

# CITY OF BILLINGS

## CITY OF BILLINGS' VISION STATEMENT:

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

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## AGENDA

COUNCIL CHAMBERS

April 28, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing  
PLEDGE OF ALLEGIANCE – Mayor Tussing  
INVOCATION –  
ROLL CALL  
MINUTES –  
COURTESIES –  
PROCLAMATIONS - none  
ADMINISTRATOR REPORTS – Tina Volek

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: 1 ONLY.**

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

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

### **CONSENT AGENDA:**

1. A. **Bid Awards:**

(1) **Water System Backup Power – Phase I.** (Opened 4/15/08) Recommend Colstrip Electric, Inc., \$390,268.00, for Schedules I and II; and reject all bids for Schedule III.

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

(2) **Yard Waste Containers for Solid Waste Division.** (Opened 4/15/08) Recommend Rehrig Pacific Company, \$51.00 per container.

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

(3) **Airport Improvement Program (AIP) 34 Airport Perimeter Security Fence Project.** (Opened 4/15/08) Recommend delay of award until 5/12/08.

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

**B. Change Order #8, SID 1379-Utility and Street Improvements to King Avenue West, Knife River Corporation \$336,315.25.**

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

**C. Certified Local Government Program Grant Contract** with the State of Montana Historic Preservation Office for historic preservation activities, \$5,500 (4/1/08 – 3/31/09). Local matches: City of Billings - \$1,031.00; Yellowstone County - \$1,000.00; City of Laurel - \$469.00.

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

**D. Confirmation of Police Officer Brian Krivitz.**

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

**E. Street Closures:**

**(1) Chase Hawks Association Burn the Point Parade and Street Dance,** August 29, 2008 – Parade: standard downtown parade route; Street Dance: North 22<sup>nd</sup> Street and 2<sup>nd</sup> Avenue North to 32<sup>nd</sup> Street North, and 3<sup>rd</sup> Avenue North to North 27<sup>th</sup> Street.

[\(Corresponding Staff Memo E1\)](#)

**(2) Downtown Billings Association Events:**

**(a) Alive After 5** – Thursdays, 3 p.m. to 9 p.m., 6/5/08 through 8/21/08, various downtown locations;

**(b) Strawberry Festival** - 3 a.m. to 7 p.m., 6/14/08; N. 28<sup>th</sup> between 1<sup>st</sup> and 3<sup>rd</sup> Aves. N.; 2<sup>nd</sup> Ave. N. from alley west of N. 27<sup>th</sup> to N. 29<sup>th</sup>; N. 29<sup>th</sup> from 1<sup>st</sup> to 2<sup>nd</sup> Aves. N.;

**(c) Farmers Market – Saturdays,** 6 a.m. to 1 p.m., 7/19/08 through 10/04/08; N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Aves. N.; 2<sup>nd</sup> Ave. N. from alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>; N. 29<sup>th</sup> from 1<sup>st</sup> to 2<sup>nd</sup> Aves. N.;

**(d) Farmers Market – Wednesdays:** 3 p.m. to 9 p.m., 8/6/08 through 8/27/08; N. 28<sup>th</sup> from 2<sup>nd</sup> to 3<sup>rd</sup> Aves. N.;

**(e) Harvestfest** - 6 a.m. to 5 p.m., 10/11/08; N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Aves. N.; 2<sup>nd</sup> Ave. N. from alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>;

**(f) Holiday Parade** – 7 p.m., 11/28/08; standard downtown parade route;

**(g) Christmas Stroll** – 4 p.m. to 9:30 p.m., 12/5/08; N. 28<sup>th</sup> from 1<sup>st</sup> to 3<sup>rd</sup> Aves. N.; 2<sup>nd</sup> Ave. from alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup>.

[\(Corresponding Staff Memo E2\)](#)

**F. Acceptance of donation** from First Interstate Bank to help send School Resource Officers to National Conference, \$1,400.00.

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

**G. Acceptance of donation** from various donors to the Ballpark Construction Fund - \$23,169.00; and Ballpark Maintenance Fund - \$11,600.00.

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

**H. (a) Acceptance of donation** from Pepsi Cola Bottling Company of Billings for upgrades to the scoreboard at Dehler Park, \$200,000.00.

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

**(b) Change Order #1**, Upgrades to Dehler Park scoreboard, Sign Products, Inc., \$108,317.00.

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

**I. Acceptance of donation** from Billings Mustangs Booster Association for purchase and installation of six cash drawers and two beer dispensing stanchions for concession areas at Dehler Park, \$4,242.00.

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

**J. Resolution** authorizing condemnation of property on King Avenue East from South Billings Boulevard to Orchard Lane.

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

**K. Resolution of Intent** to construct W.O. 02-08, Milton Lane School Route.

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

**L. Second/final reading ordinance for Zone Change #829:** A zone change from Agriculture-Open Space (A-1), a county zoning district, to Planned Development with three underlying zoning districts - Mixed Use (MU); Multi-family Residential (MF-R); and Single Family, Residential Multi-Family (Four-plex) (MF-4) located at 4345 King Avenue West. Lenhardt Property, LP; Lenhardt Farm, LLC and Lenhardt Enterprises, LLC, owners, Engineering, Inc. and Bill Cole agents.

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

**M. Second/final reading ordinance** amending nuisance weed regulations.

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

**N. Exempt Amended Plat** of Tract 1, Certificate of Survey 1815.

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

**O. Final Plat Approval**

(1) Amended Plat of Stardust Acres Subdivision, Lot 4, Block 1

[\(Corresponding Staff Memo O1\)](#)

(2) Twin Oaks Subdivision

[\(Corresponding Staff Memo O2\)](#)

**P. Bills and Payroll**

(1) March 28, 2008

[\(Corresponding Staff Memo P1\)](#)

(2) April 4, 2008

[\(Corresponding Staff Memo P2\)](#)

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

## **REGULAR AGENDA:**

**2. PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE #OP-08-02:** A variance from the Site Development Ordinance, Sections 6-1203(j) regarding off-street parking for a new medical facility located at 708 Broadwater Avenue, Broadwater L.L.C., owner; Collaborative Design Architects, agent. Staff recommends approval with conditional deed restrictions. (**Action:** approval or disapproval of staff recommendation.)

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

**3. PUBLIC HEARING AND APPROVAL OF AGREEMENT** with Real Estate Dynamics, Inc. for King's Green Subdivision, Phase III, for the construction of 14 new homes. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

**4. PUBLIC HEARINGS FOR COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP PROGRAMS AND THE FY2008-2009 ANNUAL ACTION PLAN.** Staff recommends delaying final action until May 12, 2008. (**Action:** approval or disapproval of staff recommendation.)

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

**5. PUBLIC HEARING AND FIRST READING ORDINANCE** repealing Ordinance 07-5441 and creating the South Billings Boulevard Urban Renewal District. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

**6. PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward III to include recently annexed property in Annexation #08-01: a 114-acre property located north of King Avenue West between 48<sup>th</sup> Street West and Shiloh Road and described as Tracts 1A-5A, C/S 2063. Lenhardt Property, LP; Lenhardt Farm, LLC and Lenhardt Enterprises, LLC, owners and petitioners. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

**7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #836:** A zone change from Residential 8000 to Residential Professional on Lots 4, 5, and 6, Block 19, of Lampman Subdivision, generally located on the northeast corner of South 32<sup>nd</sup> Street West and Rosebud Drive. Lais Development, Inc., applicant and agent. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

**8. PUBLIC HEARING AND RESOLUTION** annexing a 20.6-acre property located north of Alkali Creek Road and described as: Tracts 1A, 1B, and 1C, Certificate of Survey 2055, Amended, (Annexation #08-06). Best Development Corp., petitioner. Staff



recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

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

**9. PUBLIC HEARING AND SPECIAL REVIEW #858:** A special review for expansion of a church facility on an existing 5.939-acre parcel of land zoned Residential 9600 and described as: Tracts 2A-1 and 3A-1, Certificate of Survey 1876 located at 4125 and 4135 Grand Avenue. King of Glory Lutheran Church, Inc., applicant; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

**10. PUBLIC HEARING AND SPECIAL REVIEW #859:** A special review to allow an all beverage license without gaming on property described as Lots 7-12 and 14-24, Block 9, Billings Original Townsite; and Lot 13A, Block 58, Fosters Addition, Amended, less 642 square feet. Yellowstone Art Center Foundation, owner; James Healow, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

**11. (a) PUBLIC HEARING AND FIRST READING ORDINANCE – Model Cable TV Ordinance.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

**(b) PUBLIC HEARING AND FIRST READING ORDINANCE** repealing existing Cable TV Franchise Ordinance and enacting new Franchise Ordinance with Bresnan Communications. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

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

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

## **Council Initiatives**

## **ADJOURN**

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

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

AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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TITLE: Water System Backup Power – Phase I  
 DEPARTMENT: Public Works  
 PRESENTED BY: Dave Mumford, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The Public Works Department has developed a plan to maintain adequate drinking water for public health needs should the electrical grid fail for an extended period as occurred in the Midwest several years ago. The plan calls for backup power equipment to be installed over a period of years at the water treatment facility and critical pump stations around the city. Phase I of this plan was authorized in the FY 2008 Capital Improvement Plan. Phase I would provide backup power equipment at up to four pumping stations depending upon the bids received. Three of the four stations identified for this phase serve areas that have minimal water storage or no water storage and require operational pumping stations for service. This project includes the generators, all required ancillary equipment and control systems, and installation and startup. The project is broken up into three schedules which can be awarded separately.

**FINANCIAL IMPACT:** Bids were received on April 15, 2008. The bidding results are provided in the table following this section. Adequate funding is available in the Capital Water Construction account to award schedule I and II.

<b>Bidder</b>	<b>Ace Electric, Inc.</b>	<b>Colstrip Electric, Inc.</b>
Schedule 1 (Fox Pump Station)	\$81,000.00	\$80,933.00
Schedule 2 (Christensen & Waldo Pump Stations)	\$366,800.00	\$309,335.00
Schedule 3 (Thomas Pump Station)	\$102,000.00	\$106,985.00

**RECOMMENDATION**

Staff recommends that Council award the bid for Schedules I and II of the Water System Backup Power Project-Phase I to Colstrip Electric, Inc. for \$390,268 and reject all bids for Schedule III.

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

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Approval of Award to Purchase Yard Waste Containers for the Solid Waste Division

**DEPARTMENT:** Public Works/Solid Waste Division

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

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**PROBLEM/ISSUE STATEMENT:** During 2005, the Solid Waste Division completed a pilot program for curb-side yard waste collection. Based upon the positive results of the pilot program, a decision was made to expand the curb-side yard waste collection program city wide. A separate 95-gallon container is provided for participants to put their separated yard waste in for collection. The program is currently offered in six of the 32 residential collection areas and will be expanded to 12 additional collection areas this summer when additional trucks are received. The FY2008 Solid Waste Division budget includes \$350,000 to purchase 6,000 to 7,000 additional yard waste containers for the additional areas.

**FINANCIAL IMPACT:** The Solid Waste Division advertised for bids on April 3<sup>rd</sup> and 10<sup>th</sup> for the purchase of yard waste containers. Bid packets were provided to twelve vendors, and five bids were received for the 2:00pm bid opening on April 15, 2008. The price bid is per each container delivered to the Billings Operation Center in truckload quantities. The bids are summarized as follows:

	<u>Price Each</u>	<u>Truckload Quantity</u>
<b>Rehrig Pacific Company</b>	<b>\$51.00</b>	<b>486</b>
Otto Environmental Systems	\$51.20	432
Toter Incorporated	\$51.44	588
Cascade Engineering	\$52.40	522
Schaefer Systems International	\$54.08	427

**RECOMMENDATION**

Staff recommends that Council award the contract for purchase of yard waste carts to Rehrig Pacific Company in the amount of \$51.00 each.

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

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AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 28, 2008

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**TITLE:** Delay Award of Airport Improvement Program (AIP) 34 Airport Perimeter Security Fence Project

**DEPARTMENT:** Aviation and transit

**PRESENTED BY:** Tom Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** One of the Airport's approved Capital Improvement Program (CIP) projects is the replacement of the Airport Perimeter Security Fence. This project will replace approximately 20,000 lineal feet of perimeter security fence that does not comply with current Transportation Security Administration (TSA) or Federal Aviation Administration (FAA) standards on the west, east, and north sides of the Airport. The new chain link fence will be 7' tall with an additional 1' of barbed wire on the top. Additionally, this project will also enhance the Airport's Federally Mandated Wildlife Hazard Management Plan by installing wildlife deterrents a minimum of 6' on the outside of the fence. In most cases an 8' wide by 6" deep section of roto-milled tailings will provide a non-diggable surface as a deterrent. Where the fence is placed in steep ravines or on rock the project calls for the installation of a 6' piece of chain link fabric attached to the bottom of the fence and secured to the surrounding terrain.

**FINANCIAL IMPACT:** The total cost of the Airport Perimeter Fencing project will be funded through a 95% AIP entitlement grant and 5% local match.

### RECOMMENDATION

Staff recommends that City Council delay the award of the AIP 34 Airport Perimeter Security Fence project to May 12, 2008, to allow staff sufficient time to review the bids received.

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** SID 1379 – Utility and Street Improvements to King Avenue West from S. 31<sup>st</sup> Street West to Shiloh Road, Change Order #8

**DEPARTMENT:** Public Works - Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Work under this change order would construct additional utility improvements to facilitate providing sanitary sewer service to Shiloh Crossing Subdivision by fall 2008. Work would include installing additional sanitary sewer mains and two additional manholes that can be utilized by the City as an interim lift station for Shiloh Crossing. All work would be incorporated into the future King Avenue Lift Station project.

As such, it is necessary to construct these utilities at the present time under SID 1379. Mayor and Council rejected the sole bid for the lift station project at their March 24, 2008 meeting. Although the King Avenue lift station design will be modified and the project rebid with the intent of attracting more bidders and a lower price, it cannot be rebid and constructed in time to provide the necessary service to Shiloh Crossing. The City has committed providing sewer service to Shiloh Crossing in time for fall store openings.

The contractor is currently installing sewer main and manholes under SID 1379 and is the utility contractor on Shiloh Crossing's Private Contract No. 583; they are well positioned to complete the work required by this change order. All necessary dewatering facilities and construction equipment are on-site and in close proximity to the project area under consideration.

**FINANCIAL IMPACT:** Funding for this additional work will come from Waste Water funds and will not be assessed to property owners currently being assessed under the SID. The total amount of Change Order #8 is \$336,315.25. Change Orders 1 through 8 results in an increase to the original contract price of \$679,450.11 or 13.67% of the original contract price.

**RECOMMENDATION**

Staff recommends that Council approve Change Order No. 8 in the amount of \$336,315.25.





