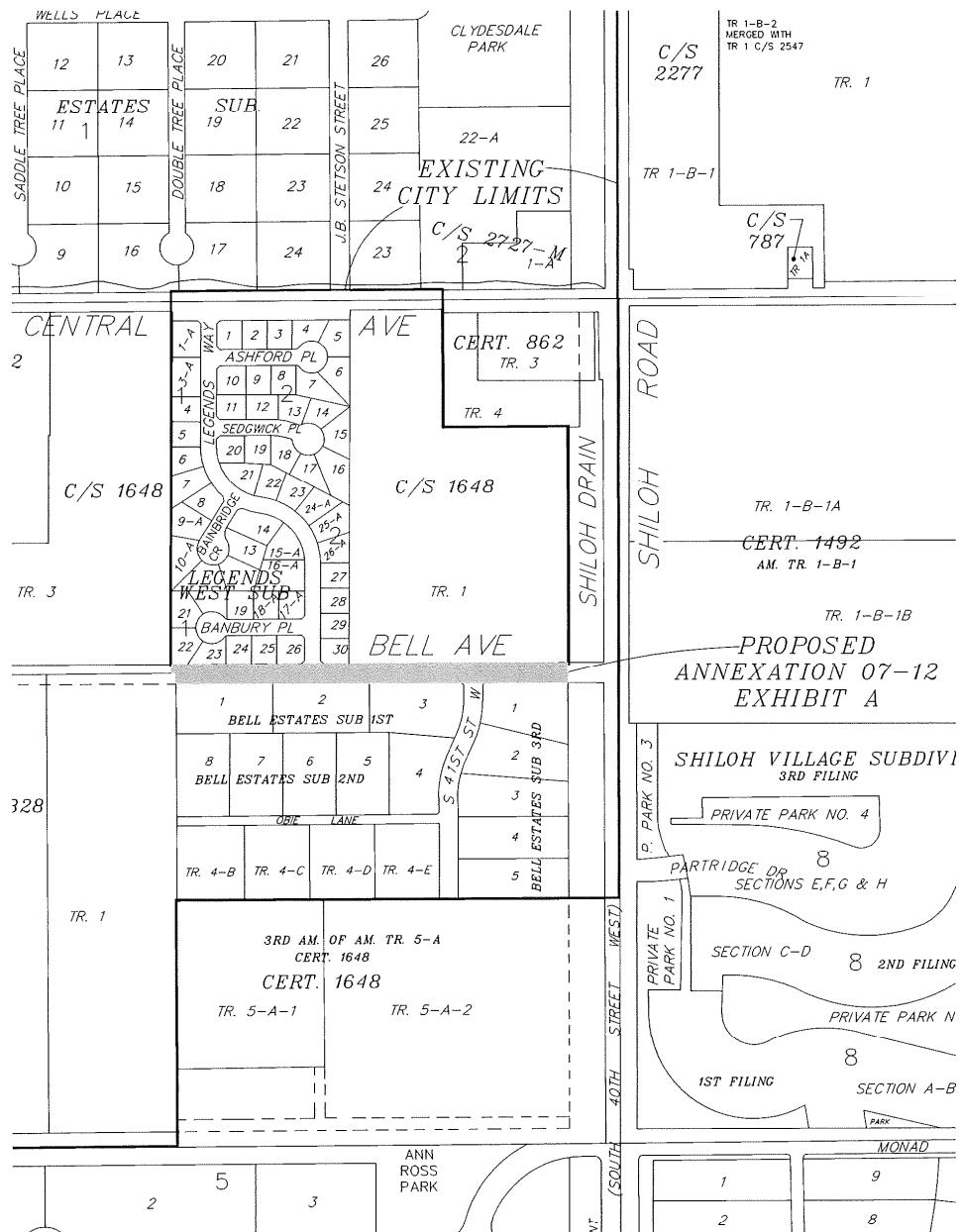
BY: _____

Cari Martin, CITY CLERK

(AN #07-12)

ATTACHMENT B
Annexation Map – Annexation #07-12

EXHIBIT A



ATTACHMENT D



CITY OF BILLINGS
OFFICE OF CITY ADMINISTRATOR
P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8433
FAX (406) 657-8390



Memorandum

To: Cari Martin, Billings City Clerk
From: Christina Volek, Billings City Administrator *CPV*
Cc: Wyeth Friday, AICP, Planning Division Manager
Date: 8/16/07
Re: Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 th Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 th Street and 50 th Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 th Street West
#07-17	Portion of 62 nd Street West south of Ironwood Subdivision
#07-18	Portions of 56 th Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 nd Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Road Right-Of-Way Annexation Request #07-13, Acknowledge Request, Approve Resolution of Intent to Annex, Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex this 0.92 acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City by the County. This property was quit claimed by the County to the City in 2005. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The property east of this right-of-way property on Zimmerman Trail was annexed previously, and all of the Zimmerman Trail right-of-way was not included in that annexation. The City is now ready to annex this right-of-way as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

Approved by:

City Administrator _____ **City Attorney** _____

ATTACHMENTS

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. City Annexation Request Letter

ATTACHMENT A
RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION**

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

Tracts of land situated in the SW1/4 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1B, Amended Tract 1 of Certificate of Survey No. 1990, Recorded October 26, 2005, Under Document No. 3354258, Records of Yellowstone County, Montana;

Tract 1-B, Amended Tract 1 of Certificate of Survey No. 2974, Recorded October 26, 2005, Under Document No. 3354257, Records of Yellowstone County, Montana. Less that portion of Tract 1-B of said Amended Tract 1 of Certificate of Survey No. 2974 designated for road for Grand Avenue; and less that portion of Tract 1-B previously annexed under City Resolution No. 06-18449, Recorded October 05, 2006, Under Document No. 3395866, Records of Yellowstone County, Montana.

Containing 0.912 gross acres.

(# 07-13) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

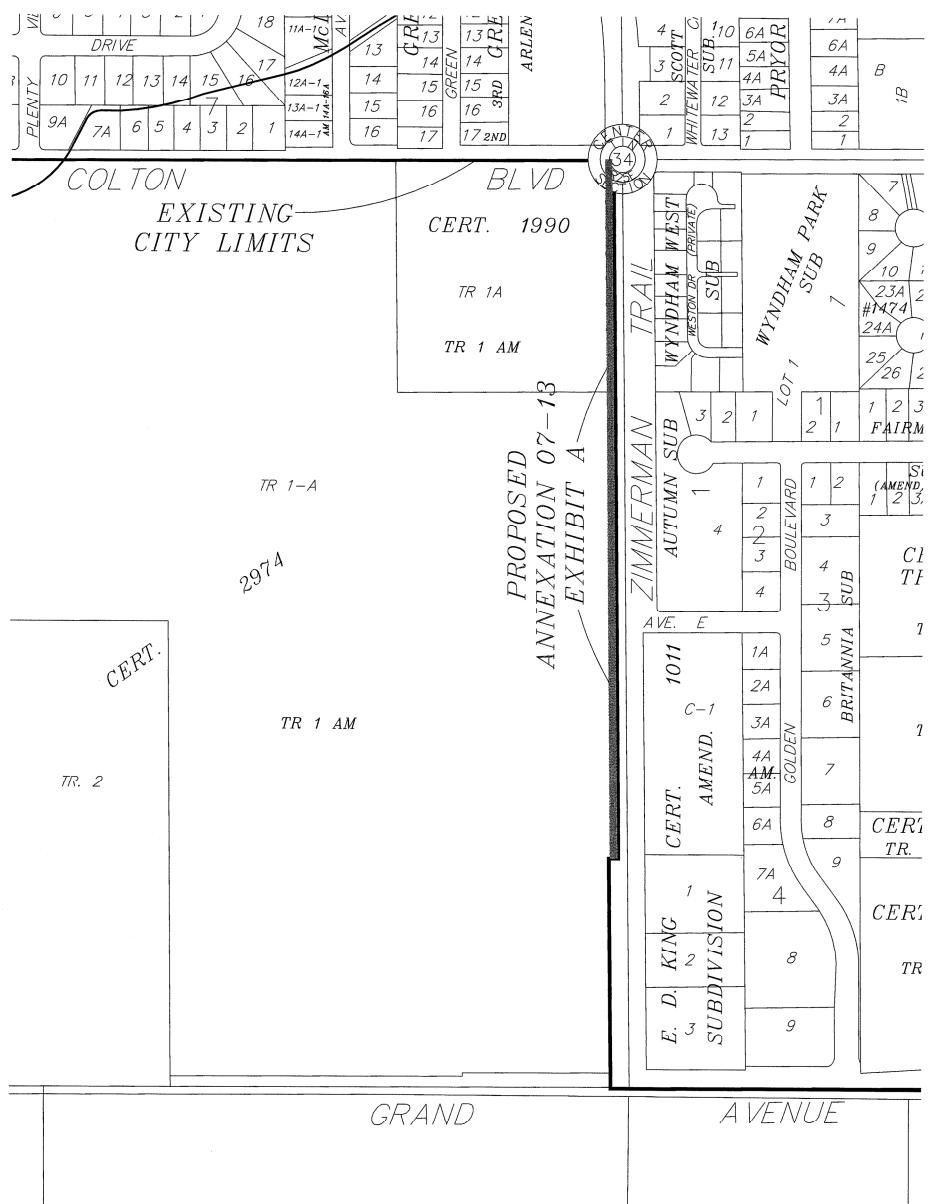
BY: _____

Cari Martin, CITY CLERK

(AN #07-13)

ATTACHMENT B
Annexation Map – Annexation #07-13

EXHIBIT A



ATTACHMENT C



CITY OF BILLINGS
OFFICE OF CITY ADMINISTRATOR
P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8433
FAX (406) 657-8390



Memorandum

To: Cari Martin, Billings City Clerk
From: Christina Volek, Billings City Administrator *CFV*
Cc: Wyeth Friday, AICP, Planning Division Manager
Date: 8/16/07
Re: Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 th Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 th Street and 50 th Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 th Street West
#07-17	Portion of 62 nd Street West south of Ironwood Subdivision
#07-18	Portions of 56 th Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 nd Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

Billings Pride
City-wide

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Road Right-Of-Way Annexation Request #07-14, Acknowledge Request, Approve Resolution of Intent to Annex, Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City of Billings, property owner, submitted a letter of request to annex this 4.86 acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City by the County. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The property south of this property on Cove Avenue was annexed in two separate annexations in 2002 and 2003. All of the Cove Avenue right-of-way was not included in those annexations.

Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city "shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed." This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex approximately the western two thirds of the right-of-way for Cove Avenue in this area since it is adjacent to property on the south that was annexed after 2003. The City also is ready to annex the eastern one third of the Cove Avenue right-of-way in this area as per 7-2-4401, et seq. MCA. The property to the south of this portion of the right-of-way was annexed in 2002.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property on behalf of the city. The City is required under 7-2-4211, MCA, to annex road right-of-way adjacent to property annexed after the change in the 2003 legislation. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. City Annexation Request Letter

ATTACHMENT A
RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION**

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city "shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;" and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

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

Street right-of-way of Cove Avenue, between east right-of-way line of 50th Street West running easterly to Leroy Lane as recorded with Zimmerman Subdivision 4th Filing, Recorded March 19, 1965, Under Document No. 751012, Records of Yellowstone County, Montana; also that portion of Leroy Lane right-of-way as dedicated with Zimmerman Acreage Tracts Subdivision 3rd Filing, Recorded May 1, 1963, Under Document No. 705939, Records of Yellowstone County, Montana beginning at the northeast corner of Lot 4, Block 3 of said Zimmerman Subdivision 4th Filing and extending easterly to the west right-of-way line of 46th Street West being on the existing City of Billings city limits.

Containing 4.864 gross acres.
(# 07-14) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A., Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

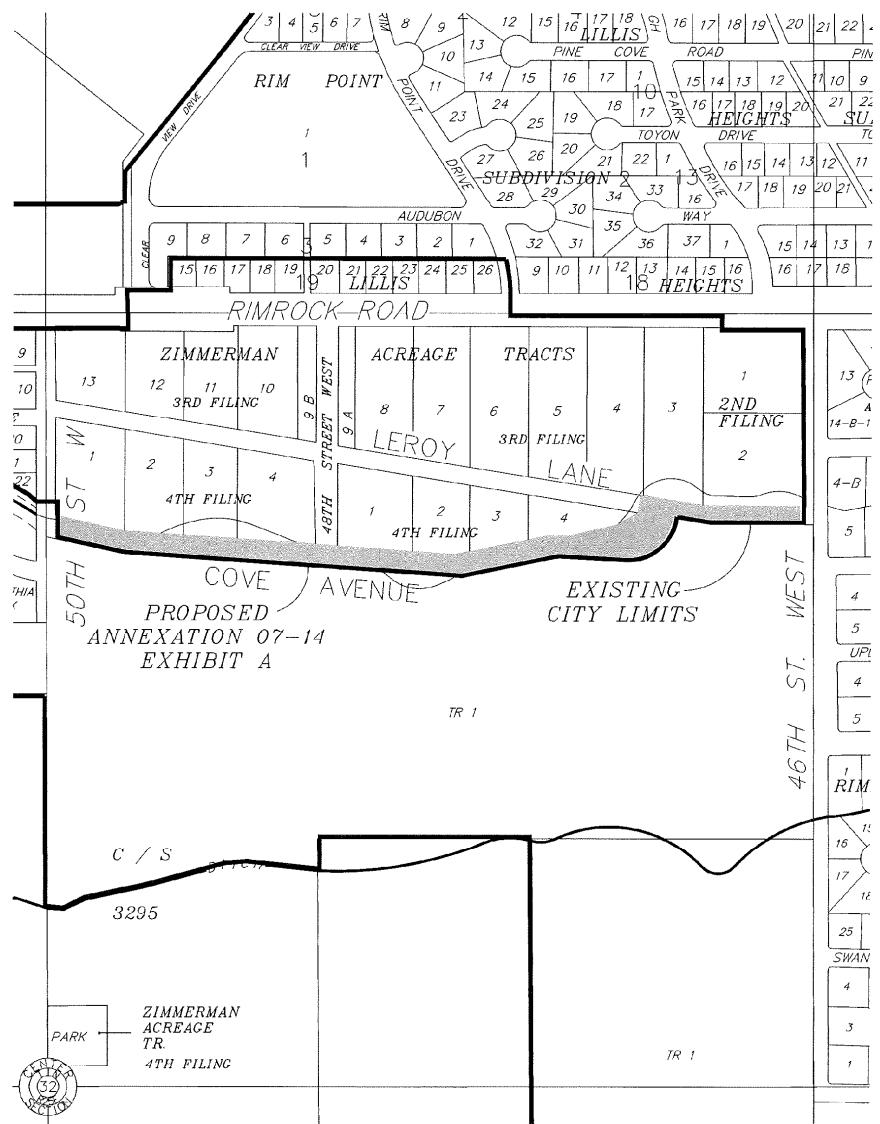
BY: _____

Cari Martin, CITY CLERK

(AN #07-14)

ATTACHMENT B
Annexation Map – Annexation #07-14

EXHIBIT A



ATTACHMENT C



CITY OF BILLINGS
OFFICE OF CITY ADMINISTRATOR
P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8433
FAX (406) 657-8390



Memorandum

To: Cari Martin, Billings City Clerk
From: Christina Volek, Billings City Administrator *CPV*
Cc: Wyeth Friday, AICP, Planning Division Manager
Date: 8/16/07
Re: Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 th Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 th Street and 50 th Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 th Street West
#07-17	Portion of 62 nd Street West south of Ironwood Subdivision
#07-18	Portions of 56 th Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 nd Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Road Right-Of-Way Annexation Request #07-16 - Acknowledge Request, Approve a Resolution of Intent and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a letter of request to annex a 0.359-acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq, Montana Code Annotated (MCA). The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits based on requirements of the State of Montana Code. These rights-of-way should have been annexed into the city when adjacent properties were annexed. In this case, property along Grand Avenue to the north was previously annexed and the entire portion of Grand Avenue right-of-way fronting the property was not included in that annexation. MCA, 7-2-4211 specifies that annexations of property into the city "shall include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed." This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex the entire right-of-way for Grand Avenue adjacent to annexed properties.

The portion of the right-of-way that will be annexed is a 30-foot wide County Road Petition #5 that contains approximately 0.359 acres. The property requested to be annexed is the southern 30-feet of the Grand Avenue right-of-way extending from the northwest corner of Vintage Estates Subdivision west to the southwest corner of Lot 65A-4, Sunny Cove Fruit Farms (see Exhibit A). Bell Real Estate Holdings, LLC, is the legal owner of a 0.131-acre portion of the right of way property and Durand M. Ward, is the legal owner of a 0.228-acre portion of the right-of-way. However, the ownership interest is subject to the public's right to use it as a roadway based on County Road Petition #5. Planning staff has contacted the property owners and provided them with the option of either deeding the property to the City and removing it from the property's taxes, or taking no action and upon annexation of the 30-foot wide road easement, paying City taxes on the annexed portion of the right of way (see Attachment B). In this case, one of the property owners has decided to quit claim this portion of the property to the

City (See Attachment C). The City will annex the easement for the remaining portion of Grand Avenue.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. The Council should also accept the Quit Claim Deed as approved by the Board of County Commissioners on October 2, 2007, for the portion of right-of-way formerly "owned" by the County at this first meeting. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: Government Officials under 7-2-4401, et seq. MCA, are permitted to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City would own the subject property, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, accept the quit claim deed from the County, and schedule a public hearing for December 10, 2007.

Approved by: **City Administrator** **City Attorney**

ATTACHMENTS

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Letter to Property Owners
- C. Quitclaim Deed for Belle Real Estate Holdings, LLC
- D. City Annexation Request Letter
- E. County Quit Claim Deed to City

ATTACHMENT A
RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION**

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city "shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;" and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the NW1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Yellowstone County road easement for Grand Avenue also described as a portion of County Road Petition Number 5, filed December 26, 1883, Declared a County Road March 6, 1884, being those portions of the E1/2E1/2NW1/4NW1/4 and the W1/2E1/2NW1/4NW1/4 of said Section 4 adjacent to Lot 65A-4 of Amended Plat Of Lot 65A Of The Plat Of Amended Lots 65-68, 93-100, And 125-128 Of Sunny Cove Fruit Farms, Recorded December 29, 2004, Under Document No. 3317043, Records of Yellowstone County.

Said Tract containing 0.359 acres.

(# 07-16) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

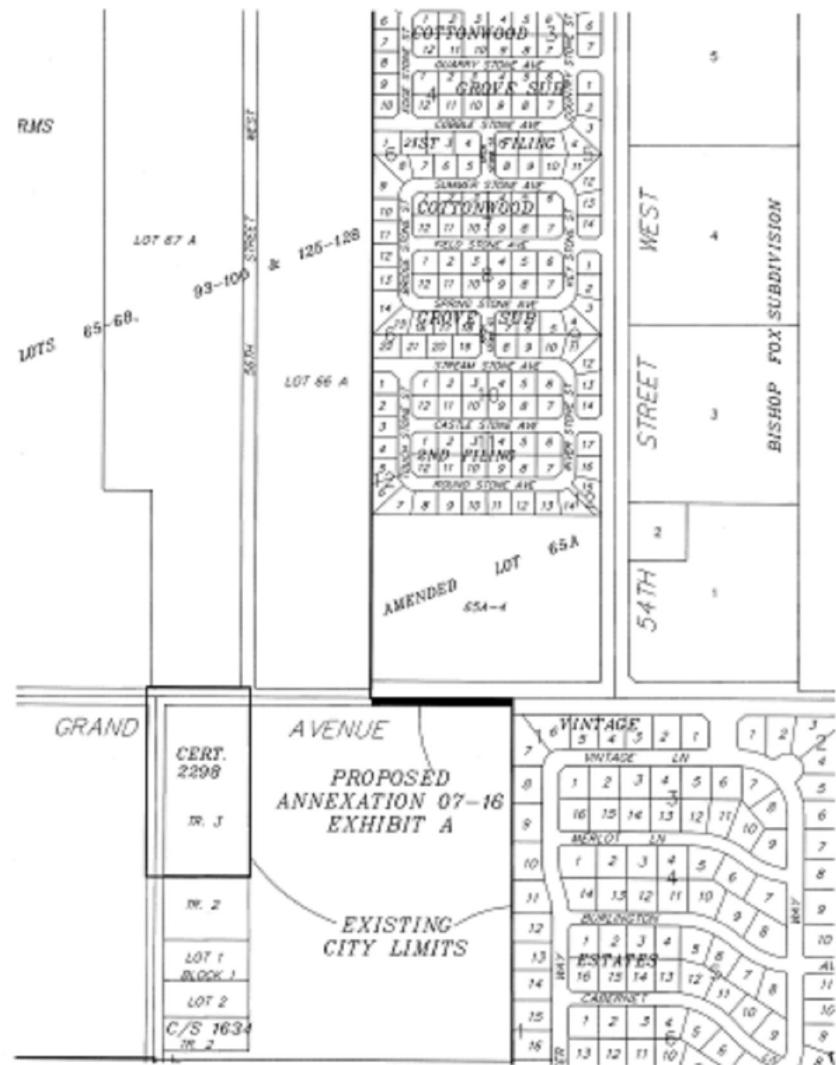
ATTEST:

BY: _____

Cari Martin, CITY CLERK

(AN #07-16)

EXHIBIT A





Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



October 25, 2007

Mr. Durand M Ward
5416 Grand Avenue
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Ward:

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 22, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,931.68 square feet of your property (see attached Exhibit A). You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

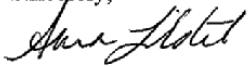
The original schedule was delayed due to some questions about the annexation process being proposed, however after further consideration by City legal staff, we have been directed to proceed with the annexation of 5416 Grand Avenue, including the 30-foot wide road easement on your property.