## CHANGE ORDER

No. 8

DATE OF ISSUANCE 4-17-08 EFFECTIVE DATE 4-17-08

OWNER City of Billings, Montana  
 CONTRACTOR Knife River Corporation  
 Contract: N/A  
 Project: S.I.D. 1379: Utility and Street Improvements to King Avenue West from South 31<sup>st</sup> St W to Shiloh Road  
 OWNER's Contract No. N/A ENGINEER's Contract No. 00194-143-050  
 ENGINEER City of Billings

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

*Description:*

- 1) Construct a lift station

*Reason for Change Order:*

- 1) The City of Billings needs to provide a lift station within Shiloh Crossing Subdivision.

*Attachments: (List documents supporting change)*

- 1) Letter from Knife River dated 4-17-08

CHANGE IN CONTRACT PRICE:
Original Contract Price \$ <u>4,971,752.50</u>
Net Increase ( <del>Decrease</del> ) from previous Change Orders No. <u>1</u> to <u>7</u> : \$ <u>343,134.86</u>
Contract Price prior to this Change Order: \$ <u>5,314,887.36</u>
Net increase (decrease) of this Change Order: \$ <u>336,315.25</u>
Contract Price with all approved Change Orders: \$ <u>5,651,202.61</u>

CHANGE IN CONTRACT TIMES:
Original Contract Times: Substantial Completion: <u>August 1, 2008</u> Ready for final payment: _____ (days or dates)
Net change from previous Change Orders No. ____ to No. ____: Substantial Completion: _____ Ready for final payment: _____ (days)
Contract Times prior to this Change Order: Substantial Completion: <u>August 1, 2008</u> Ready for final payment: _____ (days or dates)
Net increase (decrease) this Change Order: Substantial Completion: <u>0</u> Ready for final payment: _____ (days)
Contract Times with all approved Change Orders: Substantial Completion: <u>August 11, 2008</u> Ready for final payment: _____ (days or dates)

RECOMMENDED:

APPROVED:

ACCEPTED:

By \_\_\_\_\_  
(ENGINEER - Signature  
Signature)

\_\_\_\_\_  
OWNER (Authorized Signature)

\_\_\_\_\_  
CONTRACTOR(Authorized

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EJCDC 1910-8-B

**Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.**

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Certified Local Government Program Contract  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Lora Mattox, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** The State of Montana Historic Preservation Office has designated the City of Billings as a Certified Local Government (CLG) for historic preservation activities. As a CLG, the City is eligible to receive state funding to coordinate historic preservation efforts in our area. In January of 2008, the City of Billings applied for these funds through the CLG Program. On March 31, 2008, the City received approval for this grant cycle of April 1, 2008, through March 31, 2009, and 2 original contracts for the Authorized Representative (Mayor) to sign.

**ALTERNATIVES ANALYZED:** Agree or decline to participate in State CLG program and accept CLG grant funding to coordinate historic preservation activities.

**FINANCIAL IMPACT:** City Council approval would provide \$5,500 in State of Montana Certified Local Government funding. Local match for the CLG include \$1,031 from the City of Billings, \$1,000 from Yellowstone County and \$469 from the City of Laurel for a total program of \$8,000. The Planning Division will also continue to provide in-kind match through staff support of approximately 20 hours a week to administer the Yellowstone Historic Preservation Board (YHPB) activities and the CLG Grant Administration. The funding package will be used to contract with the Western Heritage Center for consulting services that assist with completion of projects identified in the YHPB Work Plan. In past years, the total contract with Western Heritage Center was \$12,000. Due to budget constraints, the City of Billings local match through the Planning Division was reduced by \$4,000.

The budget proposed with local funds and in-kind match is sufficient to meet the requirements of the Certified Local Government Grant and has been approved by the State Historic Preservation Office.

**RECOMMENDATION**

Staff recommends that the City Council authorize the Mayor to sign the Certified Local

Government Grant Contracts for a \$5,500 Certified Local Government grant from the Montana State Historic Preservation Office.

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

**ATTACHMENTS**

- A.     Certified Local Government Agreement
- B.     FY 2008 Work Plan

STATE OF MONTANA AGREEMENT

This agreement is hereby made between **City of Billings**, PO Box 1178, Billings, Montana, 59103 (The "Subgrantee") and the Montana Historic Preservation Office, Montana Historical Society, 1410 8th Ave, PO Box 201202 Helena, Montana 59620-1202 (The "Grantee"). The two parties, in consideration of mutual covenants and stipulations described below, agree as follows:

SECTION I: SERVICES

The Subgrantee will:

1. Maintain an active Historic Preservation Commission (HPC) that will advocate for preservation, assist the HPO to accomplish preservation goals and fill vacancies on the HPC promptly.
2. Participate in and carry out the responsibilities for Certified Local Government program status as outlined in "The Montana Certified Local Government Manual."
3. Insure historic preservation concerns are considered at all levels of local government planning and are incorporated as goals of other local, state, and federal projects.
4. Administer local preservation ordinances.
5. Have on staff a minimum half-time designated Historic Preservation Officer (HPO) who demonstrably plays an active and consistent role in the conduct of the subgrantee's historic preservation activities. On behalf of the Subgrantee it is the role of HPO to conduct these activities and/or work with the HPC to:
  - a. Regularly report on HPC activities at local government Commission meetings and be available for comment to these groups and other local government offices;
  - b. Monitor Preservation Covenants and Agreements and provide historic preservation information and assistance to property owners;
  - c. Provide technical assistance, direction, literature on historic preservation tax credits, National Register, Federal regulations and Secretary of Interior Standards;
  - d. Inspect and evaluate historic properties for potential and feasible reuse and rehabilitation;
  - e. Coordinate, promote and participate in events such as National Historic Preservation Week and/or other preservation related activities;
  - f. Cooperate and communicate with the Grantee and fellow HPO/HPCs in Montana and elsewhere as appropriate; and
  - g. Submit quarterly reports, meeting minutes and financial reports per deadlines outlined in this agreement. In the Final Progress Report, the HPO will identify benefits the local government has derived as a result of the employment of a HPO, the needs of the local government for future professional preservation efforts, and any additional functions of the HPO carried out which further the understanding and implementation of historic preservation values and objectives in the local government.

All work completed under this funding agreement must meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as interpreted by the Grantee. Final products or services that do not fulfill the requirements of this Agreement and do not comply with the appropriate

Secretary of the Interior's Standards will not be reimbursed and any advance payments made in connection with such products or services must be repaid to the Grantee.

## SECTION II: EFFECTIVE DATE, DURATION, AND REMUNERATION

The Agreement shall take effect as of April 1, 2008 and shall terminate March 31, 2009 unless a new termination date is set or the agreement is terminated pursuant to SECTION IV. Total payments by the "Grantee" for all purposes under this contract shall not exceed: \$5,500. Payment shall be made on a reimbursement basis by request of Subgrantee to the SHPO.

## SECTION III: CONSIDERATION AND PROCESS FOR PAYMENT

In consideration of Services rendered in this Agreement, the Grantee agrees to pay the Subgrantee as follows:

1. The Subgrantee agrees to submit Progress Reports, meeting minutes and Requests for Reimbursement quarterly. Reports will be accompanied by the following documentation:
  - a. The Subgrantee's name, address and agreement number **MT-08-012**;
  - b. Report discussing work completed during the quarter. Include meeting agendas and minutes;
  - c. An itemized listing of cash or in-kind donations that comprise the non-federal match;
  - d. An itemized listing of project expenses that are charged to the federal grant;
  - e. The net request for payment; and
  - f. Products produced during the quarter.
2. All Requests for Reimbursement must be approved by the Grantee prior to payment. Payment for work completed under this Agreement may be withheld pending the delivery and acceptance of such items. All Subgrantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of 3 years or until an acceptable audit (accessible by auditors) has been performed and all claims and audit findings involving the records have been resolved. The 3-year retention period starts from the date of the submission of the final report. A final Request for Reimbursement must be submitted within thirty (30) days of the termination of this Agreement if they are to qualify for payment.
3. All Requests for Reimbursement will be reviewed for eligibility and allowability under Chapters 12, 13 and 14 of the National Park Service's Historic Preservation Fund Manual and the State CLG Manual. The Subgrantee may request a copy of the CLG Manual from the SHPO and the Historic Preservation Fund Manual is available for inspection at the SHPO.
4. The Grantee may retain final payment of federal grant funds until such time as the approved project work has been successfully completed and all conditions of this Agreement have been met.

## SECTION IV: TERMINATION

1. The Subgrantee understands and agrees the Grantee, as a state agency, is dependent upon federal and state appropriations for its funding and actions by Congress or the Montana Legislature may preclude funding this Agreement completely through the termination date stated in Section II. Should such a contingency occur, the parties agree the Grantee may set a new termination date or terminate the contract immediately, depending upon the funding remaining available for the Agreement, and the

Subgrantee will be compensated for services rendered and expenses incurred to 5:00 p.m. of the revised termination date.

2. In the event of termination, all property (except real estate) and finished or unfinished documents, data, studies, and reports purchased or prepared by the Subgrantee under this Agreement shall, at the option of the Montana Historical Society (MHS), become the property of the MHS and the Subgrantee shall be entitled to compensation for any un-reimbursed expenses necessarily incurred in satisfactory performance of this Agreement. Notwithstanding the above, the Subgrantee will not be relieved of liability to the Grantee for damage sustained by the Grantee by virtue of any breach of the Agreement by the Subgrantee and the Grantee may withhold any reimbursement to the Subgrantee for the purpose of off-set until such time as the exact amount of damages due the Grantee from the Subgrantee is agreed upon or otherwise determined.
3. Except for the provisions of SECTION IV, paragraph 1, and SECTION XII, either party may terminate this Agreement without cause thirty (30) days after delivery of written notice in hand to the other party.
4. The MHS may terminate this Agreement for failure of the Subgrantee to perform any of the services, duties, or conditions in accordance with the time schedule contained in this Agreement. The Grantee will provide the Subgrantee with written notification of the reasons for the Subgrantee's performance failure and allow the Subgrantee a period of not less than ten (10) days nor more that thirty (30) days after receipt of said notification to rectify the identified failure to perform.

#### SECTION V: GENERAL AND SPECIFIC CONDITIONS

The Subgrantee agrees to follow the General and Specific Conditions according to this Agreement and Chapter 5 of the Historic Preservation Fund Grants Manual.

#### SECTION VI: ASSIGNMENT AND PROCUREMENT PROCEDURES

1. The Subgrantee agrees that the procurement of services, supplies, equipment, and construction will be obtained efficiently and economically and in compliance with the applicable federal laws, and of OMB Circular A-102, (as further amended, 8/29/97) and Chapter 17 of the Historic Preservation Grants Manual.
2. The process for the selection of subcontractors to perform the services under this Agreement, regardless of whether by competitive bidding or negotiated procurement, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms or individuals in order for them to qualify to do business, (2) non-competitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.
3. Competitive bidding or negotiated procurement is required for all survey and planning subcontracts. Proposals shall be requested from an adequate number of sources (at least two or three sources) to permit reasonable competition. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable. The Request for Proposals shall identify the survey or planning area, population, number of properties to be inventoried, funds available and volunteer support (if applicable). The Subgrantee shall document in



writing the evaluation criteria used and the results of the technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for subcontract award. Subcontractors shall be selected on the basis of qualification, subject to negotiation of fair and reasonable compensation. Unsuccessful offerors shall be notified promptly. A copy of documentation of the selection process will be submitted to the Grantee prior to the initiation of the project.

4. Noncompetitive negotiation may be used with prior written approval from the Grantee when, after the solicitation in accordance with Section VI, 3. above, competition is determined inadequate.
5. The Subgrantee will notify the SHPO upon the selection of a subcontractor. Subgrantee will verify Subcontractor is not on the debarred list. A copy of this contract will be submitted to the SHPO for review and written or verbal approval prior to its execution.
6. Prior to the beginning of project work or any grant payment, the Subgrantee must submit to the SHPO the below listed items to demonstrate that the federal procurement requirements have been met in full:
  - a. Copies of the letters to qualified sources and public advertisements requesting proposals and/or invitations to bid;
  - b. Copy of the Subgrantee documentation of the selection criteria and process;
  - c. A copy of the successful proposal and a description of the Subgrantee reasons for selection;
  - d. Listing of the unsuccessful offerors;
  - e. Copy of the proposed contract between the Subgrantee and the subcontractor.

Note: SHPO must review and approve all contracts between the Subgrantee and subcontractors prior to their execution. The parties agree that there will be no assignment or transfer of this Agreement or any interest in the Agreement and that no service required under this Agreement may be performed under subcontract unless both parties agree in writing.

#### SECTION VII: EQUAL EMPLOYMENT OPPORTUNITY

1. Pursuant to Sections 49-2-303 and 49-3-207 of the Montana Code Annotated and the federal Civil Rights Act of 1964, (as amended) and Equal Employment Opportunity statute, in all hiring or employment made possible by or resulting from this Agreement, the Subgrantee 1) will not discriminate against any employee or applicant for employment because of race, color, social condition, religion, sex, age, national origin, marital status, creed, political affiliation, or physical or mental handicap and 2) will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This requirement applies to, but is not limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subgrantee will comply with all applicable statutes and Executive Orders on equal employment opportunity, including enforcement provisions, as implemented by, but not limited to, Department of the Interior policies, published in 43 CFR 17.
2. The Subgrantee will comply with Section 504 of the Rehabilitation Act of 1973 which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

3. The Subgrantee will comply with The Age Discrimination Act of 1975 prohibit discrimination on the basis of age in programs and activities receiving Federal Financial assistance.

#### SECTION VIII: FAIR LABOR STANDARDS

The Subgrantee agrees to comply with all Federal and State wage and hour rules, statutes, and regulations, and warrants that all applicable Federal and State fair labor standards and provisions will be complied with both by the Subgrantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the MHS, SHPO and the Subgrantee.

#### SECTION IX: PROHIBITION AGAINST LOBBYING

The Subgrantee must conform to provisions of 18 USC 1913:

"No part of the money appropriated by an enactment of Congress shall in the absence of express authorization by Congress be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or any other device intended or designed to influence in any matter a Member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the U.S. or its Departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper channels, requests for legislation or appropriation that they deem necessary for the efficient conduct of the public business." Thus, costs associated with activities to influence legislation pending before Congress, commonly referred-to as "lobbying" is unallowable under this Agreement.

#### SECTION X: INDEMNIFICATION

The Subgrantee agrees that it will hold harmless and indemnify the MHS from any and all losses that may result to the Grantee because of negligence on the part of the Subgrantee, its agents, representatives, or employees. The Subgrantee shall hold harmless the MHS from any and all claims arising out of the execution of this Agreement for injury to third persons, including their agents, employees, or volunteers, recipients, and to the public at large, for injury to property of persons, which arise out of any Subgrantee's actions.