A new City Council review schedule is as follows:

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Sincerely,



Aura Lindstrand
Planner II

Enclosure

RETURN TO:
CITY CLERK
CITY OF BILLINGS
P O BOX 1178
BILLINGS, MT 59103

QUITCLAIM DEED

For valuable consideration, Shawna Stale, as member, of **BELL
REAL ESTATE HOLDINGS L.L.C.**, as GRANTOR, does hereby release and forever quitclaim their interest unto the **CITY OF BILLINGS, MONTANA**, a Municipal Corporation, of P.O. Box 1178, Billings, Montana 59103, as GRANTEE, the following described real property situated in Yellowstone County, Montana:

A portion of Yellowstone County road easement for Grand Avenue also described as a portion of County Road Petition Number 5, filed December 26, 1883, Declared a County Road March 6, 1884, more particularly described as:

Being the north 30.00 feet of the W1/2 E1/2 NW1/4 NW1/4 Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana, adjacent to Lot 65A-4 of Amended Plat Of Lot 65A Of The Plat Of Amended Lots 65-68, 93-100, And 125-128 Of Sunny Cove Fruit Farms, Recorded December 29, 2004, Under Document No. 3317043, Records of Yellowstone County.

Said Tract containing 0.131 acres, more or less.

AS SHOWN BY EXHIBIT "A", consisting of one sheet, attached hereto and made a part of.

THE PURPOSE OF THIS QUITCLAIM DEED is to create a right-of way parcel for construction and use for a public road, utilities, and related appurtenant structures, which is exempt from the provisions of the Montana Subdivision and Platting Act pursuant to §76-3-201(1)(h), M.C.A. as a division of land that creates rights-of-way or utility sites and 24.183.1104 A.R.M.

Dated this 24 day of Sept., 2007.

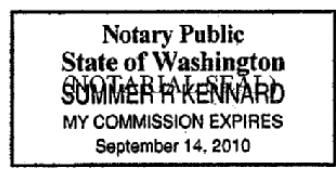
By:

Shawna Stale
Member
As:

STATE OF Washington)
ss.
County of Snohomish)

On this 24th day of September, 2007, before me, a Notary Public for the State of Washington, personally appeared Shawna Steele, as member, of **BELL REAL ESTATE HOLDINGS L.L.C.**, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same.

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



Summer R. Kennard (Signature)

Summer R. Kennard (Printed Name)
Notary Public for the State of Washington
Residing in Lynnwood, WA
My Commission Expires: Sept. 14, 2010

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

RON TUSSING, Mayor
CITY OF BILLINGS

ATTEST:

By: _____

CARI MARTIN, City Clerk

STATE OF MONTANA)

: ss.

County of Yellowstone)

On this _____ day of _____, 2007, before me, a Notary Public for the State of Montana, personally appeared **RON TUSSING** and **CARI MARTIN**, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

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

_____ (Signature)

(NOTARIAL SEAL)

_____ (Printed Name)

Notary Public for the State of Montana

Residing in Billings, Montana

My Commission Expires: _____

ATTACHMENT D



CITY OF BILLINGS

OFFICE OF CITY ADMINISTRATOR

P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8433
FAX (406) 657-8390



Memorandum

To: Cari Martin, Billings City Clerk
From: Christina Volek, Billings City Administrator
Cc: Wyeth Friday, AICP, Planning Division Manager
Date: 8/16/07
Re: Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 th Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 th Street and 50 th Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 th Street West
#07-17	Portion of 62 nd Street West south of Ironwood Subdivision
#07-18	Portions of 56 th Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 nd Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

*BillingsPride:
City-wide*

Return to:
City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

QUITCLAIM DEED

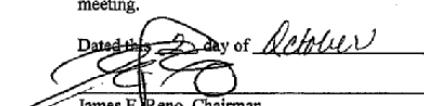
For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:

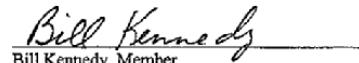
Tract 8, of Certificate of Survey 1261, Recorded August 8, 1972, under Document No. 913447, Records of Yellowstone County.

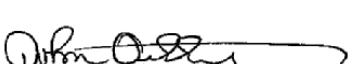
Said Tract containing 0.995 acres.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its October 2, 2007 meeting.

Dated this 2 day of October 2007.


James E. Reno, Chairman
Yellowstone County Commissioner


Bill Kennedy, Member
Yellowstone County Commissioner


John Ostlund, Member
Yellowstone County Commissioner

Attest: 
Tony Nave
Yellowstone County Clerk and Recorder

State of Montana }
ss.
County of Yellowstone }

On October 2, 2007 before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tone Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Reitz
Teri Reitz

(Notarial Seal)

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires 2-27-2010

ACKNOWLEDGEMENT AND ACCEPTANCE OF CONVEYANCE

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

Ron Tussing, Mayor, City of Billings

ATTEST:

By: _____

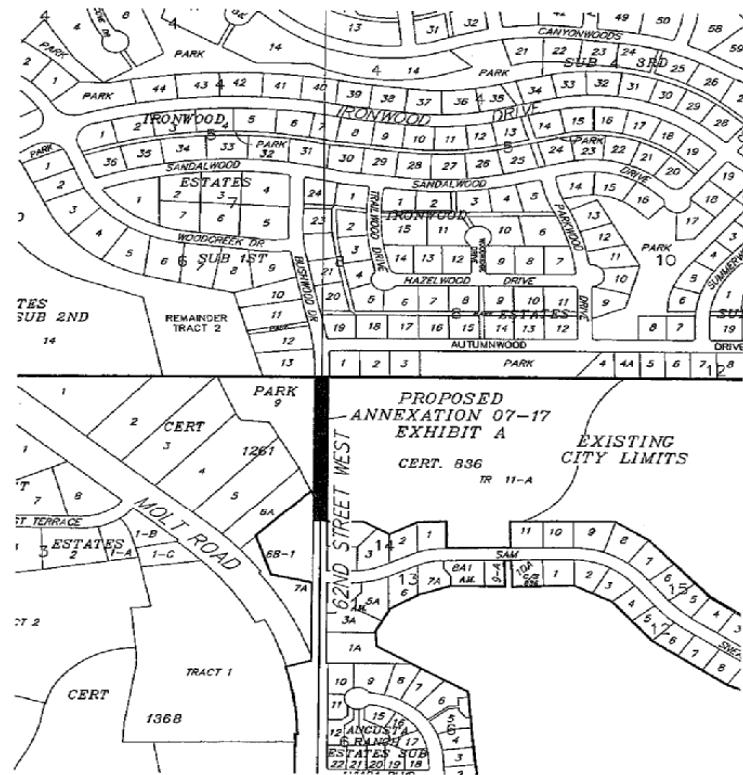
State of Montana }
County of Yellowstone }
ss. }

On this _____ day of _____, 200____, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and _____ known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

(Notarial Seal)

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires _____

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Road Right-Of-Way Annexation Request #07-18, Acknowledge Request, Approve Resolution of Intent to Annex, accept Quit Claim Deeds from Yellowstone County, Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a letter of request to annex road right-of-way land into the City of Billings under 7-2-4401, et. seq. Montana Code Annotated (MCA). The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits based on requirements of the State of Montana Code. Montana Code Annotated 7-2-4211 enacted by the 2003 session of the Montana Legislature states; "In all instances of annexation the municipality shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed". This law requires the City to annex the entire right-of-way for Broadwater Avenue and 56th Street West since it is adjacent to properties annexed after 2003 on the north side of Broadwater Avenue and the west side of 56th Street West. These rights-of-way should have been annexed at the time properties adjacent to the roads were annexed into the City.

The portion of the right-of-way that will be annexed is from the intersection of Broadwater and 56th Street West on the south side of Broadwater, from the centerline of Broadwater south 30 feet, for 1,304.6 feet to the west. From the intersection of Broadwater and 56th Street West on the east side of 56th Street West, from the centerline of 56th Street West east 30 feet, for 1,347.3 feet to the north, (See Attachment B). City staff contacted the property owners, provided them with the option of either deeding the property to the City and having it removed from their property taxes, or taking no action and having the 30-foot-wide road easement annexed by the City and paying City taxes on the annexed portion of the right of way (See Attachment C). The property owners are the legal owners of these road easement rights-of-way, but the ownership interest is subject to the public's right to use it as a roadway. The portion of Broadwater Avenue that is proposed to be annexed is a dedicated Yellowstone County road tract and so is the portion on the west edge of Certificate of Survey 2178, (See Attachment B). Yellowstone County has Quit Claimed those two road tracts to the City of Billings, (See Attachment E). Two of the four

property owners have contacted the Planning Division office with questions about the annexation, the remaining property owners have not yet responded to the information staff has provided and so annexation of the easement by the City is the expected outcome.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: Montana Code Annotated 7-2-4401, et. seq. allows government officials to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City would own the subject property, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, accept the Quit Claim Deeds from Yellowstone County, and schedule a public hearing for December 10, 2007, to consider annexing this property.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. Letters to Property Owners
- D. City Administrator Letter
- E. Quit Claim Deeds from Yellowstone County

ATTACHMENT A
RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION**

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city "shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;" and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

Broadwater Avenue Tract:

Basis of bearings Certificate of Survey No. 1322, Recorded June 27, 1973, Under Document No. 937794, Records of Yellowstone County, Montana,

A portion of Tract 7, AKA Broadwater Avenue, of said Certificate of Survey No. 1322 Beginning at the east $\frac{1}{4}$ corner of Section 5, T.1S., R.25E., P.M.M.; thence $89^{\circ}48'30''$ W along the E-W mid section line of said Section 5 for a distance of 1304.6 feet; thence S $00^{\circ}05'30''$ for a distance of 30.00 feet; thence $89^{\circ}48'30''$ E for a distance of 1304.6 feet to a point on the east section line of said Section 5; thence $00^{\circ}04'$ E for a distance of 30.00 feet to the Point of Beginning. Said Tract containing 0.898 acres.

56th Street West Tract:

A portion of Yellowstone County road easement for 56th Street West also described as a portion of County Road Petition Number 19, Filed January 2, 1886, Road Established June 9, 1886, more particularly described as:

Beginning at the west 1/4 corner of Section 4, T.1S., R.25E., P.M.M.; thence southerly along the west section line of said Section 4 for a distance of 30.00 feet; thence easterly for a distance of 30.00 feet on a line that is perpendicular to the west section line of said Section 4 to a point; thence northerly and 30.00 feet parallel to the west section line of said Section 4 for an approximate distance of 1347.3 feet to a point, said point being on a line that is perpendicular to the N1/16 corner of said Section 4; thence westerly for a distance of 30.00 feet to the N1/16 corner of said Section 4; thence southerly along the west section line of said Section 4 for an approximate distance of 1317.3 feet to the Point of Beginning. Said Tract containing 0.927 acres more or less.

(# 07-18) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.

4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

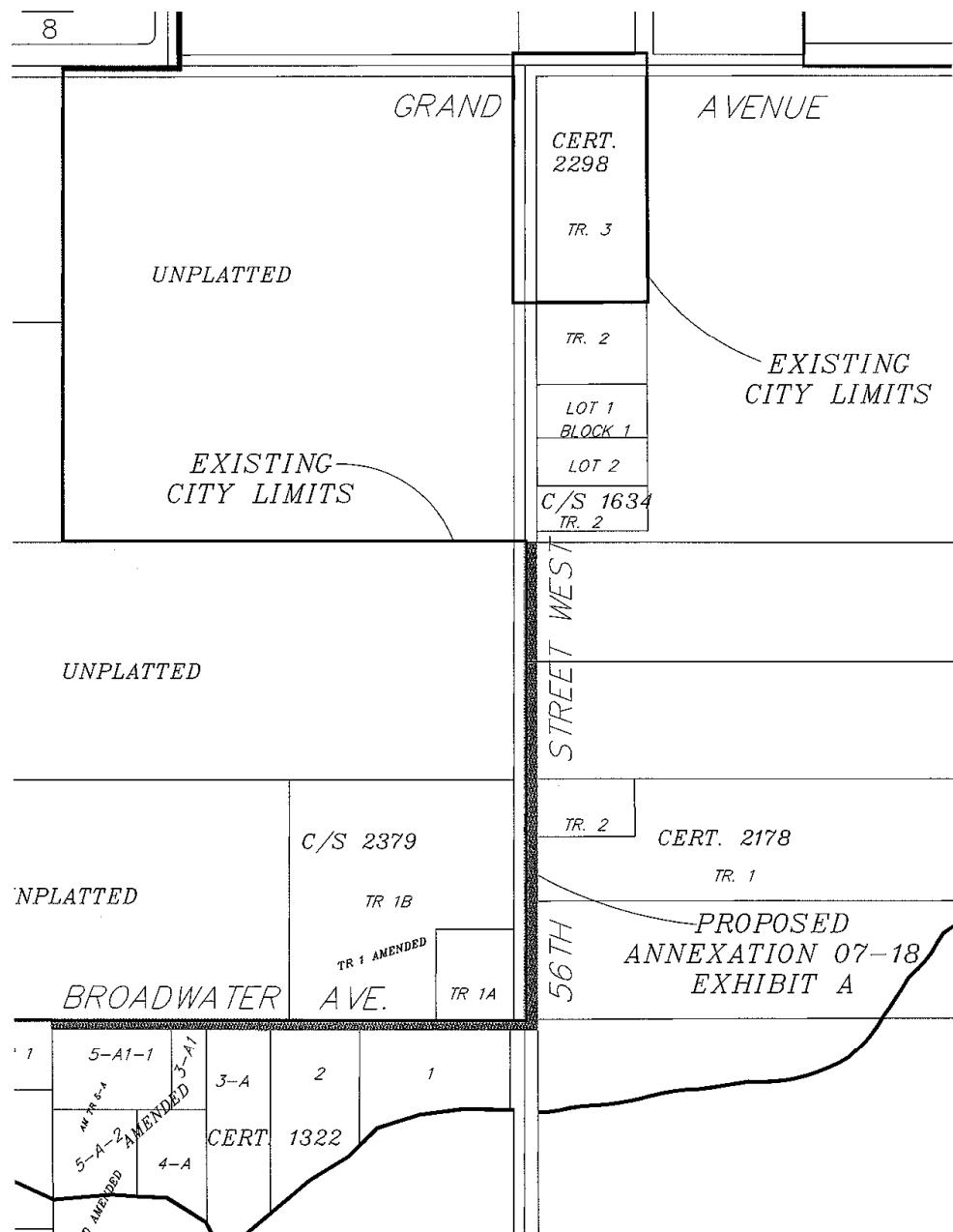
BY: _____

Cari Martin, CITY CLERK

(AN #07-18)

ATTACHMENT B

Map
EXHIBIT A



ATTACHMENT C
Letters to Property Owners



**Planning & Community Services
Department**

"Serving Billings, Broadview and Yellowstone County"

**510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246**



October 24, 2007

Mr. William C. Lackman
637 56th Street West
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Lackman,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 900 square feet of your property. You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56th Street West and Broadwater Avenue, including the 30-foot wide road easement that is in the northwest corner of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,
Planner I
(406) 247-8654



Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



October 24, 2007

Mr. Bret T. Murray
1011 56th Street West
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Murray,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,888 square feet of your property. You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56th Street West, including the 30-foot wide road easement that is on the west edge of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,
Planner I
(406) 247-8654



Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



October 24, 2007

Mr. Robert A. Olsen
715 56th Street West
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Olsen,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,888 square feet of your property. You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56th Street West, including the 30-foot wide road easement that is on the west edge of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.

- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,
Planner I
(406) 247-8654



Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



October 24, 2007

Mr. Gregory J. Smith
909 56th Street West
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Smith,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,888 square feet of your property (see attached Exhibit A). You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56th Street West, including the 30-foot wide road easement that is on the west edge of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,
Planner I
(406) 247-8654



CITY OF BILLINGS

OFFICE OF CITY ADMINISTRATOR

P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8433
FAX (406) 657-8390



Memorandum

To: Cari Martin, Billings City Clerk
From: Christina Volek, Billings City Administrator *CPV*
Cc: Wyeth Friday, AICP, Planning Division Manager
Date: 8/16/07
Re: Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 th Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 th Street and 50 th Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 th Street West
#07-17	Portion of 62 nd Street West south of Ironwood Subdivision
#07-18	Portions of 56 th Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 nd Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

BillingsPride
City-wide

Return to:
City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

QUITCLAIM DEED

For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:

Broadwater Avenue Tract:

Basis of bearings Certificate of Survey No. 1322, Recorded June 27, 1973, Under Document No. 937794, Records of Yellowstone County, Montana,

A portion of Tract 7, AKA Broadwater Avenue, of said Certificate of Survey No 1322 Beginning at the east 1/4 corner of Section 5, T.1S., R.25E., P.M.M.; thence N 89°48'30" W along the E-W mid section line of said Section 5, for a distance of 1304.6 feet; thence S 00°05'30" W for a distance of 30.0 feet; thence S 89°48'30" E for a distance of 1304.6 feet to a point on the east section line of said Section 5; thence N 00°04' E for a distance of 30.00 feet to the Point of Beginning.

Said Tract containing 0.898 acres.

THE PURPOSE OF THIS QUITCLAIM DEED is to create a right-of way parcel for construction and use for a public road, utilities, and related appurtenant structures, which is exempt from the provisions of the Montana Subdivision and Platting Act pursuant to §76-3-201(1)(h), M.C.A. as a division of land that creates rights-of-way or utility sites and 24.183.1104 A.R.M.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its October 2, 2007 meeting.

Dated this 8 day of October 2007.

James E. Reno, Chairman
Yellowstone County Commissioner

Bill Kennedy
Bill Kennedy, Member
Yellowstone County Commissioner

John Ostlund
John Ostlund, Member
Yellowstone County Commissioner

Attest:

Tony Nave
Tony Nave
Yellowstone County Clerk and Recorder

State of Montana }
County of Yellowstone }

On October 2, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Reitz

(Notarial Seal)

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires 3-27-2010

ACKNOWLEDGEMENT AND ACCEPTANCE OF CONVEYANCE

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

Ron Tussing, Mayor, City of Billings

ATTEST:

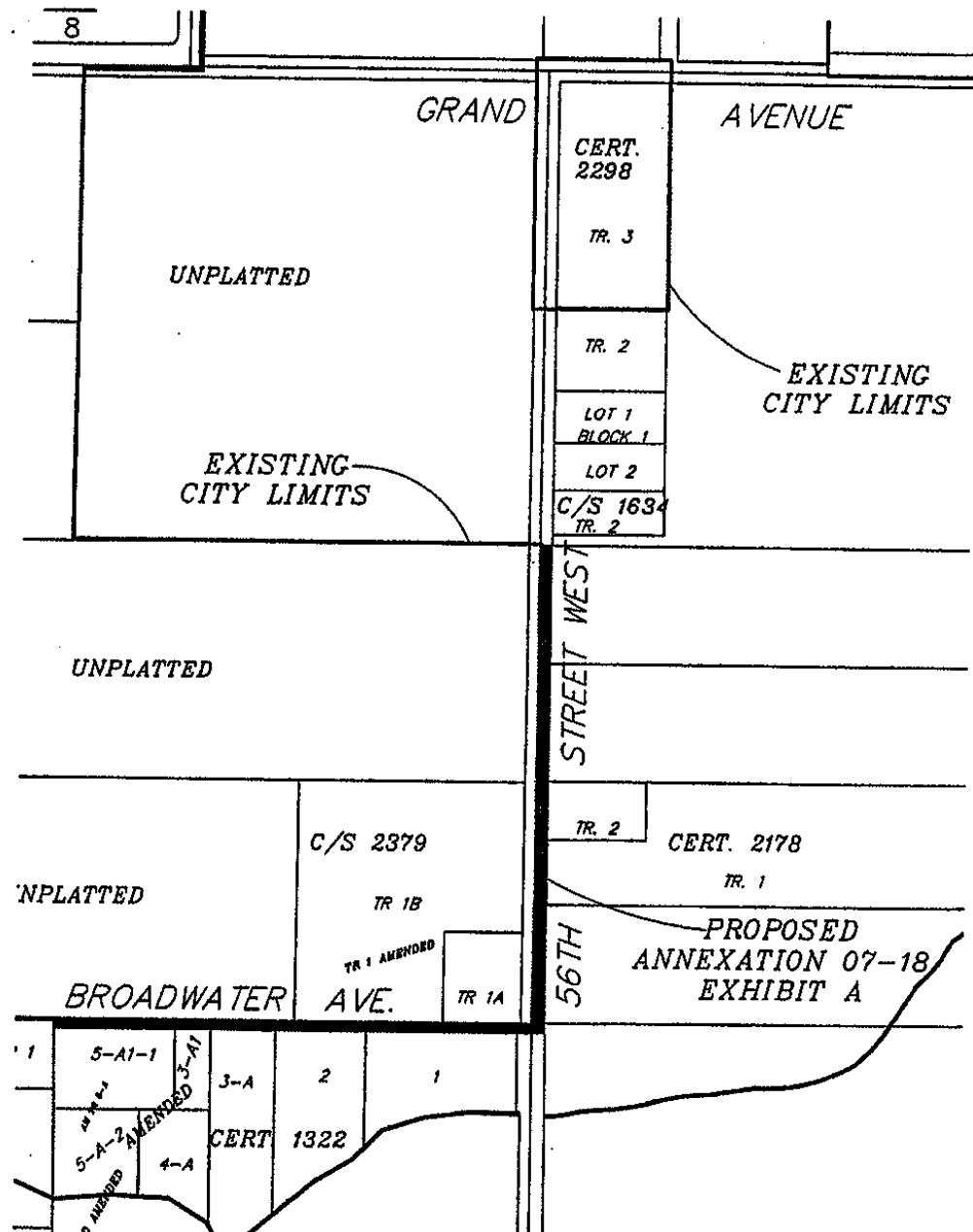
By:

_____, City Clerk

On this _____ day of _____, 200_____, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and _____ known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires _____

EXHIBIT C



Return to:
City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

QUITCLAIM DEED

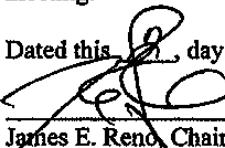
For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:

Tract 3, Certificate of Survey 2178, Recorded April 6, 1983, Under Document No. 1260295, Records of Yellowstone County, Montana,

Said Tract containing 0.227 acres.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its October 2, 2007 meeting.