#### SECTION XI: WORKERS' COMPENSATION

The Subgrantee and all independent subcontractors earning compensation under this funding agreement must elect to be bound personally and individually by the provisions of compensation plans 1, 2 or 3, but he/she may apply to Montana Workers' Compensation division for an exemption from the Worker's Compensation Act. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When the division approves an application it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

#### SECTION XII: MODIFICATIONS AND PREVIOUS AGREEMENTS

1. This instrument contains the entire Agreement between the parties, and no previous statements, promises, or inducements made by either party or agent of either party which are not contained in this written agreement shall be valid or binding. This agreement may not be enlarged, modified, or altered except in writing signed by the parties and attached to the original of this Agreement, except as provided under Section IV (1). No change, addition, or erasure of any printed portion of this Agreement shall be valid or binding upon either party.

2. Any changes that substantially alter the scope of work or the cost of the approved project must be submitted as a project amendment. These amendments must have prior written approval from NPS before the change is implemented. Change orders will be treated as amendments. SHPO will be consulted to review the change to determine if it substantially alters the scope of work or the cost of the approved project. If the change is determined to be substantial, the SHPO will process the amendment through NPS. Failure to notify the SHPO of any such changes may be construed as just cause for revocation and/or recovery of the grant funds.

#### SECTION XIII: CONFLICT OF INTEREST

No officer or employee of the MHS or member of the Society Board or State Preservation Review Board and no member of the Subgrantee's governing body at localities in which the project is situated or being carried out who exercises any functions or responsibilities or who enjoys a position of influence in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his personal or pecuniary interest. The Subgrantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

#### SECTION XIV: COPYRIGHT PROHIBITION

1. Except as otherwise provided in the terms and conditions of the grant agreement, the Subgrantee is free to copyright any books, publications, or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty-free, nonexclusive, and irrevocable license throughout the work to the Grantee and/or the US Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.
2. Any materials produced as a result of this Agreement which are to be publicly distributed, shall include the following statement:

The (activity) that is the subject of this (type of publication) has been financed (in part/entirely) with Federal funds from the National Park Service, U. S. Department of Interior, and administered by the SHPO of Montana. The contents and opinions do not necessarily reflect the views or policies of the U.S. Department of the Interior or the Montana Historic Preservation Office, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or SHPO.

Publications must include the nondiscrimination statement:

This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, age, or disability in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to:

Office for Equal Opportunity  
National Park Service  
1849 C Street, N.W.  
Washington, D.C. 20240

2. The Subgrantee shall not include in the materials produced as a result of this Agreement any copyrighted matter without the written approval of the copyright owner that provided SHPO and the United States Government with written permission to use the material in the manner provided herein.

SECTION XV: AUDITING

The Subgrantee agrees to allow access to the records of the activities covered by this Agreement as may be necessary for legislative post-audit and analysis purposes in determining compliance with the terms of this Agreement. The Subgrantee shall maintain all administrative and fiscal records relating to this project for three years after the final grant reimbursement is made by the Grantee to the Subgrantee. Notwithstanding the provisions of SECTION IV, this Agreement shall automatically terminate upon any refusal of the Subgrantee to allow access to records necessary to carry out the legislative post-audit and analysis functions set forth in Title 5 Chapter 12 and 13, MCA and the financial and programmatic audit conducted by the Secretary of the Interior and the Comptroller General of the United States provided for in OMB Circular A-102, as amended.

SECTION XVI: SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this contract is by the courts held to be illegal or in conflict with any Montana law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

SECTION XVII: EXECUTION

This Contract consists of this Agreement and pages of attachments; the original copy is to be retained by SHPO. A copy of the original and attachments, if any, has the same force and effect for all purposes as the original.

Each party has full power and authority to enter into and perform this Agreement, and the person signing the Agreement on the behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

To express the parties' intent to be bound by the terms of this Agreement, they have executed this document on the date set out below:

\_\_\_\_\_  
Chief Elected/Authorized Official ~ Subgrantee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Administrator, Centralized Services Division  
Montana Historical Society

\_\_\_\_\_  
Date

**Yellowstone Historic Preservation Board Work Plan  
2008-2009**

Goals & Objectives:

- I. Promote the preservation of historic buildings, sites or neighborhoods.
- II. Increase community awareness on the benefits of historic preservation activities.
- III. Promote increased awareness of preservation activities and the work of the YHPB by the four governing bodies represented on the Board.
- IV. Comply with the duties and responsibilities of historic preservation organizations under the State Certified Local Government Program and the requirements of the Inter-local Agreement.

**2008 Projects**

- 1. Update the existing Historic Preservation Ordinance. To assist developers with development within the historic district, develop and adopt Standards for Construction Ordinance. Incorporate the Secretary of Interior Standards for new construction within the Ordinance.**

Time Frame: Begin 2/19/08  
Who: YHPB Board and HPO/WHC  
Status: This project is ranked number 1 for priority.

- 2. Assist North Elevation Task Force in the development of a Historic Residential District, provide technical assistance as needed.**

Time Frame: Begin 2/19/08  
Who: YHPB Board, WHC and staff  
Status: This project is ranked number 2 for priority.

- 3. To increase awareness about historic preservation to residents and tourist, complete the construction of the sign boards titled "Billings Through the Decades". This sign board will be displayed throughout the downtown.**

Time Frame: As funding becomes available  
Who: YHPB, WHC and HPC  
Status: Funding will continue to try to be raised to complete this project.

**Identified Projects for Future Consideration (not in any order)**

1. Prepare a recognition and/or activity for the City of Laurel's Centennial.
2. Complete the inventory and presentation of historic barns, silos and other important structures in Yellowstone County. (MSU-B)
3. Prepare education trunks for area elementary schools.
4. Scan and create a database for site inventory forms that are currently in binders located in the Planning Division.

**Annual Board Activities**

1. Continue the review of building permits submitted for properties located within the designated historic district.

Time Frame: Ongoing  
Who: Committee and HPO

2. Assure existing YHPB products are disseminated in communities (Laurel Walking Tour, Billings Walking Tour, South Side Presentation, and Rural Yellowstone County Presentation, etc).

Time Frame: Ongoing  
Who: WHC/HPO

3. To provide up to date information to the general public, continually update the web site on activities and programs.

Time Frame: Ongoing  
Who: WHC

4. Promote additional nominations to the National Register. Assure resources are available for property owners, such as literature and technical assistance. Look at possible nomination of school sites in conjunction with local school districts.

Time Frame: Ongoing  
Who: YHPB Board/HPO/WHC

5. Expand YHPB meetings to alternate locations. To take advantage of some of our many historic venues, the board wishes to expand meetings to alternate locations. This is an event that will take place quarterly.

Time Frame: Ongoing  
Who: HPO/WHC

6. Due to a loss of potential historic buildings within the City of Billings, an effort is being made to notify WHC and a member of the board about

**upcoming demolitions. The Building Department notifies HPO on the release of demolition permits, HPO notifies members of the demolition and a determination is made to either document/photograph building.**

Time Frame: Ongoing  
Who: HPO/WHC/Board

**7. To provide additional funds to the YHPB for projects, continue exploration of grant opportunities.**

Time Frame: Ongoing  
Who: HPO/WHC

**8. To keep the YHPB abreast of Historic Preservation Activities, consultants and the HPO will attend meetings as needed.**

Time Frame: Ongoing  
Who: WHC/HPO

**9. To provide a forum for Historic Preservationist to share their successes and discuss projects and to present historic preservation awards, continue to host the Historic Preservation Roundtable yearly.**

Time Frame: Yearly  
Who: WHC/HPO/Board  
Status: Preservation Month - May

**10. To continually update the local governing bodies of the activities undertaken by the YHPB, annual PowerPoint Presentations will be made to the City of Billings, the City of Laurel and Yellowstone County.**

Time Frame: Yearly  
Who: Chair/WHC/HPO  
Status: The scheduling of these meetings will take place yearly during spring.

**11. Celebrate National Historic Preservation Month. Board will decide on a program, speakers and other events to commemorate this event.**

Time Frame: Yearly  
Who: Committee/WHC  
Status: This event will occur yearly during May.



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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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TITLE: Confirmation of Probationary Police Officer  
DEPARTMENT: Police Department  
PRESENTED BY: Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** On April 2, 2007, Officer Brian Krivitz was hired by the Billings Police Department as a probationary Police Officer. According to MCA 7-32-4113, his probationary period is for one year from date of hire. At this time Officer Krivitz has completed his one year probation, and according to state statute, his name is to be submitted to City Council within 30 days for confirmation. All of the supervisor comments concerning Officer Krivitz's performance are positive and indicate that he is doing a good job, and recommend confirmation.

**RECOMMENDATION**

City staff recommends Officer Brian Krivitz be confirmed as a Billings Police Officer.

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

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Chase Hawks Association Burn the Point Parade and Street Dance  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** Dave Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The Chase Hawks Association requests temporary street closures for a parade and street dance on Friday, August 29, 2008. Event times and locations are as follows:

**Parade:** Established car parade assembly will begin at 6:00 pm. The parade will start at 7:00.

**Street Dance:** To be held immediately following parade under the Skypoint and will end at 1:00 am Saturday morning. The street closure will be located on North 22<sup>nd</sup> Street and 2<sup>nd</sup> Ave. to 32<sup>nd</sup> Street North and 3<sup>rd</sup> Ave. North to 27<sup>th</sup> Street North.

Recommended conditions of approval include Chase Hawks Association:

1. Provide security for the event to insure there is no alcohol consumed in the public right of way during the street dance.
2. Contact all businesses and make them aware of the event 60 days in advance.
3. Clean the area to be used and provide and empty waste cans after the event.
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event.
5. Have the Billings Fire Department provide inspections of vendors.
6. Provide a certificate of insurance naming the City of Billings as additional insured.
7. Provide and install adequate traffic barricades and signs directing motorists around closure.
8. Provide a 20' emergency vehicle access lane on one side of street that is free of kiosks, cars, or anything other than pedestrians.
9. Obtain proper noise permit from Billings Police Department.

**ALTERNATIVES ANALYZED:**

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

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

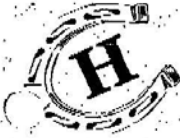
**RECOMMENDATION**

Staff recommends that Council approve closures for the parade and street dance on Friday, August 29, 2008 subject to the conditions of approval.

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

**ATTACHMENTS:**

- A. Letter from Chase Hawks Memorial Association outlining event
- B. Right of Way Special Activity Permit
- C. Course map
- D. Certificate of insurance



# CHASE HAWKS MEMORIAL ASSOCIATION, INC.

BOX 31333  
BILLINGS, MT 59107

PHONE  
(406) 248-9295  
(800) 736-5312

FAX  
(406) 248-1019

**OFFICERS**

Scott Chesurek  
President

Jim Reiter  
Vice President

Christa Ryan  
Secretary

Rose Larsen  
Treasurer

**DIRECTORS**

Yvonne Argento

Bonnie Bernsten

Jerry Christensen

John Craig, MD

Tim Crowley

Kevin Flock

Sylvia Gusick

Howard Hawks

Kathy Jo Oppenad

Jim Reiter

Carol Trawick

**KIDS 'N COWBOYS  
PROGRAM**

Tim Crowley  
Administrator

March 19, 2008

Billings Downtown Association  
2815 2<sup>nd</sup> Ave N  
Billings, MT 59101

Dear Director of Parks:

The Chase Hawks Memorial Association Inc., will again be sponsoring the Burn the Point car parade and street dance to follow. This will take place on Friday August 29, 2008. The car show will take place on August 30, at Metra Park.

The car parade assembly will begin at 6 pm. The parade will start at 7 pm. The parade will follow the established parade route established by the City of Billings. This year the cars will be in 2's, side by side, as we have had record years in the past with over 500 cars in the parade. The side by side solution should take a little less time, allowing North 27<sup>th</sup> Street to open sooner after the parade than last year.

The dance will follow the car parade. The stage will be set up at 2<sup>nd</sup> Avenue and North 28<sup>th</sup> street, just to the south of Sky Point, allowing traffic to continue on 2<sup>nd</sup> Avenue North. There will be a few vendors selling food and drink, which will be placed strategically to not interfere with traffic and ensure safety to the public.

Attached is a parade permit, maps of the 2 events showing street closures and a certificate of insurance from Hoiness LaBar Insurance. Chase Hawks has \$1,000,000 general liability coverage and another \$1,000,000 umbrella policy which accommodates the \$1,500,000 requirement with the city.

The Burn the Point was a very successful event last year. We are currently working out details for the upcoming year's event, and appreciate your consideration in approving this request.