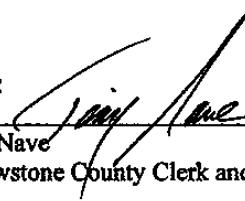
Dated this 2, day of October 2007.


James E. Reno, Chairman
Yellowstone County Commissioner


Bill Kennedy, Member
Yellowstone County Commissioner


John Ostlund, Member
Yellowstone County Commissioner

Attest:


Tony Nave
Yellowstone County Clerk and Recorder

State of Montana }
ss.
County of Yellowstone }

On October 2, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Jeri Reetz

Teri Reitz

(Notarial Seal)

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires 2-27-2010

ACKNOWLEDGEMENT AND ACCEPTANCE OF CONVEYANCE

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

Ron Tussing, Mayor, City of Billings

ATTEST:

By: _____

, City Clerk

On this _____ day of _____, 200_____, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and _____ known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

(Notarial Seal)

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires _____

(Back to Consent Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Road Right-Of-Way Annexation #07-19, Acknowledge Request, Approve Resolution of Intent to Annex, Accept Quit Claim deed, and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a letter of request to annex a 6.832 acre portion of Rimrock Road right-of-way under 7-2-4401, et seq. MCA. The City is in the process of annexing portions of road rights-of-way into the City limits where they are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services.

In this particular case, the proposed annexation is a 60-foot wide County Road Petition Number 167 that covers the entire Rimrock Road right-of-way from 62nd Street West, west to the existing city limits (see Attachment B). Yellowstone County previously owned approximately 6.2 acres of the subject property, and quit claimed its interest to the City of Billings on October 2, 2007. Hageman Farms, Rodger Hageman, is the legal owner of the remaining .633-acre portion of the road right of way property, but the ownership interest is subject to the public's right to use it as a roadway. City staff contacted the property owner, provided him with the option of either deeding the property to the City and having it removed from the property's taxes, or taking no action and having the 30-foot-wide road easement annexed by the City and paying City taxes on the annexed portion of the right of way (See Attachment C). Mr. Hageman has contacted staff a number of times for additional information on the annexation but has not yet decided whether to quit claim this portion of his property to the City, so annexation of the easement by the City is the expected outcome.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. The Council also should accept the Quit Claim Deed as approved by

the Board of County Commissioners for the portion of right-of-way formerly “owned” by the County at this first meeting. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: MCA, 7-2-4403 allows government officials to request annexation of city-owned property or property in which the City holds a beneficial interest. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City owns most of the subject property, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, accept the quit claim deed from the County, and schedule a public hearing for December 10, 2007.

Approved by: _____ City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Letter to Property Owner
- C. City Annexation Request Letter
- D. County Quit Claim Deed to City

ATTACHMENT A
RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION**

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the S1/2 of Section 25, T.1N., R.24E., the N1/2 of Section 36, T.1N., R.24E., the SW1/4 of Section 30 T.1N., R.25E., and the NW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Yellowstone County road easement for Rimrock Road also described as a portion of County Road Petition Number 167, filed November 10, 1908, Declared a County Road December 29, 1908, more particularly described as:

Basis of bearings: Certificate of Survey No. 2465, Recorded October 1, 1987, Under Document No. 1458714, Records of Yellowstone County, Montana,

Commencing at the southeast corner of said Section 25; thence N 00°00'04" W a distance of 30.00 feet to the True Point of Beginning; thence S 89°29'28" W being 30.0 feet parallel to the south section line of said Section 25 for a distance of 2673.17 feet; thence S 89°44'27" W and continuing parallel to the south section line of said Section 25 for a distance of 2256.22 feet to the southeast corner of Tract 2A, Amended Tracts 2 and 3, Certificate of Survey No. 2465, Recorded September 16, 1996, Under Document No. 1845641, Records of Yellowstone County Montana; thence south for a distance of 60.00 feet to a point on a line perpendicular to the south section line of said Section 25, said south section line being also the north section line of said Section 36; thence easterly and 30.0 feet parallel to the north section line of said Section 36 for an approximate distance of 944.7 feet to the northwest corner of Lot 14, Sunny Cove Fruit Farms, Recorded April 27, 1910, Under Document No. 21540, Records of Yellowstone County,

Montana; thence easterly and continuing parallel to the north section line of said Section 36 for an approximate distance of 3985.4 feet to a point on the west section line of said Section 31; thence easterly and 30.0 feet parallel to the north section line of said Section 31 for a distance of 30.0 feet to the northwest corner of Lot 8 of said Sunny Cove Fruit Farms; thence north for a distance of 60.00 feet to a point on a line perpendicular to the north section line of said Section 31, said north section line being also the south section line of said Section 30; thence westerly and parallel to the south section line of said Section 30 for a distance of 30.0 feet to the Point of Beginning.

Containing 6.832 gross acres, more or less.

(# 07-19) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

BY: _____

Cari Martin, CITY CLERK

(AN #07-19)

EXHIBIT A



ATTACHMENT B
Letter sent to Affected Property Owner

Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

**510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246**

October 22, 2007

Rodger E. Hageman
PO Box 2251
Newport Beach, CA 92659

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Hageman,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, a portion of the right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately .633 acres of your property (see attached Exhibit A). You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

After receipt of your letter dated September 13, 2007, and further consideration by City legal staff, we have been directed to proceed with the annexation of Rimrock Road, including the 30-foot wide road easement that crosses the northern portion of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13th or December 10th, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

Juliet Spalding, AICP
Planner II
(406) 247-8684

ATTACHMENT C

Annexation Request Letter



CITY OF BILLINGS

OFFICE OF CITY ADMINISTRATOR

P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8433
FAX (406) 657-8390



Memorandum

To: Cari Martin, Billings City Clerk
From: Christina Volek, Billings City Administrator
Cc: Wyeth Friday, AICP, Planning Division Manager
Date: 8/16/07
Re: Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 th Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 th Street and 50 th Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 th Street West
#07-17	Portion of 62 nd Street West south of Ironwood Subdivision
#07-18	Portions of 56 th Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 nd Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

ATTACHMENT D

State of Montana }
County of Yellowstone }

On October 2, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Reitz
Teri Reitz

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires 2-27-2010

(Notarial Seal)

ACKNOWLEDGEMENT AND ACCEPTANCE OF CONVEYANCE

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

Ron Tussing, Mayor, City of Billings

ATTEST:

_____, City Clerk

State of Montana }
County of Yellowstone }

On this _____ day of _____, 200_____, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and Cari Martin known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

(Notarial Seal)

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires _____

(Back to Consent Agenda)



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Road Right-Of-Way Annexation Request #07-25 - Acknowledge Request, Approve a Resolution of Intent and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The City of Billings is requesting to annex a 2.457-acre county road tract to the City of Billings under 7-2-4401, et seq, Montana Code Annotated (MCA). This right-of-way should have been annexed into the city when adjacent properties were annexed. In this case, property adjacent to the west of 44th Street West was previously annexed and the entire portion of the 44th Street West right-of-way fronting the property was not included in that annexation, as it is a county road tract. MCA, 7-2-4211 specifies that annexations of property into the city "shall include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed." This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex the entire right-of-way for 44th Street West adjacent to annexed properties.

The portion of the right-of-way that will be annexed is a 40-foot wide county road tract legally described as Block 5, Lot 1, Long Subdivision and contains approximately 2.457 acres (see Attachment A). Yellowstone County owns the 44th Street West road tract and is prepared to quitclaim it to the City prior to the December 10, 2007, public hearing for this annexation (see Attachment B).

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the City Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: Government Officials under 7-2-4401, et seq. MCA, are permitted to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the

annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

FINANCIAL IMPACT: Since the City would own the subject property, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

Approved by: _____ City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Resolution of Intent to Annex and Set Public Hearing
- B. County Quitclaim Deed

ATTACHMENT A
RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
TO CONSIDER ANNEXING TERRITORY
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE
MONTANA CODE ANNOTATED, AND FIXING
A DATE FOR A PUBLIC HEARING ON THE
QUESTION OF ANNEXATION**

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city "shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;" and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the NW1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

A portion of Lot 5, Block 1, Long Subdivision, Recorded August 30, 1994, Under Document No. 1755400, Records of Yellowstone County, Montana, more particularly described as:

The west 40.0 feet of said Lot 5, Block 1, Long Subdivision, adjacent to Western Sky Subdivision, Recorded April 19, 2006, Under Document No. 3374355, Records of Yellowstone County, Montana, including all adjacent right-of-way of King Avenue West.

Said Tract containing 2.457 gross and net acres.

(# 07-25) See Exhibit "B" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

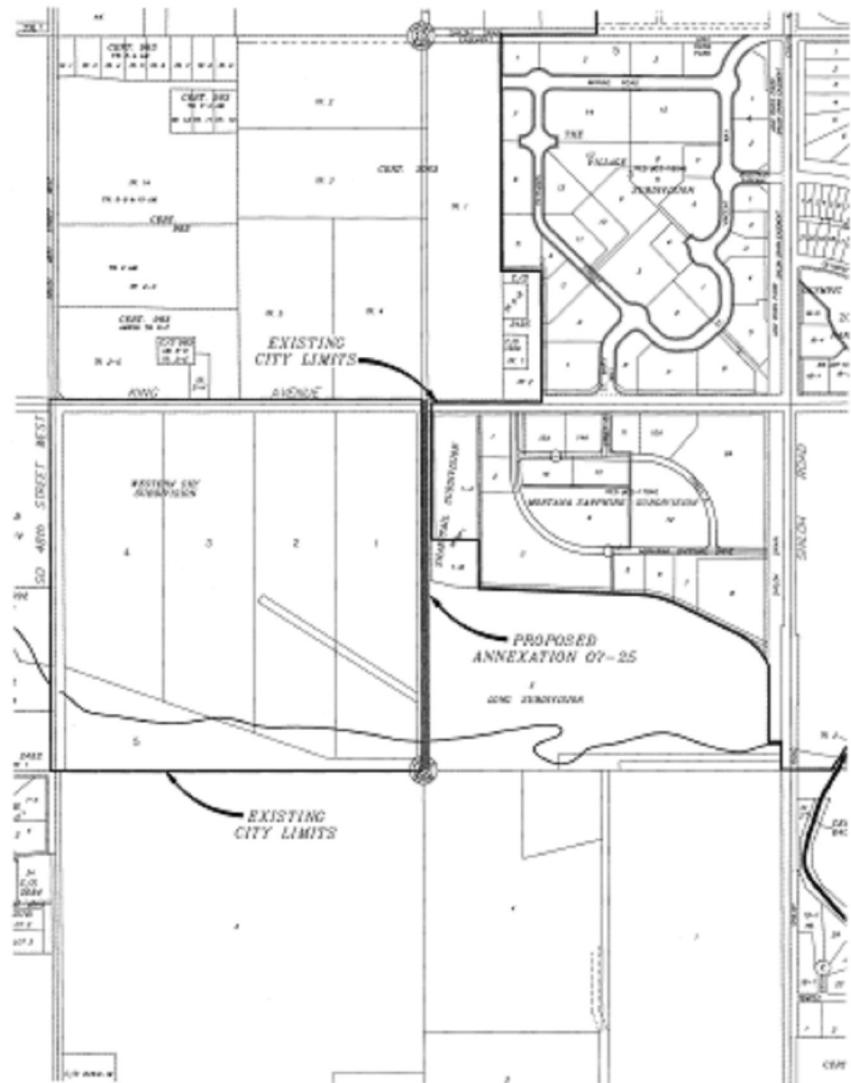
ATTEST:

BY: _____

Cari Martin, CITY CLERK

(AN #07-25)

EXHIBIT B



ATTACHMENT B

QUITCLAIM DEED

For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:

A portion of Lot 5, Block 1, Long Subdivision, Recorded August 30, 1994, Under Document No. 1755400, Records of Yellowstone County, Montana, more particularly described as:

The west 40.0 feet of said Lot 5, Block 1, Long Subdivision, adjacent to Western Sky Subdivision, Recorded April 19, 2006, Under Document No. 3374355, Records of Yellowstone County, Montana.