Sincerely,

Sylvia Gusick  
Event Chairperson





City of Billings  
RIGHT-OF-WAY ACTIVITY  
PERMIT

Please check the type of activity you are applying for:

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

Submit this application with attachments to either the: Public Works office, 510 N. Broadway, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Ronette Bantz / Sylvia Gusick

ORGANIZATION MAKING APPLICATION Chase Hawks

PHONE 406-228-1948

ADDRESS Po Box 31333 Billings MT 59107  
CITY STATE ZIP

EMAIL ADDRESS \_\_\_\_\_

APPROXIMATE TIME EVENT WILL:

Assemble 6:00pm Start 7pm Disband \_\_\_\_\_

DATE OF EVENT August 29, 2008

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

classic car parade & street dance - a fund raising event for the Chase Hawks Community Crisis fund

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

The parade route will follow the established downtown parade route. Estimated at 500 classic cars. Street dance to follow with the stage located at 28th + 2nd North - will not block 2nd Avenue traffic.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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

Clean up will be done by committee & volunteers of Chase Hawks Association

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE Rose Marie Mas. DATE 3-19-08

APPLICATION APPROVED \_\_\_\_\_ DATE \_\_\_\_\_

APPLICATION DENIED \_\_\_\_\_ DATE \_\_\_\_\_

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

**FOR CITY USE ONLY**

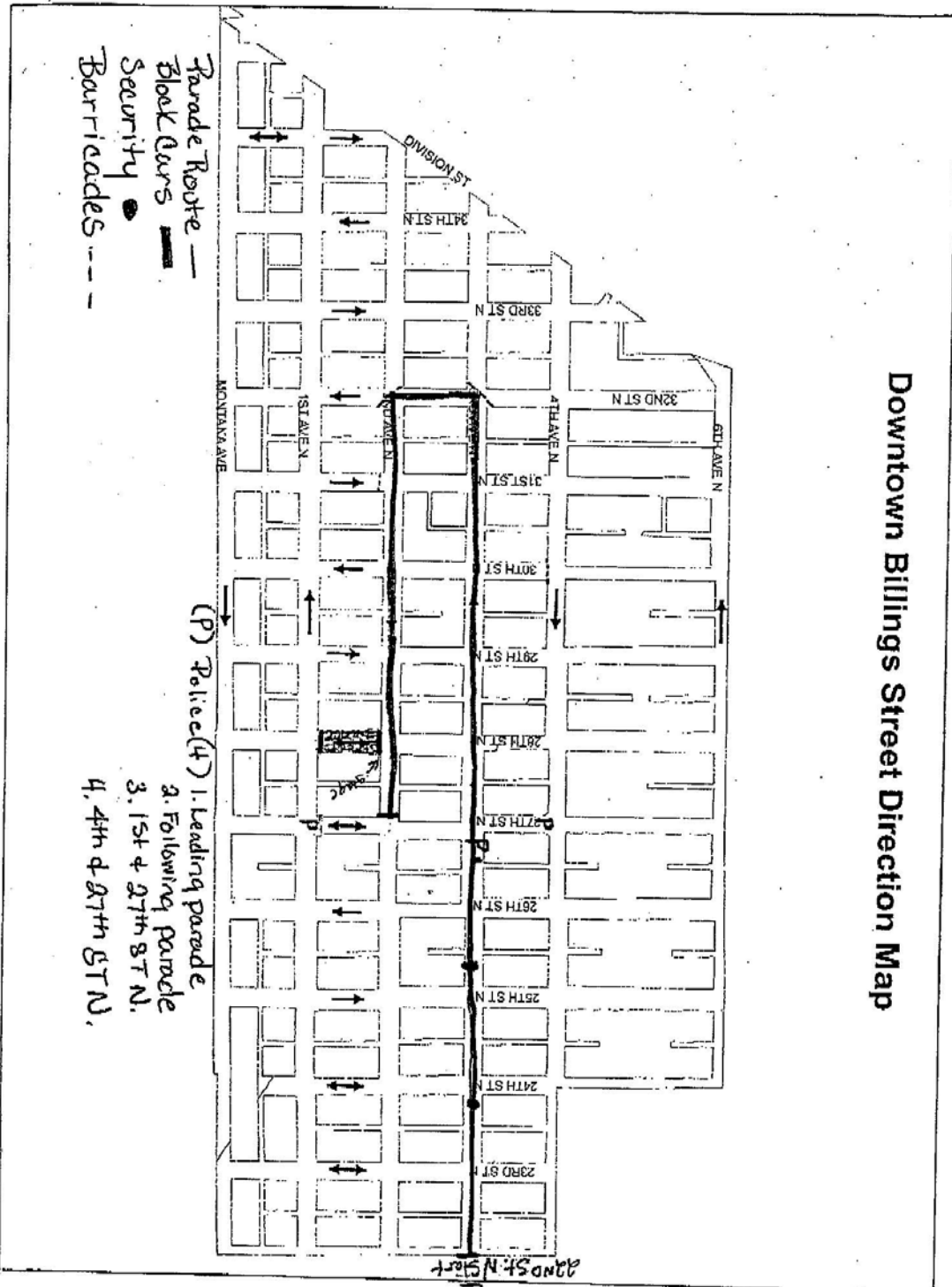
FEE: \_\_\_\_\_

APPLICANT NOTIFIED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

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

### Downtown Billings Street Direction Map





Client#: 6090

CHASEHAW

*BTP*

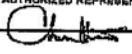
<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 02/06/08
PRODUCER Payne Financial Group P.O. Box 3327 145 West Front Street Missoula, MT 59806-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Chaso Hawks Memorial Association, Inc. P.O. Box 31333 Billings, MT 59107		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: <b>Great American Insurance</b>		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

**COVERAGES**

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

INSR ADD'L LTR INDRS	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GEN-RL LIAB <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	PAC0000592889903	12/01/07	12/01/08	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ca occurrence) \$300,000 MCD EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$5,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ca accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$	EXC0000925569701	12/01/07	12/01/08	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				<input type="checkbox"/> NO STAT-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYER \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Ref: BURN THE POINT CAR SHOW 8/29/2008.  
 City of Billings additional insured as required.  
 (See Attached Descriptions)

<b>CERTIFICATE HOLDER</b> City of Billings P.O. Box 1178 Billings, MT 59104	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Downtown Billings Association (DBA) Street Closures  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** Dave Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The DBA requests temporary street closures for its annual events as outlined in the attached document. These annual events are following the same basic outline as in previous years.

Recommended conditions of approval include DBA:

1. Contact all businesses and make them aware of the event 60 days in advance
2. Clean the area to be used and provide and empty waste cans after the event
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide a certificate of insurance naming the City of Billings as additional insured
5. Obtain proper alcohol and noise permits from the Police Department for events that require them

**ALTERNATIVES ANALYZED:**

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

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

**RECOMMENDATION**

Staff recommends that Council approve the closures as outlined in the attached document.

**ATTACHMENTS**

- A. Letter from DBA outlining events
- B. Certificate of insurance



**Downtown Billings Association**  
 2815 2nd Ave N., Billings, MT 59101  
 Phone: 259-5060 Fax: 294-5061  
 Email: Sherris@downtownbillings.com

## Street Closure Requests

### ALIVE AFTER 5:

6/12/08, 08/07/08

Alive After 5 has 12 different hosting venues. The Alive After 5 will include many of the same activities as it did last year. There will be two different Alive After 5's under Skypoint this year, each one hosted by a different restaurant/pub. We will need street closure from 3 PM until 9 PM. The event includes music and alcohol sales (open container permit will be obtained by the hosting restaurant/pub) and usually draws a large crowd. The specific dates and hosting restaurants are: TK Productions on 6/12: & Montana Brewing Company on 8/7

**For the TK Productions- 06/12-** N. 28<sup>th</sup> (N. Broadway) from 2<sup>nd</sup> to 3<sup>rd</sup> Ave. (1 block) Traffic on 2<sup>nd</sup> Ave N. and 3<sup>rd</sup> Ave N. will not be effected except they will not be able to turn south from 3<sup>rd</sup> or north from 2<sup>nd</sup> onto N.28<sup>th</sup>.

**For the Montana Brewing Company – 08/02/07:** N 28<sup>th</sup> (N. Broadway) from 1<sup>st</sup> to 2nd Ave.(1 block) Traffic on 1<sup>st</sup> Ave N. and 2<sup>nd</sup> Ave N. will not be affected except they will not be able to turn south from 2<sup>nd</sup> or north from 1<sup>st</sup> onto N. 28<sup>th</sup>.

### ALIVE AFTER 5

Thursday, June 5, 2008

One of the Alive After 5's will be hosted by **Tiny's Tavern** the same as last year. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by Tiny's Tavern) and usually draws a large crowd. We are requesting to close the following streets:

N. 24<sup>th</sup> street between 4<sup>th</sup> Ave N. and 3<sup>rd</sup> Ave N.(1 block) from 3:00 pm to 9:00 pm. Traffic on 3<sup>rd</sup> Ave N and 4<sup>th</sup> Ave N. will not be affected except they will not be able to turn North from 3<sup>rd</sup> Ave N. or South from 4<sup>th</sup> Ave N. onto N. 24<sup>th</sup> street.

### ALIVE AFTER 5:

Thursday, June 26, 2008

One of the Alive After 5's will be hosted by **The Carlin**. The event will have many of the same activities .The event includes music and alcohol sales (open container permit will be obtained by The Carlin) and usually draws a large crowd. We are requesting to close the following street:

N. 25<sup>th</sup> between Montana Ave and 1<sup>st</sup> Ave N. (1 block) from 3:00 PM to 9:00PM. Traffic on Montana will not be allowed to turn north onto N. 25<sup>th</sup> street and accommodations will be made for the Bus Depot. (Bus traffic only) to access their facility via 1<sup>st</sup> Ave N. at N. 25<sup>th</sup>. Since N 25<sup>th</sup> street is a north bound one way street, this will be a special departure for normal bus traffic. We will mark the street as closed at 1<sup>st</sup> Ave N. just to make sure that the regular traffic doesn't try to enter even though they would be going the wrong way on a one way street. In addition, we will use cones and caution tape. We will clearly mark a "No access area" on the street to accommodate any bus traffic. (Most of the action and crowd occupancy in the street will occur far from the Bus Depot near Montana).

**ALIVE AFTER 5****Thursday, July 24, 2008**

One of the Alive After 5's will be hosted by **Dean Wright CPA**. The event will have many of the same activities. The event includes music and alcohol sales (open container permit will be obtained by Dean Wright CPA) and will probably draw a large crowd. We are requesting to close the following street:

N. 31<sup>st</sup> street between 4<sup>th</sup> Ave N. and 6<sup>th</sup> Ave N. from 3:00 PM to 9:00 PM. Traffic on 4<sup>th</sup> Ave N. and 6<sup>th</sup> Ave N. will not be affected except they will not be able to turn north from 4<sup>th</sup> Ave N. onto N. 31<sup>st</sup> street.

**ALIVE AFTER 5****Thursday, August 21, 2008**

One of the Alive After 5's will be hosted by **Don Luis**. The event will have many of the same activities as it did last year. The event includes music and alcohol sales (open container permit will be obtained by Don Luis) and usually draws a large crowd. We are requesting to close the following street.

N 26<sup>th</sup> street from Montana Ave to 1<sup>st</sup> Ave N. (1 block) from 3:00 pm to 9:00pm. Traffic on 1<sup>st</sup> Ave N. and Montana Ave will not be affected except they will not be able turn south onto N 26<sup>th</sup> street from 1<sup>st</sup> Ave N.

**STRAWBERRY FESTIVAL:****Saturday, June 14, 2008**

The Strawberry Festival will include many of the same activities as in the last SEVENTEEN years. We request permission to close the following streets from 3:00am to 7:00 pm.(4 ½ blocks)

N. 28<sup>th</sup> (N. Broadway) from 1<sup>st</sup> to 3<sup>rd</sup> Ave (traffic will not be allowed to turn north from 1<sup>st</sup> or south from 3rd onto N 28<sup>th</sup>)

2<sup>nd</sup> Ave. from alley west of N. 27<sup>th</sup> to N. 29<sup>th</sup> (traffic diverted left only onto N 29<sup>th</sup>)

N. 29<sup>th</sup> from 1<sup>st</sup> to 2<sup>nd</sup> Ave. (traffic will not be allowed to turn north from 1<sup>st</sup> onto N. 29<sup>th</sup>)

**FARMERS MARKET:****Every Saturday, 07/19/08-10/04/08**

The Farmers market will include many of the same activities as previous years. We request permission to close the following streets every Saturday starting July 19<sup>th</sup> through, and including October 4, 2008 from 6AM to 1PM.

N. 28<sup>th</sup> (N. Broadway) from 1<sup>st</sup> to 3rd Ave. (traffic will not be allowed to turn north from 1<sup>st</sup> Ave N. or south from 3<sup>rd</sup> Ave N. onto N. 28<sup>th</sup>.)

2<sup>nd</sup> Ave. from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup> (traffic diverted left only onto N. 29<sup>th</sup>);

N. 29<sup>th</sup> from 1<sup>st</sup> to 2<sup>nd</sup> Ave. (traffic will not be allowed to turn north from 1<sup>st</sup> onto N. 29<sup>th</sup>)

**FARMERS MARKET:****Wednesday August nights 8/06/08-8/27/08**

The Farmers Market will include many of the same activities as previous years. We request permission to close the following street every Wednesday night starting August 6<sup>th</sup> through, and including, August 27<sup>th</sup> from 3pm to 9pm: (1 block)

N. 28<sup>th</sup> (N. Broadway) from 2<sup>nd</sup> to 3<sup>rd</sup> Ave. (traffic will not be allowed to turn south from 3<sup>rd</sup> or north from 2<sup>nd</sup> onto N.28<sup>th</sup>)

**HARVESTFEST****Saturday, October 11, 2008**

Harvestfest is a smaller Strawberry Festival that will be ending the event season. We are requesting the following streets to be closed on Saturday October 11, 2008 from 6am to 5pm.

N. 28<sup>th</sup> (N Broadway) from 1<sup>st</sup> to 3<sup>rd</sup> Ave. traffic on 3<sup>rd</sup> Ave N. and 1<sup>st</sup> Ave N. will not be affected except they will not be allowed to turn south from 3<sup>rd</sup> or north from 1<sup>st</sup> onto N.28<sup>th</sup>)  
2<sup>nd</sup> Ave. from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup> (traffic diverted left only onto N. 29<sup>th</sup>).

**HOLIDAY PARADE:****Friday, November 28, 2008**

Pursuant to City Ordinance Sections 24-540 and 24-501 We would like to hereby request permission to hold our annual Holiday Parade. We intend to use the usual established Downtown Parade Route. We will start the parade at 7:00pm on Friday November 28, 2008 with final staging beginning in the staging area east of N. 26<sup>th</sup> street at about 5:30pm. We will arrange for proper closure of the staging area and parade route. We will do our best to ensure that no vehicles are parked in the parking lanes on 3<sup>rd</sup> Ave N. between N. 27<sup>th</sup> and N. 29<sup>th</sup> streets and we will secure the services of the Billings Police Department to assist in Temporary Street closures, especially N. 27<sup>th</sup>.

We would request that the usual police department support for this parade with a lead car and a follow car. We would also like permission to place a review trailer on 3<sup>rd</sup> Ave. N across from the Alberta Bair Theater... Same as years previous. Finally, we hereby inform your department that there may be animals in this parade and the streets will need to be cleaned following the parade. We will arrange event zone/ no parking signs and place them on the parade route prior to the event.

**CHRISTMAS STROLL:****Friday December 5, 2008**

The Christmas stroll will include many of the same activities as in the past FOURTEEN years. At this time, we are requesting that the following streets be closed from 4:00pm to 9:30pm: (3 ½ blocks)

N. 28<sup>th</sup> (N Broadway) from 1<sup>st</sup> to 3<sup>rd</sup> Ave. Traffic on 1<sup>st</sup> Ave N and 3<sup>rd</sup> Ave N will not be affected except they will not be allowed to turn north from 1<sup>st</sup> or south from 3<sup>rd</sup> onto N.28<sup>th</sup>).  
2<sup>nd</sup> Ave. from the alley east of N. 27<sup>th</sup> to N. 29<sup>th</sup> (traffic diverted left only onto N. 29<sup>th</sup>).

For all of these events the Downtown Billings Association will provide the necessary barricades for traffic control. We will also arrange for adequate trash cans to control litter as well as clean up. We will send letters before each event to inform emergency personnel of the street closures and parade events. At this time we request adequate police escort for the holiday parade and bike/foot patrol officers, if available, at all events. If you have any questions or concerns, please call me at 294-5060.