Said Tract containing 2.374 acres.

AS SHOWN BY EXHIBIT "A", consisting of one sheet, attached hereto and made a part of.

THE PURPOSE OF THIS QUITCLAIM DEED is to create a right-of way parcel for construction and use for a public road, utilities, and related appurtenant structures, which is exempt from the provisions of the Montana Subdivision and Platting Act pursuant to §76-3-201(1)(h), M.C.A. as a division of land that creates rights-of-way or utility sites and 24.183.1104 A.R.M.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its _____, 2007 meeting.

Dated this ____, day of _____ 2007.

James E. Reno, Chairman
Yellowstone County Commissioner

Bill Kennedy, Member
Yellowstone County Commissioner

John Ostlund, Member
Yellowstone County Commissioner

Attest:

Tony Nave
Yellowstone County Clerk and Recorded

State of Montana)
ss.
County of Yellowstone)

On _____, 200_____, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, the Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires

(Notarial Seal)

ACKNOWLEDGEMENT AND ACCEPTANCE OF CONVEYANCE

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

Ron Tussing, Mayor, City of Billings

ATTEST:

By: _____

_____, City Clerk

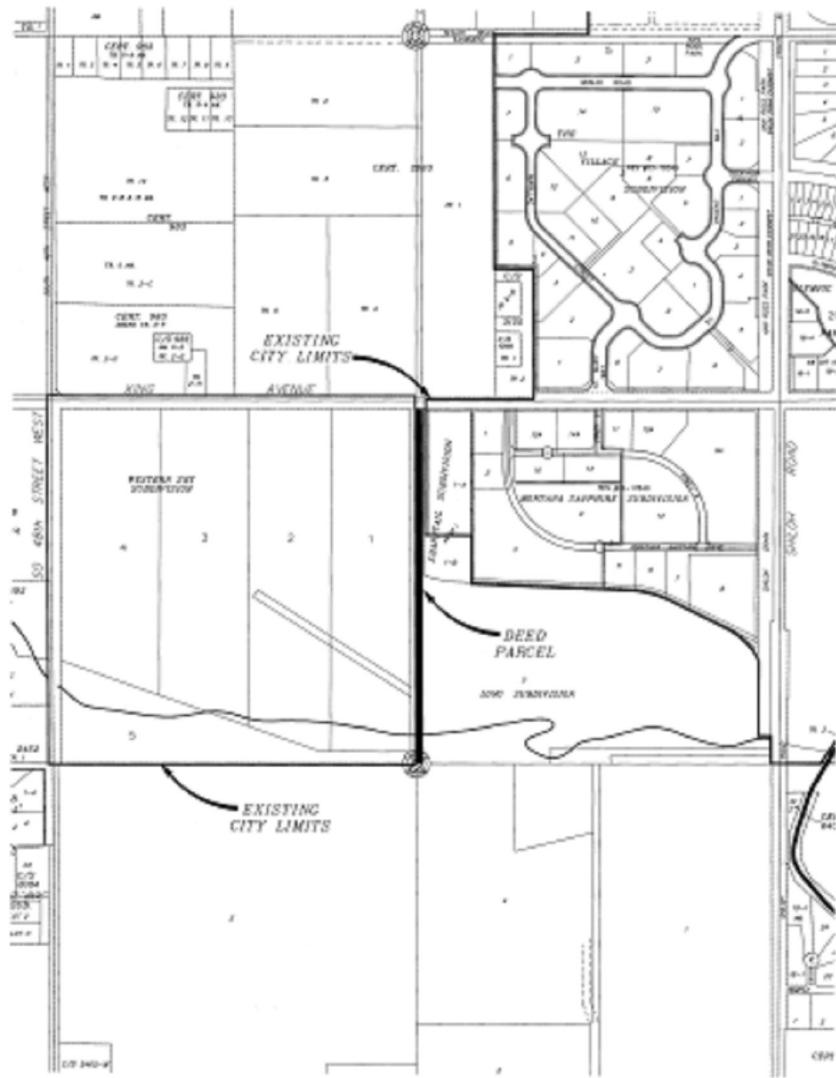
State of Montana)
ss.
County of Yellowstone)

On this _____ day of _____, 200_____, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and Cari Martin known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires

(Notarial Seal)

EXHIBIT A



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

Y

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Acknowledge Receipt of Petition to Vacate a portion of Henry Road and Set a Public Hearing Date

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: John Glenn, property owner at 1125 Henry Road, has petitioned to vacate a portion of Henry Road fronting his property. Henry Road currently has 60 feet of right of way fronting this property, but only the southern 30 feet of the road is constructed. The northern 30 feet of right of way has steep terrain and sandrock. The past property owner of 1125 Henry Road applied for and was approved to have the required building front setback of 20 feet reduced to 1 foot due to the steep terrain of his parcel. Mr. Glenn is petitioning to vacate the northern 30 feet of right of way which will be utilized for his driveway. The southern 30 feet of right of way will continue to benefit the one property owner to the east of this property.

ALTERNATIVES ANALYZED:

1. Acknowledge receipt of petition to vacate the above-mentioned right-of-way and set a public hearing for December 10, 2007.
2. Do not acknowledge receipt of petition to vacate the above-mentioned right-of-way.

FINANCIAL IMPACT: Mr. Glenn purchased his lot in 2004 for \$3.13 per square foot and is willing to pay the same price for the Henry Road right of way. The total value of the proposed vacated property (4,122.90 square feet) to be paid to the city from Mr. Glenn is \$12,904.68 at the \$3.13 per square foot price.

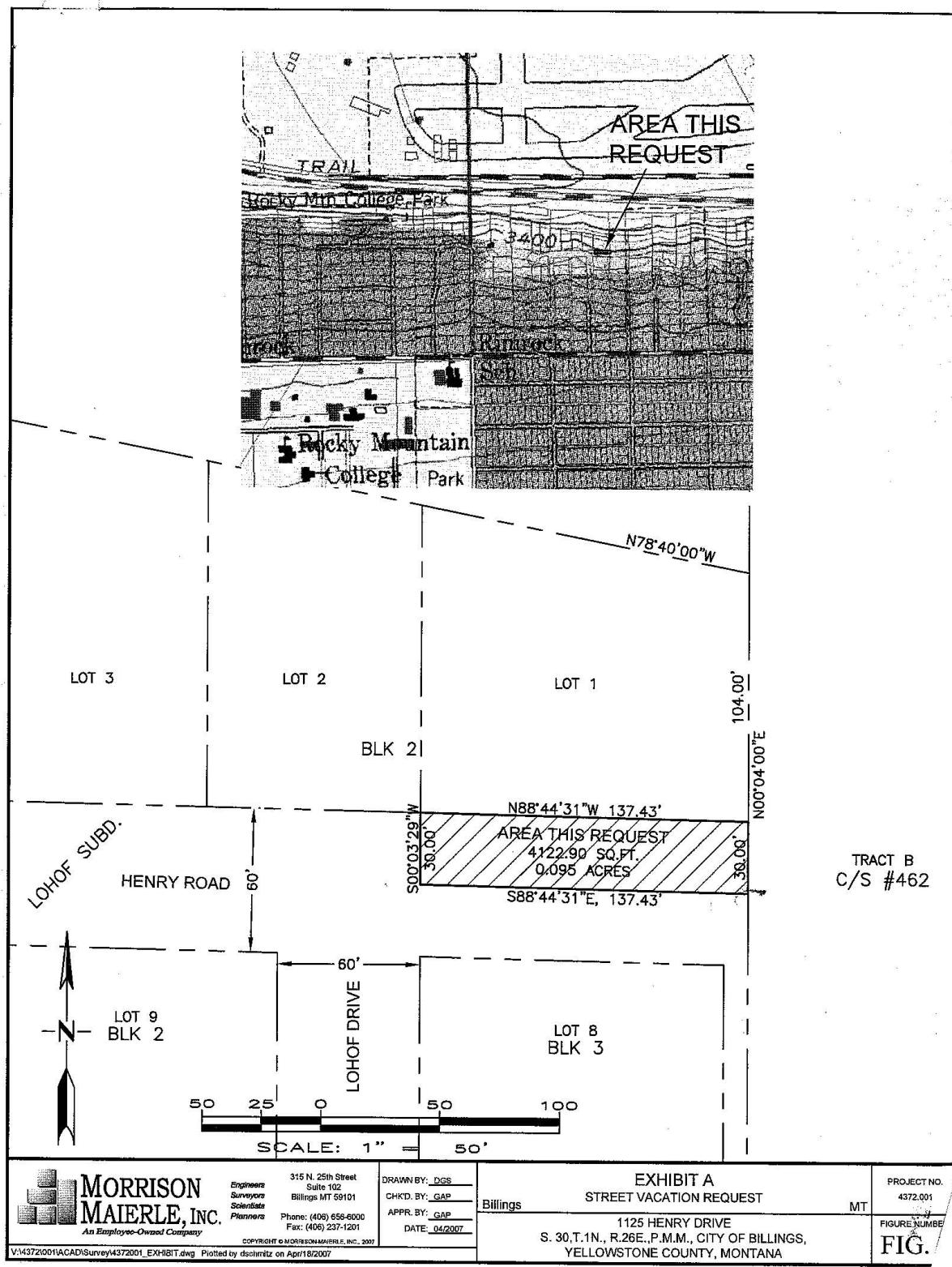
RECOMMENDATION

Staff recommends that Council acknowledge the receipt of petition to vacate a portion of Henry Road and set a public hearing date for December 10, 2007.

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

ATTACHMENTS

- A. Map Depicting Area to be Vacated
- B. Letter from Property Owner
- C. Approval Letter for Setback Variance



May 27, 2007

Honorable City Council
City of Billings

REQUEST TO VACATE
PUBLIC R-O-W

Dear Council Members:

Our application plus \$200 fee to acquire public right-of-way from the City in order for us to have access to the residence we are building for our permanent home at 1125 Henry Road is enclosed for your consideration.