Thank you for your time and consideration and for helping us make Downtown Billings, The HEART of the Magic City.

See you Downtown!

Sherri Sjolseth  
Operations Director  
Downtown Billings Association

Rx Date/Time MAR-12-2008(WED) 14:38 1 406 245 9887 P.001  
 MAR-12-2008 15:16 HOINESS LABAR INSURANCE 1 406 245 9887 P.01/09

Client#: 54779

DONLUIS

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 03/12/08
Hoiness LaBar Insurance A Member of Payno Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Don Luis, Inc. 15N. 26th Street Billings, MT 59101		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: St Paul Travelers		
INSURER B: Mount Vernon Fire Insurance Company		
INSURER C:		
INSURER D:		
INSURER E:		

**COVERAGES**

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

INSR ADDL TYPE INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	16801488L243IND07	05/01/08	05/01/09	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (LA ASSISTANCE) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
	GENERAL AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROD <input type="checkbox"/> BOT <input type="checkbox"/> LOC <input type="checkbox"/>				
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS MIXED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA Insured) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AUTO \$
A	EXCESSUMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$	BINDER705376	05/01/08	05/01/09	EACH OCCURRENCE \$1,000,000 AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under CAPITAL PROVISIONS below				WC STATUS: <input type="checkbox"/> LIMITED <input type="checkbox"/> OTHER EL, EACH ACCIDENT \$ EL, DISEASE - EA EMPLOYEE \$ F.I. DISEASE - POLICY LIMIT \$
B	OTHER Liquor Liab	BINDER708070	05/01/08	05/01/09	\$1,000,000/\$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Miscellaneous Coverage - General Liability - Pol.# 16801488L243IND08

Additional Insured

(See Attached Descriptions)

CERTIFICATE HOLDER

City of Billings  
 210 N 27th Street  
 Billings, MT 59101

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  
 AUTHORIZED REPRESENTATIVE  
*Stan Dulko*

Rx Date/Time APR-01-2008(TUE) 13:54 406 728 4938 P.002  
 Sent By: HUB INTERNATIONAL MISSOULA; 406 728 4938; Apr-1-08 13:44; Page 2/2

**ACORD CERTIFICATE OF LIABILITY INSURANCE** DATE (MM/DD/YYYY) 02/22/2008

DER <b>HUB INTERNATIONAL</b> Mountain States Limited PO Box 3927 Missoula MT 59806 INSURED Tiny's Tavern 323 North 24th Billings MT 59101	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: <b>Diamond State</b>	
INSURER B: <b>American Capacity</b>	
INSURER C:	
INSURER D:	
INSURER E:	

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

INSR ADDL TO INCORP	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Catering Endorsement GENL AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> SECT. <input type="checkbox"/> LOC	MTA0000044	07/28/2007	07/28/2008	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCUR) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMPROMISED \$ 1,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRE/AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	MTA0000044	07/28/2007	07/28/2008	COMBINED SINGLE LIMIT (EA ACCIDENT) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
B	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> INTENTION \$	To Be Determined	04/01/2008	07/28/2008	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 Following Form over \$ General Liability \$ Only \$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETARY/INDEPENDENT CONTRACTOR/EMPLOYEE EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WE STATUS <input type="checkbox"/> OTHER <input type="checkbox"/> TORY LIMITS \$ FL EACH ACCIDENT \$ FL DISEASE - EA EMPLOYEE \$ FL DISEASE - POLICY LIMIT \$
A	OTHER Liquor Liability Aggregate Each Common Cause	MTA0000044	07/28/2007	07/28/2008	\$1,000,000 \$1,000,000

DESCRIPTION OF OPERATIONS, LOCATIONS, VEHICLES, EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
 Reference: ALIVE AFTER 5 HOURS  
 Additional Insured: City of Billings, P. O. Box 1178, Billings, MT 59103

<b>CERTIFICATE HOLDER</b> As Additional Insured: Downtown Billings Association, Inc. 2815 2nd Avenue North P. O. Box 2117 Billings, MT 59103	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 0 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Rose L. Kohler</i>
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For TK Productions & Dean Wright

2/TAMBU

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 04/01/2008
PRODUCER HUB INTERNATIONAL - MOUNTAIN STATES LIMITED		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
PO Box 3927 Missoula MT 59806		
INSURED YAM Lounge, Kim K. Hauptman DBA: 3232 Redwood Lane Billings MT 59102		INSURERS AFFORDING COVERAGE
		NAIC #
		INSURER A: Diamond State
		INSURER B: American Capacity
		INSURER C:
		INSURER D:
		INSURER E:

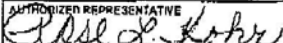
**COVERAGES**  
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED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

MARKET/TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Catering Endorsement GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-PORT <input type="checkbox"/> LOC	To Be Assigned	05/01/08	05/01/09	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADJ INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRE-LEASED <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA AGG \$ AGG \$
B	<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	To Be Assigned	05/01/08	05/01/09	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 Following form over \$ General liability \$ Only \$
	<b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b> ANY PROHIBITOR/PARTNER/EXECUTIVE/ OFFICER/ MEMBER EXCLUDED? If yes, See the other SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATE <input type="checkbox"/> OTHER <input type="checkbox"/> TORY LIMITS <input type="checkbox"/> EP \$1 EACH ACCIDENT \$ \$1 DISEASE, EA EMPLOYEE \$ \$1 DISEASE, POLICY LIMIT \$
A	<b>OTHER Liquor Liability</b>	To Be Assigned	05/01/08	05/01/09	Annual Aggregate \$1,000,000 Each Common Cause \$1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLE-SERIES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

NA: Alive After 5 Hours

Additional Insured: City of Billings, P. O. Box 1178, Billings, MT 59103

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
As Additional Insured:  Downtown Billings Association, Inc. 2815 2nd Avenue North  Billings MT 59103	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 0 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  AUTHORIZED REPRESENTATIVE 

ACORD 25 (2004/08)  
INS 025 (10/08) 05

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PK Page 1 of

Rx Date/Time APR-02-2008(WED) 15:09 406 259 9271 P.002  
 Apr 02 08 02:59p Tim Beeler Insurance 406 259 9271 p.2

## Commercial Certificate of Insurance


**Agency**

- FARMERS INSURANCE GROUP
- TIM BEETER
- 2860 GRAND AVE
- BILLINGS, MT 59102

St. 70 Dist. 05 Agent 09

**Insured**

- CSKT CORP
- MONTANA BREWING CO
- 113 N BROADWAY
- BILLINGS, MT 59101



**FARMERS**

Issue Date (MM/DD/YY) 04/02/2008

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies shown below.

**Companies Providing Coverage:**

- Company A Truck Insurance Exchange
- Company B Farmers Insurance Exchange
- Company C Mid-Century Insurance Company
- Company D

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**Coverages**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

Co. / A.	Type of Insurance	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	Policy Limits
A	<input checked="" type="checkbox"/> General Liability <input checked="" type="checkbox"/> Commercial General Liability - Occurrence Version Contractual - Incidental Only Owners & Contractors Prot.	065934922	10/19/2007	10/19/2008	General Aggregate \$ 2,000,000 Products-Comp/OPS Aggregate \$ 1,000,000 Personal & Advertising Injury \$ 1,000,000 Each Occurrence Fire Damage (Any one fire) \$ 75,000 Medical Expense (Any one person) \$ 5,000
	Automobile Liability All Owned Commercial Autos Scheduled Autos Hired Autos Non-Owned Autos Garage Liability				Combined Single Limit \$ Bodily Injury (Per person) \$ Bodily Injury (Per accident) \$ Property Damage \$ Garage Aggregate \$
A	<input checked="" type="checkbox"/> Umbrella Liability	065934930	10/19/2007	10/19/2008	Limit \$ 1,000,000
	Workers' Compensation and Employers' Liability				Statutory Each Accident \$ Disease - Each Employee \$ Disease - Policy Limit \$

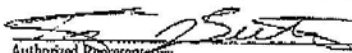
**Description of Operations/Vehicles/Restrictions/Special Items:**  
 POLICY INCLUDES \$1,000,000 LIQUOR LIABILITY COVERAGE

**Certificate Holder**

- CITY OF BILLINGS
- P.O. BOX 1178
- BILLINGS, MT 59103

**Cancellation**

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

  
Authorized Representative

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Acceptance and Recognition of \$1,400 Donation from First Interstate Bank to Send School Resource Officers to National Conference

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** The Police Department received a \$1,400 donation from First Interstate Bank to help pay the cost of sending the School Resource Officers (SRO) to the National Conference in Phoenix, Arizona on July 28<sup>th</sup> through August 1, 2008. The conference has been attended by one SRO in the past and had been recommended as an excellent training conference. The cost per officer is approximately \$1,839 which includes registration, lodging, airfare, shuttle and per diem. If any of the donation money is not spent, it will be earmarked to send the School Resource Officers to the conference next year. The Donor Verification Form has been given to First Interstate Bank for completion.

**ALTERNATIVES ANALYZED:**

- Approval and acceptance of the donation.
- Denial and return of the donation.

**FINANCIAL IMPACT:** This donation has been deposited into our Fund 709 donation account and all expenditures for the SRO conference will be taken from that fund.

**RECOMMENDATION**

Staff recommends City Council's approval and acceptance of this \$1,400 donation from First Interstate Bank to send the School Resource Officers to the National Conference in Phoenix, Arizona, on July 28<sup>th</sup> through August 1, 2008.

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

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

---

TITLE: Ballpark Construction and Maintenance Fund Donations  
DEPARTMENT: Finance Division  
PRESENTED BY: Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Various donors have made contributions for the Ballpark Construction Fund and the Ballpark Maintenance Fund. Administrative Order #103 requires that all donations of more than \$500 be accepted by the City Council.

The donated funds for the construction fund totaling \$23,169 will be used to offset the construction costs of the Ballpark that exceeded anticipated costs. The donations to the maintenance fund totaling \$11,600 will be applied to the Capital Maintenance Fund and will be used for future Capital Maintenance repairs on the Ballpark.

**ALTERNATIVES ANALYZED:**

- Accept the donation
- Do not accept the donation

**FINANCIAL IMPACT:** The funds will be used to offset construction costs and capital maintenance costs for the new Ballpark.

**RECOMMENDATION**

Staff recommends that Council accept these donations.

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

ATTACHMENT:  
A. Donor List

## Construction Fund Donations

Contributor	Donation Amount
Avanta Federal Credit Union	1,000.00
Billings Mustang Boosters Association	1,000.00
Billings Pioneer Baseball Club	13,069.00
Dale & Jax Door & Glass	1,000.00
Lindsey Family Trust	1,000.00
National Informatin Systems	600.00
Rocky Mountain Hospice	1,000.00
Richard & Donna Clark	700.00
Brad & Melissa Fuller	1,000.00
Kenneth Hollar	700.00
Bette Rae Lindsey	1,000.00
Jane McCracken	500.00
Jan Wilson	600.00
Total Donations	\$23,169.00

## Maintenance Fund Donations

Contributor	Donation Amount
Jacobs Livestock Sales Inc.	1,000.00
Amy Baker	1,500.00
Bill & Vicki Coffee	800.00
Jack Hoppel	1,000.00
Ronald May	1,000.00
W. Scott Mitchell	1,000.00
James & Judy Rice	1,000.00
Randy Spear	1,000.00
Peggy Wilson	1,300.00
Tom & Erin Zimmer	2,000.00
Total Donations	\$11,600.00

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Financial Donation by Pepsi Cola Bottling Company of Billings.  
**DEPARTMENT:** Park, Recreation, and Public Lands  
**PRESENTED BY:** Mike Whitaker, Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** Pepsi Cola Bottling Company of Billings has stepped forward to donate \$200,000.00 toward the purchase of upgrades to the scoreboard at Dehler Park.

**ALTERNATIVES ANALYZED:**

- Accept the financial donation from Pepsi Cola Bottling Company of Billings or,
- Decline the donation.

**FINANCIAL IMPACT:** There will be no increase in costs to the City.

**RECOMMENDATION:** Staff recommends that Council accept the donation from Pepsi Cola Bottling Company of Billings.

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

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Change Order #1 to Contract for the Scoreboard at Dehler Park  
**DEPARTMENT:** Parks, Recreation, and Public Lands Department  
**PRESENTED BY:** Mike Whitaker, Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** On February 25, 2008, Council approved a contract with Sign Products Inc. of Billings for \$189,253.00 to construct a new scoreboard at Dehler Park. Pepsi Cola Bottling Company of Billings has stepped forward with a generous donation of \$200,000.00 to provide for upgrades to the original bid package. These upgrades will include doubling the size of the video display board, add lettering designating the facility as “Dehler Park”, increasing the size of the message board, and upgrade the coverings over the structural poles supporting the scoreboard.

**FINANCIAL IMPACT:** The financial impact will be a net *increase* to the project of \$108,317.00 (Attachment A).

**ALTERNATIVES ANALYZED:**

- Approve Change Order No. One (1), or
- Do not approve Change Order No. One (1)

**RECOMMENDATION:**

Staff recommends approving Change Order No. One (1).

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

Attachment A: Change Order No. One

**Attachment A**

**CHANGE ORDER**

No. One(1)

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**PROJECT:** **Billings Baseball  
And Multi-Use Stadium** **DATE OF ISSUANCE: April 29, 2008**

**OWNER:** City of Billings **OWNER'S PROJECT NO.** \_\_\_\_\_  
(Name & Address) 510 N. Broadway, 4<sup>th</sup> Floor  
Billings, MT 59101

**CONTRACTOR:** **Sign Products Inc.** **ARCHITECT:**  
1425 Monad Rd.  
Billings, MT 59104 **ARCHITECT'S PROJECT NO.** \_\_\_\_\_

**CONTRACT FOR:** Construction of a Scoreboard at Billings New Baseball and Multi-Use Stadium

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

**Purpose of Change Order:** To make improvements and upgrades as noted in Exhibit A.

**Attachments:** Exhibit A: Document form Sign Products identifying additions and deducts.

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<b>CHANGE IN CONTRACT PRICE:</b>	<b>CHANGE IN CONTRACT TIME:</b>
Original Contract Price	Original Contract Time
\$ <u>189,253.00</u>	<u>June 23, 2008</u> days or date
Previous Change Orders	Net Change from previous Change Orders
\$ <u>(0)</u>	<u>None</u> days
Contract Price prior to this Change Order	Contract Time prior to this Change Order
\$ <u>189,253.00</u>	<u>June 23, 2008</u> days or date
Net Increase of this Change Order	Net Increase (decrease) of this Change Order
\$ <u>108,317.00</u>	<u>None</u> Days



Contract Price with approved Change Order

\$ 297,570.00

Contract Time with approved Change Order

June 23, 2008  
days or date

**APPROVED:**

By \_\_\_\_\_  
Owner

**RECOMMENDED:**

By \_\_\_\_\_  
Architect

**APPROVED:**

By \_\_\_\_\_  
Contractor

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Financial Donation by the Billings Mustang Booster Association.  
**DEPARTMENT:** Park, Recreation, and Public Lands  
**PRESENTED BY:** Mike Whitaker, Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** The Billings Mustang Booster Association has donated \$4,242.00 to purchase and install six cash drawers and two beer dispensing stanchions in the concession areas.

**ALTERNATIVES ANALYZED:**

- Accept the financial donation from the Billings Mustang Booster Association or,
- Decline the donation.

**FINANCIAL IMPACT:** There will be no increase in costs to the City.

**RECOMMENDATION:** Staff recommends that Council accept the donation from the Billings Mustang Booster Association.

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

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** W.O. 07-22 Resolution Authorizing Condemnation of Property on King Avenue East

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** W.O. 07-22 will construct a five-lane section on King Avenue East from South Billings Boulevard to Orchard Lane. In order to complete these improvements, it is necessary to purchase right of way from six separate property owners on the north side of King Avenue East. The Appraisal Group is working on appraising the properties and negotiations have started. To complete this project by the end of August 2008, it becomes necessary to acquire the right of way or obtain right of entry as soon as possible. It is anticipated that the construction project will bid June 2008 with construction starting towards the end of June 2008. The city has not yet reached an impasse with the property owners. Approval of the resolution authorizing condemnation allows the pursuit of right of entry if an impasse is met.

**ALTERNATIVES ANALYZED:**

1. Approve resolution authorizing condemnation of the six properties on King Avenue East from South Billings Boulevard to Orchard Lane.
2. Do not approve resolution authorizing condemnation of the six properties on King Avenue East from South Billings Boulevard to Orchard Lane.

**FINANCIAL IMPACT:** Final value will be set through the negotiation of right of way or through the condemnation process.

**RECOMMENDATION**

Staff recommends that Council approve the resolution authorizing condemnation of six properties on King Avenue East from South Billings Boulevard to Orchard Lane.

**ATTACHMENT**

- A. Resolution Authorizing Condemnation of Property on King Avenue East

## **INTRODUCTION**

Work Order 07-22 was designed to widen King Avenue East from South Billings Boulevard to Orchard Lane. The City Engineer's Office is still negotiating for the necessary right-of-way. The right-of-way was identified on the design plans and must be acquired prior to construction.

## **PROCEDURAL HISTORY**

If the resolution authorizing condemnation on King Avenue is approved and negotiations come to an impasse, city staff will proceed with condemnation. It is anticipated the King Avenue Project can bid June 2008 and begin construction at the end of June or beginning of July and still be completed by the Fall 2008

## **BACKGROUND**

Appraisals for all the necessary right-of-way are being obtained and negotiations have started with the property owners. If negotiations reach an impasse, city staff will pursue condemnation and ask for right of entry to meet the construction deadlines.

## **ALTERNATIVES ANALYSIS**

Approve resolution authorizing condemnation of property on King Avenue East from South Billings Boulevard. Under this option, City Staff would proceed with the condemnation process if negotiations break down.

Do not approve resolution authorizing condemnation of property on King Avenue East from South Billings Boulevard to Orchard Lane. Under this option, if negotiations break down, the project will be delayed and may not be completed or started this year.

## **RECOMMENDATION**

Staff recommends that Council approve the resolution authorizing condemnation of six properties on King Avenue East from South Billings Boulevard to Orchard Lane.

## **ATTACHMENT**

- A. Resolution Authorizing Condemnation of Property on King Avenue East

**COUNCIL RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, PURSUANT TO BILLINGS CITY CODE CHAPTER 12, EMINENT DOMAIN, DECLARING PUBLIC PURPOSE AND USE, DESCRIBING THE PROPERTIES TO BE TAKEN AND AUTHORIZING CITY OFFICIALS TO PROCEED.**

**WHEREAS**, the City of Billings finds it necessary to acquire certain real property to allow it to utilize such property for purposes of traffic lane widening improvements on King Avenue East between Orchard Lane and South Billings Boulevard in the City of Billings; and

**WHEREAS**, the real property to be acquired, and the temporary construction easements necessary, to complete these improvements is described in Exhibit "A" attached hereto and by this reference incorporated herein; and

**WHEREAS**, the City officials have attempted to purchase said real property at a mutually agreeable purchase price but have been unable to obtain the consent of all of the owners to sell said real property; and

**WHEREAS**, pursuant to Chapter 12, Section 12-102 of the Billings City Code, it is necessary to pass a Resolution initiating eminent domain procedures; and

**WHEREAS**, said use is a public use and will benefit the general public and will be used for public purposes; and

**WHEREAS**, it is necessary to condemn said real property by exercise of the right of eminent domain to make land available for said completion of traffic lane widening improvements on King Avenue East between Orchard Lane and South Billings Boulevard in Billings; and

**WHEREAS**, it is necessary to condemn the right of way in said private real property in fee simple and for a temporary construction easement as described in Exhibit "A" for the purpose of traffic lane widening improvements on King Avenue East between Orchard Lane and South Billings Boulevard in the City of Billings; and

**WHEREAS**, the City officials should be authorized to proceed with the condemnation proceedings as provided by law.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Billings, Montana, as follows:

1. **PUBLIC USE:** The City hereby declares that the above-described interests in real property shall be condemned at its fair market value under the City's eminent domain powers to enable the City to acquire said property, and necessary construction easements, for the purposes of traffic lane widening improvements on King Avenue East between Orchard Lane and South Billings Boulevard in the City of Billings;

2. **PUBLIC PURPOSE AND NECESSITY:** It is hereby declared that said real property is being acquired for a public purpose, for public use and is necessary to the project.

3. **DESCRIPTION OF PROPERTY, EXTENT OF INTEREST:** The right of way in fee simple, a perpetual easement and temporary construction easement described in Exhibit "A" shall be taken for public purpose.

4. **AUTHORIZATION TO PROCEED:** That the appropriate City officials are hereby directed and authorized to proceed with condemnation of said real property as provided by law.

**PASSED AND ADOPTED** by the City Council of the City of Billings, Montana, at a regular session thereof held on the 28th day of April, 2008.

---

RON TUSSING, Mayor

ATTEST:

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CARI MARTIN  
City Clerk

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF KING AVENUE EAST PROPERTY ACQUISITION**

1. A Tract of land situated in Lot 2, Star Subdivision as recorded in Document No. 1023306, in the SW1/4 SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of said Lot 2, thence S90°00'00"W, a distance of 295.35 feet; thence along a curve to the right having a Radius of 10.00 feet, a Delta of 90°00'00", and an Arc Length of 15.71 feet; thence N00°00'00"E, a distance of 23.17 feet; thence S56°19'15"E, a distance of 41.78 feet; thence N90°00'00"E, a distance of 270.56 feet to the East line of said Lot 2; thence S00°02'34"E along the East line of said Lot 2, a distance of 10.00 feet to the Point of Beginning, containing an area of 3434.8 square feet, more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the previously described Right-of-way Acquisition Description, containing an area of 3126.4 Sq.Ft., more or less.

2. A Tract of land situated in Lot 1, Star Subdivision as recorded in Document No. 1023306, in the SW1/4 SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southwest corner of said Lot 1, thence N00°02'34"W along the Westerly line of said Lot 1, a distance of 10.00 feet; thence N90°00'00"E, a distance of 260.91 feet; thence N28°41'50"E, a distance of 30.00 feet to the Westerly Right-of-Way of Newman Lane; thence S00°03'00"E along said Westerly Right-of-Way of Newman Lane, a distance of 26.31 feet; thence along a curve to the right having a Radius of 10.00 feet, a Delta of 90°03'00", and an Arc Length of 15.71 feet; thence S90°03'00"W, a distance of 265.34 feet to the Point of Beginning, containing 2762.1 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the previously described Right-of-way Acquisition Description, containing 2941 Sq.Ft., more or less.

3. A Tract of land situated in Lot 1, Block 5, Pinnick Subdivision 3rd Filing as recorded in Document No. 779769, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of said Lot 1, thence S90°00'00"W, a distance of 389.40 feet to the Easterly Right-of-Way of Newman Lane; thence N00°03'00"W along said Easterly Right-of-Way of Newman Lane, a distance of 25.62 feet; thence S87°12'20"E, a distance of 135.68 feet; thence N90°00'00"E, a distance of 253.90 feet to the Easterly line of said Lot 1; thence S00°00'00"E along the Easterly line of said Lot 1, a distance of 19.00 feet to the Point of Beginning, containing 7847.3 Sq.Ft., more or less.



Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the previously described Right-of-way Acquisition Description, containing 3886.8 Sq.Ft., more or less.

4. A Tract of land situated in Lot 24, Sugar Subdivision as recorded in Document No. 15136, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Pinnick Subdivision 3rd Filing, thence N00°00'00"W, a distance of 19.00 feet; thence N90°00'00"E, a distance of 187.61 feet; thence N54°26'59"E, a distance of 28.39 feet to the Westerly Right-of-Way of Calhoun Lane; thence S00°00'00"E along said Westerly line of Calhoun Lane, a distance of 35.51 feet; thence S90°00'00"W, a distance of 210.71 feet to the Point of Beginning, containing 4194.3 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the previously described Right-of-way Acquisition Description, containing 2135.9 Sq.Ft., more or less.

5. A Tract of land situated in Tract 1, Certificate of Survey No. 2350 as recorded in Document No. 1372518, in the S1/2 SW1/4 SE1/4 SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southwest corner of said Tract 1, thence N00°09'49"W along the Easterly Right-of-Way of Calhoun Lane, a distance of 35.84 feet; thence S54°36'53"E, a distance of 32.49 feet; thence N89°51'37"E, a distance of 85.44 feet; thence S83°00'53"E, a distance of 88.69 feet; thence N89°51'37"E, a distance of 66.88 feet; thence S88°59'59"E, a distance of 80.74 feet; thence S87°51'35"E, a distance of 109.57 feet to the existing Northerly Right-of-Way of King Avenue East; thence S89°51'37"W along said Northerly Right-of-Way of King Avenue East, a distance of 456.96 feet to the Point of Beginning, containing 4232.5 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the South line of said Tract 1 and the previously described Right-of-way Acquisition Description, containing 6408.8 Sq.Ft., more or less.

6. A Tract of land situated in Lot 1, Block 9, Orchard Lane Subdivision 3rd Filing as recorded in Document No. 537746, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Orchard Lane Subdivision 3rd Filing, thence S89°55'30"W along the Northerly Right-of-Way of King Avenue East, a distance of 11.47 feet; thence N70°54'10"E, a distance of 12.13 feet to the Westerly Right-of-Way of Orchard Lane; thence S00°11'30"E along said Westerly Right-of-way of Orchard Lane, a distance of 3.95 feet to the Point of Beginning containing 22.7 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the South line of said Lot 1 and the previously described Right-of-Way Acquisition Description, containing an area of 639.2 Sq.Ft., more or less.

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
CITY OF BILLINGS, MONTANA  
Monday, April 28, 2008

TITLE: Resolution of Intent to Construct W.O. 02-08, Milton Lane School Route  
DEPARTMENT: Public Works - Engineering  
PRESENTED BY: David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** The purpose of this project is to provide school route sidewalks along Milton Lane from the east side of Bench Elementary School to Lake Elmo Drive. The project will entail completion of the street section, curb & gutter, sidewalks, installation of storm drain improvements, enhanced crosswalks, and school frontage improvements. In order to construct these improvements, Council must pass a Resolution of Intent and set a Public Hearing for the project in order to allow adjacent property owners to be assessed.

**FINANCIAL IMPACT:** The proposed project is funded through multiple sources, including direct property assessments for a total project cost of \$480,500, as follows:

Estimated Assessed Costs	\$ 67,000
CTEP	\$125,000
Storm Drain	\$ 50,000
CDBG (for Storm Drains)	\$ 52,500
Gas Tax Funds	\$186,000

Funding for the proposed project has already been authorized in the Capital Improvement Plan and is identified in the Fiscal Year 2008 budget.

**RECOMMENDATION**

Staff recommends that Council pass a Resolution of Intent to construct the improvements identified in Work Order 02-08, Milton Lane School Route, and set a Public Hearing date for May 26, 2008.

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

**ATTACHMENT**

- A. Resolution of Intent

## **INTRODUCTION**

The purpose of this project is to provide school route sidewalks along Milton Lane from the east side of Bench Elementary School to Lake Elmo Drive. The project will entail completion of the street section, curb & gutter, sidewalks, installation of storm drain improvements, enhanced crosswalks, and school frontage improvements. In order to construct these improvements, Council must pass a Resolution of Intent and set a Public Hearing for the project in order to allow adjacent property owners to be assessed.

## **PROCEDURAL HISTORY**

### Completed Items

- November 14, 2005 – Council approved using CDBG funds for storm drain for Milton Lane
- June 6, 2006 – CTEP Project Specific Agreement approved by Council
- September 20, September 27, and October 4, 2007 – RFP advertisement dates
- October 19, 2007 – Proposals received by Engineering Division
- November 14, 2007 – Selection committee meeting
- February 11, 2008 – Award of Contract for Professional Services

### Future Items

- April 28, 2008 – Creation of sidewalks assessment project by Council (**this memo**)
- May 26, 2008 – Public Hearing and Resolution of Ordering Improvements
- June 2008 – Design completed, advertising for construction contract and contract award
- July 2008 – Construction begins
- September 2008 – Construction complete

## **BACKGROUND**

The proposed project can be divided into two separate categories. The properties on the north side of Milton Lane have sidewalk, curb & gutter existing. The improvements to these properties will be based on the condition of the facilities. Bench Elementary School is located on the north side of Milton Lane, but it will receive further upgrades to its sidewalk to enhance the school crossings. The properties on the south side of Milton Lane have no sidewalk, curb & gutter. The pavement will be widened to the new improvements.

The proposed project uses funding allocations from various sources. The properties will be assessed for the extra pavement width, sidewalk, and curb & gutter. Of this assessment, CTEP funds will pay for 50% of the sidewalk and the curb & gutter. CDBG and Storm Drain funds will be used to pay for the storm drain improvements with this project. The Gas Tax funds will be used for the remainder of the construction and engineering costs.

## **RECOMMENDATION**

Staff recommends that Council pass a Resolution of Intent to construct the improvements identified in Work Order 02-08, Milton Lane School Route, and establish a Public Hearing date of May 26, 2008.

**ATTACHMENT**

A. Resolution of Intent

RESOLUTION NO. 08-\_\_\_\_\_

A RESOLUTION RELATING TO W.O. 02-08, MILTON LANE SCHOOL ROUTE; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND.