Also enclosed is a copy of a letter dated May 29, 1985 to the former owner of the property granting a one-foot setback for construction on the lot. We are building in accord with that setback.

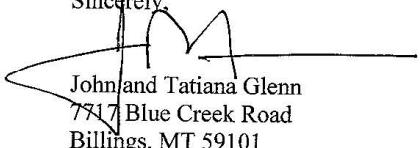
We paid \$50,000 for the lot in 2004 making a square footage value of \$3.13. The area we are requesting to purchase, as depicted on a sketch in the application, constitutes 4122.9 square feet giving thus an extended value at \$3.13/SF of \$12,904.68.

Photographs are also enclosed to show the physical conditions necessitating our request.

Please allow us to purchase the property as requested for the amount of \$12,904.68 to be paid forthwith upon notice of your approval.

Thank you for your kind consideration.

Sincerely,



John and Tatiana Glenn
7717 Blue Creek Road
Billings, MT 59101

May 29, 1985

#454 Variance

J. P. Evans
3115 Lohof Drive
Billings, Montana 59102

Dear Mr. Evans:

This is to inform you of the action taken by the City Board of Adjustment on your request for a variance from the front yard setback of 20' to 1' in a Residential 9600 (R-96) zone to allow construction of a residence on Lot 1, Block 2, Lohof Subdivision. The Board of Adjustment granted the variance.

Sincerely,

Lee Tuott
Zoning Coordinator

xc: R. H. and Marcia Spalding
Steve Baker, Building Official

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

Z

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Donation from Northwestern Energy to the Cobb Field Fundraising Project

DEPARTMENT: Administration

PRESENTED BY: Cari Martin, City Clerk

PROBLEM/ISSUE STATEMENT: The City of Billings has received a \$2,000 donation to the Cobb Field Fundraising Project from the Northwestern Energy Employee Contribution Committee.

ALTERNATIVES ANALYZED:

1. Accept the donation.
2. Do not accept the donation.

FINANCIAL IMPACT: The donation will be put towards the building expense of the new baseball stadium.

RECOMMENDATION

Staff recommends that Council accept the \$2,000 donation from Northwestern Energy.

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

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

AA

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, November 13, 2007

TITLE: Resolution on South Billings Boulevard Urban Renewal District, Declaring Blight, Intent to Create the District, and Setting a Public Hearing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Lora Mattox, AICP, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: The Council will consider adopting a resolution that is the first step toward creating a South Billings Boulevard Urban Renewal District. The resolution declares the Council's intention to create the district, including tax increment authority, describes the property involved and the blighted conditions, sets a public hearing for November 26, 2007, and directs staff to make the necessary public notifications.

ALTERNATIVES ANALYZED: Creating this district is discretionary. The City Council may:

- not approve the resolution
- modify the proposed boundary
- adopt the resolution as the first step toward creating the proposed district

FINANCIAL IMPACT: The financial impact is unknown. However, the current taxable market value in the proposed TIFD is approximately \$251,730,757 and is stagnant. The purpose of an urban renewal and tax increment district is for the public to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur, thus there is no "loss" of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value.

RECOMMENDATION

Staff recommends that Council adopt the resolution that declares the Council's intention to create a South Billings Boulevard Urban Renewal District, including tax increment authority,

describes the property involved and the blighted conditions, sets a public hearing for November 26, 2007, and directs staff to make the necessary public notifications.

Approved by: _____ **City Administrator** _____ **City Attorney**

ATTACHMENTS:

A: Resolution

INTRODUCTION

The City Council will consider adopting a resolution that is the first step toward creating a South Billings Boulevard Urban Renewal District.

PROCEDURAL HISTORY

- On April 26, 2007, Planning Division staff attended the Southwest Corridor Task Force to discuss and answer questions on urban renewal districts and tax increment financing.
- May through August, 2007, Planning Division staff attended monthly Southwest Corridor Task Force meetings to continue discussions on the urban renewal district and to gather input from residents on potential public improvement projects.
- On August 30, 2007, Planning Division staff mailed 2,032 letters of invitation to property owners to two public meetings on the urban renewal district.
- On September 13, 2007, the first public meeting was held to discuss the urban renewal district and tax increment financing to property owners. In addition, property owners identified potential public improvement projects within the district
- On October 11, 2007, the second public meeting was held to review the draft urban renewal plan for the district.
- On October 23, 2007, Yellowstone Planning Board voted on a 6-0 vote to recommend approval of the South Billings Urban Renewal Plan with corrections to the Billings City Council.
- On November 5, 2007, City Council at its work session will hear a presentation and discussion of the South Billings Boulevard Urban Renewal Plan and District.
- On November 13, 2007, City Council will consider a Resolution on South Billings Boulevard Urban Renewal District, Declaring Blight, Intent to Create the District and Setting a Public Hearing
- On November 26, 2007, City Council will conduct a public hearing and first reading of an ordinance to create the district.
- On December 10, 2007, City Council will consider the ordinance on second and final reading. The ordinance becomes effective 30 days later unless appealed.

BACKGROUND

Efforts began the spring of 2007 to create a tax increment finance district and an urban renewal plan for the South Billings Boulevard Urban Renewal District (SBBURD). Through public meetings and participation with the City of Billings, the Southwest Corridor Neighborhood Task Force, residents and property owners, Downtown Billings Partnership, and Big Sky Economic Development Authority the boundaries of the tax increment finance district were settled upon.

Working with area property owners, the Planning Division developed a plan that identifies conditions that create blight, opportunities for growth and development and the infrastructure improvements that need to occur to support private development. In order to create an urban renewal district and use tax increment financing for some or all of the public improvements, the city must adopt a resolution that describes the area, identify the conditions that create blight, state its intention to create a new district and set a public hearing on the plan. The attached resolution satisfies that requirement. If the resolution is approved, staff will publish the notice of

public hearing and send it to all property owners in the proposed district. On November 26, 2007, the Council will consider the ordinance that adopts the plan and allows the City to use tax increment financing for public improvements.

ALTERNATIVES ANALYSIS

The City Council may approve or disapprove the resolution and it may alter the boundaries. Approving the resolution is the first step toward creating the district. The district will be created only after a public hearing and the Council's approval of the urban renewal plan by ordinance.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy is one requirement for adopting an urban renewal plan. Growth Policy compliance is outlined in the body of the urban renewal plan.

STAKEHOLDERS

- BSEDA has been involved with creating the district from the outset. It supports the districts creation because it is an area of the community that is underdeveloped and presents business investment opportunities.
- Downtown Billings Partnership has been involved with creating the district due to its expertise in the creation and administration of Tax Increment Finance Districts.
- Southwest Corridor Neighborhood Task Force has been involved from the beginning. Meetings with the task force prior to the two public meetings helped guide the formation of the Urban Renewal District.

RECOMMENDATION

Staff recommends that Council adopt the resolution that declares the Council's intention to create a South Billings Boulevard Urban Renewal District, including tax increment authority, describes the property involved and the blighted conditions, sets a public hearing for November 26, 2007 and directs staff to make the necessary public notifications.

ATTACHMENTS:

A: Resolution

ATTACHMENT A

RESOLUTION NO: 07-

A RESOLUTION DECLARING THE CITY COUNCIL INTENT TO CREATE A SOUTH BILLINGS BOULEVARD URBAN RENEWAL DISTRICT WITH TAX INCREMENT AUTHORITY; DECLARING THE EXISTENCE OF BLIGHT WITHIN THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL AREA; SETTING A PUBLIC HEARING DATE; AND REQUIRING PUBLICATION AND MAILING OF THE NOTICE OF HEARING

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), the City of Billings, Montana (the "City") is authorized, among other things, to identify and declare an area as containing blight with the intention of eliminating it through urban renewal; and

WHEREAS, the City is authorized by the Act to create urban renewal areas with tax increment provisions by adopting an urban renewal plan by ordinance; and

WHEREAS, an urban renewal plan has been prepared for the proposed South Billings Boulevard Urban Renewal District; and

WHEREAS, the City Council desires to conduct a public hearing on the draft urban renewal plan for the proposed South Billings Boulevard Urban Renewal District to determine if it is desirable to create the district.

NOW, THEREFORE, the City Council of the City of Billings, Montana, declares and resolves as follows:

1. Description of Proposed District The area being considered for inclusion in the proposed urban renewal area is described as:

Starting at the intersection of State Avenue and Van Buren Street, extending south down the centerline of Van Buren Street to the intersection of Van Buren Street and Roosevelt Avenue, extending east down the centerline of Roosevelt Avenue to the intersection of Roosevelt Avenue and Jackson Street, extending south down the centerline of Jackson Street to the intersection of Jackson Street and Madison Avenue, extending east down the centerline of Madison Avenue to the intersection of Madison Avenue and Washington Street, extending south down the centerline of Washington Street to Orrel Drive, extending south along the existing city limit boundary to the intersection of Jackson Street and King Avenue East, extending east along the centerline of King Avenue East to the intersection of King Avenue East and Washington Street, extending south along the centerline of Washington Street to South Frontage Road (including Interstate

90 corridor), extending west along the south edge of South Frontage Road to the intersection of South Frontage and Orchard Lane, extending south along the centerline of Orchard Lane to the existing city limit boundary, extending west along the existing city limit boundary to the intersection of South 12th Street West and Nova Lane, extending south along the centerline of South 12th Street West to intersection of South 12th Street West and the southern boundary of Tract 1, Certificate of Survey 2834, then continuing west along the southern boundaries of Lot 6, Block 4 of Weil Subdivision and Lot 5C of Block 4 of Weil Subdivision amended and Lot 4 of Block 4 of Weil Subdivision and Lot 3 of Block 4 of Weil Subdivision and Lot 2 of Block 4 of Weil Subdivision and Lot 1 of Block 4 of Weil Subdivision and its intersection with the centerline of Mullowney Lane, extending north along the centerline of Mullowney Lane to the intersection of Mullowney Lane and Underpass Avenue, extending northeast along the centerline of Underpass Avenue to the intersection of Underpass Avenue and State Avenue, extending east along the centerline of State Avenue to the ending point at the intersection of State Avenue and Van Buren Street. Excluding all nonincorporated land within the boundary.

2. Determination of blight. A requirement of Montana Annotated Code 2005 is to justify an urban renewal plan through the determination of *blight*. Blight is defined as an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodation; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

- the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;
- inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;
- inappropriate or mixed uses of land or buildings;
- defective or inadequate street layout;
- faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- unsanitary or unsafe conditions;
- deterioration of site;
- improper subdivision or obsolete platting;
- the existence of conditions that endanger life or property by fire or other causes;

The area in the proposed district contains a great deal of blight. Within the district there is substantial structural deterioration, long-term land vacancy, and significant infrastructure needs. Several of the commercial buildings in the district are vacant or deteriorated and need demolition. Many of the sidewalks are cracked or nonexistent, alleys are deteriorated, and, in general, much of the area is below city standards. In contrast to the above, there are certain

properties within the district in good repair but included in the district to allow for a contiguous block of land within the district; and because pockets of revitalization cannot be sustained if areas of neglect and blight surround them. Over time, without continued managed urban renewal, even these success stories will once again decline in taxable value. Portions of the district fall into the blighted, neglected and under-utilized categories. Maps 4 and 5 in the urban renewal plan show the current infrastructure conditions within the district.