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

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

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

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

1. INTENTION TO ORDER IN. It is the intention of the Council to order the installation, construction, reconstruction, or replacements of certain curbs, gutters, sidewalks, drive approaches, alley approaches and appurtenant improvements in certain locations, which improvements and locations are more fully described in Exhibits "A" and "B" attached hereto.
2. AFFECTED PROPERTIES. All properties, which will be required to pay any portion of the costs of the improvements identified herein, are listed and the owners of those properties are identified on Exhibit "B" attached hereto.
3. ESTIMATED COSTS. The estimated assessed costs of the proposed improvements, including construction costs, incidental expenses, engineering fees, legal fees, administrative fees and bond issuance costs, but exclusive of interest charges, will be \$67,000 as described below:

Construction Costs	\$ 50,979.19
Engineering & Administration	\$ 8,375.00
Bond Revolving Fund (5%)	\$ 3,350.00
Bond Discount Costs (2%)	\$ 1,340.00
Issuance Costs (3%)	\$ 2,010.00
Bank Fees	\$ 1,000.00
Roundoff	\$ (54.19)
TOTAL ASSESSED COSTS	\$ 67,000.00

Estimated unit costs for construction only, not including engineering, issuance, administrative and bond costs as follows:

<u>Removal and Replacement of:</u>	<u>Unit Price:</u>
Remove and Replace Sidewalk	\$ 7.00/sq. ft.
Remove and Replace Curb Gutter	\$20.00/lin. ft.

<u>New Construction:</u>	
New Sidewalk, 4"	\$ 5.00/sq. ft.
New Sidewalk, 6"	\$ 6.00/sq. ft.
New Curb and Gutter	\$15.00/lin. ft.
New Drive Approach	\$ 7.00/sq. ft.
Street Paving	\$45.00/sq. yd.
Crushed Base Course	\$25.00/cu. yd.

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

4. ASSESSMENT OF COSTS. All costs of constructing the curbs, gutters, sidewalks, and drive approaches, including engineering, administrative and bond costs, will be assessed against the properties which are adjacent to the improvements installed. As shown on Exhibit "B", assessments will be levied against 16 separate lots, parcels, or tracts.

The costs for each property will vary depending upon the actual construction that is required adjacent to each property. The average total assessment, including engineering, administrative, and bond costs is estimated to be \$4,187.50, with a high of \$23,084.07, low of \$0.00, and a median of \$3,140.55.

5. PERIOD OF ASSESSMENT. The assessments for all improvements and costs shall be paid in not more than twelve (12) annual installments, plus interest, provided however, that payment of one-half of each annual installment, plus interest, may be deferred to May 31 of the year following the assessment.

6. PROPERTY OWNER OPTION TO CONSTRUCT IMPROVEMENTS. In the event that the City Council orders in the above-described improvements following the public hearing, then the owners of all properties to be assessed for the costs of said improvements will be notified of such action in writing. Said owners will have thirty (30) days from the date of said notice in which to install the required improvements at their own expense. In the event the owners do not install these improvements, the City will do so and will assess the costs against the benefited properties as described herein.

7. METHOD OF FINANCING; PLEDGE OF REVOLVING FUND; FINDINGS AND DETERMINATIONS.

The City will issue **Sidewalk, Curb, and Gutter Improvement Bonds** in an aggregate principal amount estimated at \$67,000 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the Project. This Council further finds it is in the public interest, and in the best interest of the City and the Project, to secure payment of principal of and interest on the

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

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

- (a) Estimated Market Value of Parcels. The estimated total market value of the lots, parcels, or tracts in the Project, as of the date of adoption of this resolution, as estimated by the County Assessor, is \$2,944,746.00. The average market value is \$184,046.63, with a high of \$1,629,142.00, a low of \$22,322.00, and median value of \$70,596.00. The special assessments to be levied against each lot, parcel, or tract are less than the increase in the estimated market value of the properties as a result of the construction of the improvements.
- (b) Diversity of Property Ownership. For the 16 Tax codes in this project, there are 13 separate owners. Three owners, Janet Croy, David Reichert, and O.E. Lee & Company, own two (2) parcels apiece. One (1) parcel listed, is owned by School District #2, which is (D05335) Bench Elementary School. All other parcels are under separate ownership, it is unlikely that financial difficulties would arise that would require a loan to be made from the Revolving Fund.
- (c) Comparison of Special Assessments, Property Taxes and Market Value. Currently, 3 parcels have an SID levied against them. Parcels A13247, A13248, and A13250 are being assessed under the 1997 Miscellaneous/Developer Related Project, with a payoff amount of \$68.35, \$46.40, \$72.95 (respectively), with a payoff date of 2009.

As noted in Section 4, the estimated average assessment levied by this project will be \$4,187.50. With an average market value of \$184,046.63, and an average yearly principal payment of \$349 (monthly principal of \$29.09), the amount of assessment versus the value of the property would appear acceptable. As such, no unusual need for loans from the Revolving Fund would be expected. Further information comparing the total cost (estimate) to the market value for each parcel is listed in Exhibit "B".

- (d) Delinquencies. For tax year 2007, Zero (0) parcels were delinquent. This rate is above the average city collection rate of 95%.

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

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

Some of the parcels have been involved in recent construction or subdivision activity. Some of these parcels have undergone recent site developments, both residential and commercial,



in which a permit was taken out, but the improvements were not constructed, or the developer has requested that the improvements be included and constructed under the proposed project. Developers generally make a request to be included in the proposed project to take advantage of the financing opportunity of the 12-year assessment. Some of these parcels are lots included in recently approved subdivisions. The improvements were required as part of the Subdivision Improvements Agreements, but were not installed by the subdivider/developer.

The remaining parcels represent a continuation of an annual improvement project for repairs of tripping hazards, deteriorated sidewalks, drainage problems, property owner requests and citizen complaints.

The project improvements are located in various Task Force areas, both commercial and residential, throughout the City.

## 8. REIMBURSEMENT EXPENDITURES.

- (a) Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.
- (b) Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.
- (c) Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$67,000 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall

be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

(d) Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

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

9. PUBLIC HEARING. On Monday, May 26, 2008, at 6:30 p.m., in the Council Chambers located on the Second Floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, MT, the City Council will conduct a public hearing concerning this project and all interested parties will be allowed to testify. The City Council will also consider all written comments submitted to the City Clerk prior to the hearing or submitted to the Council during the hearing.

10. NOTICE OF PASSAGE OF RESOLUTION OF INTENTION. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the BILLINGS TIMES, a newspaper of general circulation in the county on May 1 and May 8, 2008, in the form and manner prescribed by law, and to mail or cause to be mailed, a copy of said Notice to every person, firm corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county and school district taxes, at his last-known address, on or before the same day such notice is published.

PASSED by the City Council and APPROVED this 28<sup>th</sup> day of April, 2008.

CITY OF BILLINGS:

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

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

Work Order 02-08  
Milton Lane School Route  
Exhibit "A": Location of Work

Sidewalk, curb ramps, driveway approaches, pavement widening, and curb and gutter will be constructed with this Special Improvement District. The properties included in this district are those along Milton Lane from Lake Elmo Drive to the easterly property line of Bench Elementary School.

**Work Order 02-08  
Milton Lane School Safe Route  
Exhibit "B"**

<b>Tax Code</b>	<b>SID #</b>	<b>SID Pay-off</b>	<b>Delinquent</b>	<b>WO 02-08 Assessment</b>	<b>SID Pay-off + Delinquent + WO 02-08 Assessment</b>	<b>Estimated Market Value</b>
A13246				\$ -	\$ -	\$ 125,339.00
A13247	9702	\$ 68.35		\$ 1,238.51	\$ 1,306.86	\$ 118,302.00
A13248	9702	\$ 46.40		\$ 861.58	\$ 907.98	\$ 72,560.00
A13250	9702	\$ 72.95		\$ 969.27	\$ 1,042.22	\$ 114,102.00
A14783				\$ 3,473.67	\$ 3,473.67	\$ 74,417.00
A14784				\$ 4,278.00	\$ 4,278.00	\$ 81,808.00
A14785				\$ 3,159.07	\$ 3,159.07	\$ 64,356.00
A14786				\$ 3,122.02	\$ 3,122.02	\$ 64,390.00
A14787				\$ 3,200.22	\$ 3,200.22	\$ 26,334.00
A14788				\$ 3,112.17	\$ 3,112.17	\$ 68,632.00
A14791				\$ 6,034.02	\$ 6,034.02	\$ 59,222.00
A31131				\$ 6,722.07	\$ 6,722.07	\$ 320,141.00
A31134				\$ 2,853.63	\$ 2,853.63	\$ 22,322.00
A31135				\$ -	\$ -	\$ 63,986.00
D05335				\$ 23,084.07	\$ 23,084.07	\$ 1,629,142.00
D05338A				\$ 4,891.64	\$ 4,891.64	\$ 39,693.00
Average		\$ 62.57	\$ -	\$ 4,187.50	\$ 4,199.23	\$ 184,046.63
Median		\$ 68.35	\$ -	\$ 3,140.55	\$ 3,140.55	\$ 70,596.00
Low		\$ 46.40	\$ -	\$ -	\$ -	\$ 22,322.00
High		\$ 72.95	\$ -	\$ 23,084.07	\$ 23,084.07	\$ 1,629,142.00

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



AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

**TITLE:** Zone Change #829 2<sup>nd</sup> Reading of Ordinance  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Nicole Cromwell, AICP, Zoning Coordinator, Planner II

**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Agriculture-Open Space (A-1), a county zoning district, to Planned Development with several underlying zoning districts including mixed uses (commercial & residential), multi-family apartments, single-family & patio homes as well as parks for open space. The property is located at 4345 King Avenue West and is a 113.29 acre parcel of land described as Tracts 1A through 5A of Certificate of Survey 2063, Amended. The property is owned by the Lenhardt Property, LP, Lenhardt Farm, LLC and Lenhardt Enterprises, LLC. Engineering, Inc. and Bill Cole of the Cole Law Firm are the agents. The Zoning Commission conducted a hearing on January 2, 2008, and allowed a 30-day delay for the applicant to address Planning Division and other City staff concerns with the Planned Development. The Zoning Commission conducted a second public hearing on February 5, 2008, and voted 5-0 to recommend approval to the City Council. The City Council denied a petition for annexation of the property on February 25, 2008 and rendered this zone change request moot. On March 10, 2008, the City Council voted to reconsider the annexation. The City Council approved the annexation on April 14, 2008, and held the zone change public hearing and voted to approve the zone change on first reading.

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

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

**FINANCIAL IMPACT:** The proposed zone change will increase the City's tax base when the property is developed.

**RECOMMENDATION**

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #829 and adopt the determinations of the 12 criteria.

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

**ATTACHMENTS:**

A: Ordinance and Planned Development Agreement

**ATTACHMENT A**

Zone Change #829

**ORDINANCE NO. 08-\_\_\_\_\_**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR TRACTS 1A THROUGH 5A OF CERTIFICATE OF SURVEY 2063, AMENDED, A 113.29 ACRE PARCEL OF LAND.

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

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

2. **DESCRIPTION.** A tract of land known as Tracts 1A through 5A of Certificate of Survey 2063, Amended, a 113.29 acre parcel of land is presently zoned Agriculture Open-Space (A-1) and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning on **Tracts 1A through 5A of Certificate of Survey 2063, Amended** is hereby changed from **Agriculture Open-Space to Planned Development** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Planned Development** as set out in the Billings, Montana City Code and by the Lenhardt Square Planned Development Agreement attached as **Exhibit A** to this ordinance.

4. **REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. **EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading April 14, 2008.

PASSED, ADOPTED AND APPROVED on second reading April 28, 2008.

CITY OF BILLINGS:

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

ATTEST:

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

ZC#829 – Lenhardt Square Planned Development



Exhibit A

**PLANNED DEVELOPMENT AGREEMENT FOR  
LENHARDT SQUARE**

**By and between:**

**LENHARDT PROPERTY, LP, LENHARDT FARM, LLC, LENHARDT  
ENTERPRISES, LLC**

**and**

**THE CITY OF BILLINGS, MONTANA**

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## **PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE**

This PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE (“Agreement” or “PDA”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between tenants in common LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively “Founders”), and the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 North 27th Street, Billings, Montana 59101.

### **RECITALS**

#### NOW WHEREAS:

1. Founders own as tenants in common approximately 114 acres of real property in Billings, Montana, more particularly described as:

Tracts 1A, 2A, 3A, 4A, 5A of Certificate of Survey 2063, Amended according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana as Document Number 3460596.

The foregoing property, which has been owned and farmed by the Lenhardt family for many decades, shall hereafter be known collectively as “LENHARDT SQUARE.” The five individual parcels that make up the Lenhardt farm shall hereafter be known as the “Tracts” or, if referred to individually, as a “Tract.”

2. In furtherance of their plan to liquidate the property and terminate their co-tenancy relationship, the Founders desire to place certain building and use restrictions on the property within LENHARDT SQUARE, specify certain land use and design regulations for LENHARDT SQUARE, and establish a pattern of development that is consistent with Lenhardt family values and that protects the value of the investment property being liquidated.

3. In 2001 the City of Billings and Yellowstone County adopted a neighborhood plan titled the “West Billings Plan.” The purpose of the plan was to establish development guidelines in West Billings “to meet the community’s shared vision for the future of West Billings, enabling it to thrive on growth and change through innovative, aesthetic land use and responsible development” (page 1). The West Billings Plan established these policy goals, among others, for future development in the West Billings area:

- Recognition that it is not desirable for West Billings to develop with a low-density, rural character (p. 14);
- More compact development patterns are desirable because they make full use of

urban services, offer cost-effective infrastructure, and hold down costs to the taxpayer (p. 15);

- Concentrate multi-family, office, and non-retail uses between commercial nodes along arterial streets (p. 17);
- Provide opportunities for a mix of housing types and mixed-use development by encouraging planned unit developments (pp. 22, 24);
- Increase residential densities and promote medium and high-density residential development within walking distance to commercial centers, medical facilities, and recreational amenities (pp. 21, 23);
- Link pedestrian-friendly residential, commercial, mixed-use, and park areas through a linear open space network, subdivision entryways, and special arterial treatments (p. 38);
- Create commercial developments with unique, identifiable focal points such as parks and linear open space (p. 38).

4. The City of Billings is growing to the west, adding more commercial and professional businesses. By providing convenient, nearby living opportunities for employees, our community can reduce the cost of constructing roads, sewers, and other infrastructure and consume fewer scarce natural resources.

5. The Shiloh Interchange and Shiloh Road have created a major new entryway into Billings that provides convenient access for commuters and visitors coming from Montana communities to the west and Wyoming communities to the south, leading to increased commercial growth along the King Avenue and Shiloh Road corridors.