3. Intent to Create an Urban Renewal Area with Tax Increment Authority. Pursuant to the Act and considering the blighted conditions cited above, the City Council declares its intention to create a South Billings Boulevard Urban Renewal Area and that public improvements that will stimulate private investment in the area may be financed in part through tax increment generated from the District, subject to a public hearing and adoption of the draft urban renewal plan by ordinance.

4. Public Hearing. A public hearing is hereby called and shall be held on November 26, 2007 at 6:30 p.m. in the Council Chambers at 220 N. 27th Street, on whether to adopt the draft urban renewal plan for the proposed South Billings Boulevard Urban Renewal Area.

5. Publication and Mailing of Notice. The City Clerk is hereby authorized and directed to cause notice of the public hearing to be published in the *Billings Times* at least once a week for two consecutive weeks prior to the date set for the hearing and to mail notice of such hearing not less than 10 days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owners, reputed owners, or purchasers under contract for the deed of the Property, at the addresses shown on the tax roll.

APPROVED AND PASSED by the City Council of the City of Billings this 13th day of November, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

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

BB

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, November 13, 2007

TITLE: Resolution Relating to Financing of the South Billings Boulevard Tax Increment Financing District; Establishing Compliance with Reimbursement Bond Regulations under the Internal Revenue Code

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City anticipates selling bonds for the South Billings Boulevard tax increment financing district during the first quarter of 2008. The proposed project costs and bond sale are related to the planned Foursquare Development on King Avenue East, between South Billings Boulevard and Orchard Lane. The City needs to expend monies related to the project before funds are available from the bond sale proceeds. The following resolution allows the City to reimburse expenses from the bond sale proceeds.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the resolution that will allow the City to reimburse itself and Foursquare Development for design and project development costs that are incurred prior to the anticipated bond sale.
- Disapprove the resolution and do not reimburse costs that are incurred prior to the bond sale.

FINANCIAL IMPACT: The proposed bond sale will finance the construction of multiple off-site public improvements on King Avenue East and in the vicinity of the proposed Foursquare Development project. The estimated improvement cost is \$4.2 million. Costs that will be incurred before the bond sale include design and possibly some public improvement construction. If the resolution is not approved, those costs will not be eligible for reimbursement from the bond proceeds when they become available in early 2008. The costs will then be borne by the City and the developer. The proposed public improvements will benefit the Foursquare Development project, the surrounding neighborhoods and the City of Billings. If the Tax Increment District is not approved and/or bonds not sold, the City is obligated by a Development Agreement that it approved in September to create a Special Improvement District to construct the improvements. Because the City owns land in the proposed SID area, it would be assessed for approximately half the total cost. Therefore, a TID benefits the City and Foursquare. If the

Foursquare project develops as anticipated and other vacant or underdeveloped property redevelops, that private investment will generate more increment than is needed to support the Foursquare public improvements and that increment can be used to complete other public improvements in the surrounding neighborhoods.

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

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

ATTACHMENT

A – Resolution

ATTACHMENT A

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a resolution entitled: “RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on November 13, 2007, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____
_____; voted against the same: _____
_____; abstained from voting thereon: _____
_____; or were absent: _____.

WITNESS my hand officially this _____ day of November, 2007

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO FINANCING OF CERTAIN
PROPOSED PROJECTS; ESTABLISHING COMPLIANCE
WITH REIMBURSEMENT BOND REGULATIONS UNDER
THE INTERNAL REVENUE CODE

BE IT RESOLVED by the City Council of the City of Billings, Montana (the “City”), as follows:

Recitals.

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.

The City desires to comply with requirements of the Regulations with respect to certain projects hereinafter identified.

Official Intent Declaration.

The City proposes to undertake certain projects, which projects and the estimated costs thereof are generally described on Exhibit A hereto, which is hereby incorporated herein and made a part hereof (the “Projects”).

Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (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 Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of the proceeds of debt in an estimated maximum aggregate principal amount of \$4,200,000.00 (the “Bonds”) after the date of payment of all or a portion of the costs of the Projects. 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.

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 Projects, 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.

Reimbursement Allocations. The Financial Services Manager 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 Projects. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Projects and shall specifically identify the actual original expenditure being reimbursed.

Adopted this 13th day of November , 2007.

Mayor

Attest:

City Clerk

EXHIBIT A

<u>Description of Projects</u>	<u>Estimated Cost</u>
Construction of multiple off- site public improvements on King Avenue East and in the vicinity of the proposed Foursquare Development project.	\$4,200,000.00

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

CC

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, November 13, 2007

TITLE: Resolution of Intention to Create Special Improvement District 1380, Terra West Subdivision 3rd & 4th Filings, for Monad Road Street Frontage Improvements

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: The residents of the 3rd and 4th Filings of Terra West Subdivision, containing 76 lots, have requested that immediate steps be taken to develop the unimproved boulevard strip on Monad Road that borders Terra West Subdivision. The Subdivision Improvements Agreement for Terra West 3rd Filing, and Terra West 4th Filing, provides for an extended Special Improvement District to be formed to fund the improvements of public areas for the subdivision. The proposed Special Improvement District No.1380 is for \$77,000 to finance the engineering and design service to grade and level the street frontage, install a water service and irrigation system, and plant grass and trees along the 657 foot long strip (0.74 acres). The Resolution of Intent to Create Special Improvement District 1380 is the first step in the process to include all lots of Terra West Subdivision 3rd and 4th Filings in S. I. D. 1380 to fund the construction of the Monad Road street frontage improvements.

ALTERNATIVES ANALYZED:

- Create the S. I. District now to enable development of the street frontage in the spring of 2008. This is a requirement approved in the Subdivision Improvement Agreements for the Terra West 3rd Filing and 4th Filing, and Waivers of Protest for the formation of the S. I. D. and a S. I. Maintenance District were filed with the Subdivision Improvements Agreement. This is the staff recommendation and the request of the Terra West Property owners.
- Do not create the Special Improvement District at this time.

FINANCIAL IMPACT: The development costs of the Monad Road improvements is estimated to be \$82,000 spread on the 76 lots in Terra West 3rd and 4th Filings, or \$1,013.17 per lot, payable with interest over an assessment period of 15 years. The assessment for the lots is shown in "Exhibit D" of the attached SID documents.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to create Special Improvement District 1380 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the December 10, 2007, City Council meeting.

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

ATTACHMENTS:

- A. Resolution of Intent to Create Special Improvement District No. 1380
- B. Exhibit "A" Plan for the Proposed Special Improvement District 1380
- C. Exhibit "B" Metes and Bounds Description of the Proposed Special Improvement District 1380
- D. Exhibit "C" Property Owner list for Proposed S. I. D. 1380
- E. Exhibit "D" Estimated Special Improvement District No. 1380 Costs for Proposed Improvements

INTRODUCTION

Approval of the Resolution of Intent to Create Special Improvement District No. 1380 for the construction of street frontage improvements on the north side of Monad Road adjacent to Terra West Subdivision is the first step in creating the Special Improvement District. The Resolution of Intent sets December 10, 2007, as the date for the Public Hearing and consideration of the Resolution to Create the district, and notifies the property owners included within the district of the intended action.

PROCEDURAL HISTORY

- July, 1993, Terra West Subdivision, 3rd Filing final plat approved and filed, including Waivers of Protest for park and public area improvements and maintenance. The Master Plan for the construction of the park area improvements was developed with the PRPL Department and adopted by the City Council as part of the Terra West 3rd Filing plat and approved at the same time
- August, 2001, Terra West, 4th Filing final plat was approved and filed, including Waivers of Protest for the construction and maintenance of improvements to public areas of the subdivision. Provision for the construction of street frontage improvements was not made in the 4th Filing plat approval other than as provided for in the Waivers of Protest that were filed.
- February 14, 2006, Petition to Amend Covenants filed by property owners within the Terra West 4th Filing to have the Monad Road street frontage improvements installed.
- May 1, 2006, meeting of the Terra West Subdivision residents at West End Baptist Church to discuss the improvement of the Monad Road Street frontage, estimated costs and funding alternatives.
- Determination that the Terra West Subdivision Park Maintenance District could not be used to fund the street frontage improvements. The only other alternative available is to form a Special Improvement District for this purpose.
- Approval of the Resolution of Intent To Create Special Improvement District No. 1380 provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create Special Improvement District No. 1380at the December 10th, 2007, regular City Council meeting.

BACKGROUND

The development of the streetfront on Monad Road adjacent to Terra West Subdivision is a requirement of the subdivision and is provided for with the Waivers of Protest that were filed

when the Terra West 3rd and 4th Filing plats were approved. The Waivers of Protest to the creation of improvement and maintenance districts for public areas within the subdivision are the mechanism that was put in place to enable these improvements to be completed.

- When the Terra West 1st and 2nd Filings were approved, the street front improvements along 32nd Street West were required to be completed as the Filings were built out. The 32nd Street West streetfront adjacent to Terra West 1st and 2nd Filings are maintained by the residents in that portion of Terra West Subdivision.
- The park in the center of Terra West Subdivision was completed by the developer as required in the Subdivision Improvements Agreement as part of the development of Terra West 3rd Filing. It is maintained by a subdivision-wide maintenance district, PMD 4008, created for that purpose, assessed to all properties within the entire Terra West Subdivision. The existing maintenance district is only for the purpose of maintaining that internal park area.
- The Monad Road streetfront improvement and maintenance districts will include the Terra West 3rd and 4th Filing properties. The Terra West 1st and 2nd Filings are excluded because those properties improved and are maintaining the 32nd Street West streetfront landscape.

Approval of the Resolution of Intent to Create Special Improvement District No. 1380 provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create Special Improvement District No. 1389 will take place at the December City Council Meeting.

ALTERNATIVES ANALYSIS

- Create the Special Improvement District now to enable the construction of the improvements to the Terra West Subdivision Monad Road improvements in the Spring of 2008. The approved Subdivision Improvements Agreements call for development of public areas in the subdivision through Special Improvement District and also provides that a Special Improvement Maintenance District be created for maintaining it. This is the staff recommendation.
- Do not create Special Improvement District No. 1380 and the S.I. Maintenance District to improve and maintain the Terra West Monad Road street frontage at this.

STAKEHOLDERS

- The developers of Terra West Subdivision have agreed to the development and maintenance of the public areas in the Subdivision.
- All properties in Terra West Subdivision have Waivers of Protest on file for the improvement and maintenance of public areas. However, Terra West 1st and 2nd Filings are being excluded from SID1380 and SIMD 4038 because they were required to install landscape improvements on the 32nd Street West street frontage and have been required to maintain it since the 1st and 2nd Filings were developed. They will continue to maintain the 32nd Street W. landscaping separate from the 3rd and 4th Filings.