6. LENHARDT SQUARE is located near what will likely become the most important new commercial area in Billings. In 2001 the City approved Montana Sapphire Subdivision, a 65-acre commercial development located on the southwest corner of the King Avenue/Shiloh Road intersection and southeast of LENHARDT SQUARE. In 2004 the City approved the Planned Development Agreement for The Village, a planned unit development managed by St. Vincent Healthcare Foundation, Inc. located on the northwest corner of the King Avenue/Shiloh Road intersection and directly to the east and adjacent to LENHARDT SQUARE. The Village will be a quality, mixed-use development with commercial, clinical, medical, and residential uses. In July 2007 the City approved a petition to annex the 164 acre Western Sky Subdivision located on the south side of King Avenue immediately south of LENHARDT SQUARE. This subdivision is being re-platted as King Meadows Subdivision and will consist of small single family lots and also provide for multi-family development. Lastly, the City is currently in the process of reviewing an application for approval of Shiloh Crossing Subdivision, which, if approved, will be a 74-acre commercial development on the southeast corner of the King Avenue and Shiloh Road intersection that is intended to house a large retail mall.

7. The increasing cost of residential lot development and single family housing construction makes quality single family housing cost-prohibitive for many young professionals, working families and retired seniors, many of whom will be working in the emerging commercial districts along King Avenue and Shiloh Road and/or seeking convenient access to medical services provided in The Village.

8. Founders desire to provide an opportunity for future development consistent with the West Billings Plan that will accommodate a variety of residential living opportunities and

necessary services to support the increased commercial development occurring on the west end of Billings; encourage pedestrian and non-motorized interconnectivity; promote densities that economically support the extension of city services; and utilize economies of scale to increase the affordability of residential housing in West Billings.

9. Founders enter into this Agreement with the City to ensure that LENHARDT SQUARE will be developed and maintained in a manner that is complementary to the neighborhood and other planned developments in the area, including The Village, and that will protect the value of any property of Founders that remains undeveloped.

10. Founders seek the City's approval of the LENHARDT SQUARE planned development zoning district described in this Agreement in accordance with Unified Zoning Regulations Sec. 27-1301 through 27-1310.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for LENHARDT SQUARE, including such restrictions and protective covenants as set forth herein that shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners of such real estate, and shall run with the land.

## AGREEMENT

### ARTICLE I – PURPOSES

**A. Neighborhood Compatibility and Complementary Features.** The planned development zoning district described in this Agreement is intended to provide an opportunity for future development that will create an attractive and functional neighborhood with a variety of living opportunities in close proximity to the growing commercial development on the west end of Billings. It will include planned circulation patterns to encourage pedestrian access and reduce vehicular congestion and pedestrian/vehicular conflicts. LENHARDT SQUARE will create livable residential areas with necessary services and businesses within walking distance of each other and adjacent residential and commercial areas. It will provide connectivity to other adjacent neighborhoods of West Billings as they develop, and complement the existing planned developments in the area.

**B. Flexibility for Future Development.** This Agreement and the development it describes shall permit flexibility to meet the demands of the residential, commercial, and health care markets as they change over time. In accordance with that goal, this Agreement is designed and intended to afford the future Developer of each Tract within LENHARDT SQUARE latitude to design and construct future development in a way that meets the needs and desires of the time while still ensuring sound development for the benefit of the Founders' remaining Tracts and the neighborhood generally.

**C. Specific Goals for Tract Development.** The parties enter into this Agreement to accomplish the purposes set forth herein and further the following additional objectives of LENHARDT SQUARE:

1. To provide for an appealing architectural arrangement of buildings and

spaces through the use of a wide variety of living opportunities, architectural sizing, and residential services;

2. To provide for ample but not excessive off-street parking that is well screened and landscaped and that incorporates multilevel parking where feasible;

3. To provide for well-configured squares, plazas, walkways, bikeways, greens/commons, landscaped streets and parks that are woven into the pattern of the entire development and dedicated to collective social activity, recreation, and visual enjoyment;

4. To require attractive landscaping beneficial to residents and the community;

5. To provide for a pedestrian-friendly and bicycle-friendly environment;

6. To facilitate and foster complementary uses serving the needs of the residential, commercial, professional and medical community in the area;

7. To promote a unique, attractive, and distinctive mixed-use development;

8. To promote and assist in the orderly development of LENHARDT SQUARE and the west end of Billings;

9. To encourage creativity in design, quality, and character of new development; and

10. To minimize adverse aesthetic impacts associated with excessive lighting, signage, parking and other design features.

**D. Consistency with Overall Community Goals.** The parties understand, acknowledge and agree that this plan for LENHARDT SQUARE includes and promotes consideration of the following:

1. Creating a planned development zone that permits single family, small and large scale multi-family, and residential-commercial mixed-use development uses in proximity to one another, while protecting and respecting the character and quality of adjacent uses;

2. Increasing urban densities to utilize land use efficiencies and economies to slow suburban sprawl;

3. Encouraging flexibility in design and use of mixed-use and residential zones to allow for economy, convenience, variety, and amenity;

4. Enhancing the aesthetics of the increasingly commercialized King Avenue and Shiloh Road corridors;

5. Ensuring adequate provision of public services such as water, sewer, public safety, public parks, open space, storm water control, and vehicular and pedestrian-bicycle circulation; and

6. Reducing traffic congestion and degradation of the existing air quality.

## **ARTICLE II – DEFINITIONS**

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein either expressly or by implication. The following definitions shall apply to this PDA:

**A. Annexation Agreement.** “Annexation Agreement” refers to the Annexation Agreement for Lenhardt Square executed by Founders and the City in conjunction with this Agreement.

**B. Common Areas.** “Common Areas” means any property or facility that the Master Association or an Owners Association owns or in which it otherwise holds possessory or use rights or owes maintenance obligations for the common use or benefit of more than one Unit in LENHARDT SQUARE. Common Areas may include but are not limited to open spaces, green roofs, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. Common Areas may include both public or private parks, sidewalks, and other facilities. Common Areas do not include prohibited competitive sporting facilities described in Article IV.J.9.

1. **“Master Common Areas”** means those Common Areas established in the Master Plan for LENHARDT SQUARE that are owned by, or the possessory or use rights are held or maintenance obligation are owed by, the Master Association. Master Common Areas have been defined by approximate size, general location, and intended purpose. Actual size, location, size, improvements and purpose shall be established by Developers during the platting process for each Tract, subject to the approval and consent of the Reviewer.

2. **“Developer Common Areas”** means those Common Areas that are owned by, or the possessory or use rights are held or maintenance obligations are owed by, an Owners Association.

**C. Conditions, Covenants, and Restrictions.** The “Conditions, Covenants, and Restrictions” (also referred to as the “CCRs”) means those conditions, covenants, and restrictions recorded against all or any part of the real property in LENHARDT SQUARE by Founders as the Declarant.

**D. Developer.** “Developer” means any person or entity who purchases a Tract or



any portion of a Tract within LENHARDT SQUARE from Founders or their successors in interest for further subdivision, development, or resale in the ordinary course of business or for investment purposes.

**E. Dwelling Unit.** “Dwelling Unit” means one (1) or more rooms designed for or occupied by one (1) family for living or sleeping purposes and may contain kitchen and/or bathroom facilities for use solely by one (1) family. All rooms comprising a Dwelling Unit shall have access through an interior door to other parts of the Dwelling Unit. A studio/efficiency apartment constitutes a Dwelling Unit.

**F. Founders.** “Founders” means Lenhardt Property, L.P., Lenhardt Farm, L.L.C., and Lenhardt Enterprises, L.L.C., co-tenants and co-owners of LENHARDT SQUARE. Any rights inuring to Founders under this Agreement shall be exercised by Founders jointly, and if any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

**G. Green Roof.** “Green Roof” means an engineered roofing system that allows for the propagation of rooftop vegetation and the retention or detention of storm water while maintaining the integrity of the roof structure and membrane. A Green Roof may be intended for exclusively decorative and environmental purposes with a shallow planting medium and a substrate depth ranging between approximately two inches and six inches and weighing between approximately 165 pounds and 375 pounds per square yard, designed to accommodate hardy, low height, drought resistant plant species. Alternatively, a Green Roof may be designed to accommodate deeper planting media, irrigation systems, complex landscaping features, and a broad range of plant species, and may be designed to support human occupant loads.

**H. Home Occupation.** “Home Occupation” shall have the same meaning as that phrase has in the Unified Zoning Regulations (Sec. 27-606) and shall be subject to the same restrictions described therein except as provided in Article IV.J.8.

**I. Linear Parkways.** “Linear Parkways” means those Master Common Areas depicted on Exhibit A that are linear open spaces containing developed bikeways, pathways, or pedestrian trails that are intended to provide alternative means of non-motorized transportation within LENHARDT SQUARE and connections to adjacent properties.

**J. Lot.** “Lot” means a portion of LENHARDT SQUARE depicted as a separately identified parcel of land on a recorded subdivision plat or survey other than a Tract owned by Founders that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Common Areas, as defined above, or property dedicated to the public.

**K. Master Association.** “Master Association” means the association established by Founders to own, operate and/or maintain the various Master Common Areas and improvements and to administer and enforce the CCRs and other governing documents pertaining to LENHARDT SQUARE.

**L. Master Design Guidelines.** “Master Design Guidelines “ means the design standards and architectural and aesthetic guidelines adopted pursuant to the CCRs, as they may be amended, which govern construction, modification, and maintenance of Common Areas and Units, including structures, landscaping, and other improvements.

**M. Master Plan.** “Master Plan” means a concept plan and drawing showing existing Tracts and zoning as well as proposed streets, access points, Common Areas and other site improvements intended for LENHARDT SQUARE. The details depicted in the Master Plan are conceptual in nature and may be further refined by subsequent platting or amendment of this Agreement. The current Master Plan of LENHARDT SQUARE is attached to this Agreement and marked “Exhibit A.”

**N. Mixed-Use.** “Mixed-use” refers to the mixing of different land uses – residential, retail, employment, entertainment, lodging, civic, cultural, etc. – in one relatively discrete area featuring stacked uses in low to mid-rise buildings, arranged along streets and around public squares or other open spaces. Mixed-used developments have these additional characteristics:

1. The development promotes synergy of uses and a sense of place featuring an integrated, interactive community with its own recognizable identity, focused on one or more central community features or land uses and dedicated to collective social activity and common, but diverse, business interests;

2. The development includes within the mixed-use area three or more different, significant uses such as retail, entertainment, office, medical, residential, hotel, civic, cultural, and/or recreational that are complementary and together promote a sense of community, but at least one of which is residential; and

3. The development includes uninterrupted pedestrian connections and other physical and functional components that promote integration of community businesses, residential and civic elements to create a mutually supportive community and efficient and intensive use of land.

**O. Owners Association.** “Owners Association” means an association of owners of property within a portion of LENHARDT SQUARE, other than the Master Association, established by a Developer to administer additional covenants applicable to that particular area, and/or to own, operate and/or maintain any Developer Common Areas within the area, including but not limited to associations of owners of Units, business properties, condominiums, townhomes, or single family homes.

**P. Pocket Park.** “Pocket Park” means a small park that is approximately one-half (1/2) of an acre or smaller.

**Q. The Reviewer.** “The Reviewer” means that person, entity, or committee appointed by Founders that shall have all of the rights, duties and responsibilities assigned to the Reviewer in this Agreement and the CCRs, including but not limited to the review and approval or denial of the design and planning elements of all subsequent development of Tracts and

subdivision plats filed for property within LENHARDT SQUARE.

**R. Shiloh Drain.** “Shiloh Drain” means the lateral drainage ditch that lies within the boundaries of the Shiloh Drain Easement Area shown on Exhibit A.

**S. Shiloh Drain Easement Area.** The “Shiloh Drain Easement Area” means the easement within which the Shiloh Drain is located on the north property line of LENHARDT SQUARE as depicted on Exhibit A hereto.

**T. Small In Scale.** “Small in scale” means a retail, professional or other commercial space not exceeding 8,000 square feet in total floor space on all levels.

**U. Special Review Approval.** “Special Review Approval” means approval by the City of Billings pursuant to the Special Review Approval process established in Sections 27-613 and 27-1503 of the Unified Zoning Regulations and as modified by this Agreement, including approval by the Reviewer in its discretion.

**V. Tract.** “Tract(s)” means one or more of Tracts 1A through 5A of C.O.S. 2063, Amended. Parcels in Tract 5A designated on the Master Plan by a number (e.g., Tracts 5A, Parcel 1 and Parcel 2, hereafter “Tract 5A.1” and “Tract 5A.2”) are conceptual only and are depicted on the Master Plan for zoning and planning purposes only. Parcels in Tract 5A designated by a number are not legally distinct parcels and may not be separately conveyed or transferred. If the exterior boundaries of any Tract or any parcel in Tract 5A are changed for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, any reference herein to a particular Tract or parcel shall be deemed to instead apply to that successor Tract or parcel that most closely approximates the boundaries, location, size and character of the Tract or parcel originally referenced in this Agreement and depicted on the Master Plan attached hereto. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract or parcel.

**W. Unified Zoning Regulations.** “Unified Zoning Regulations” means the Unified Zoning Regulations of the City of Billings, Yellowstone County Jurisdictional Area.

**X. Unit.** “Unit” means a portion of LENHARDT SQUARE depicted as a separately identified Lot, parcel or condominium on a recorded subdivision plat or survey that may be independently owned and conveyed. The term “Unit” refers to the land, if any, that is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a structure containing multiple dwellings that may be independently owned and conveyed, each such dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat or survey is recorded subdividing it into more than one Unit. The term does not include Common Areas, as defined above, or property dedicated to the public.

**Y. Unit Owner.** “Unit Owner” means the owner of a Unit within one of the Tracts in LENHARDT SQUARE.

### **ARTICLE III – BINDING EFFECT**

**A. Persons Bound by this Agreement.** The City of Billings and all individuals, corporations, or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within LENHARDT SQUARE shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement.

**B. Founders.** Any obligations of Founders arising under this Agreement shall be binding upon all of the Founders jointly, and all rights inuring to Founders under this Agreement shall be exercised by Founders jointly. If any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

### **ARTICLE IV – USE RESTRICTIONS**

**A. Land Use Restrictions Generally.** Tracts in LENHARDT SQUARE shall be located and classified by zone as described below. In the event that the external boundaries of any Tract changes for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, the zoning classification and other Tract-specific restrictions described in this Agreement that were applicable to the area where the change occurred shall also be deemed to have changed so that the area has the same zoning classification and restrictions as the successor Tract of which the area becomes a part. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract.

**1. Tracts 1A and 3A – Residential Multi-Family-Restricted (MF-R).**

Tracts 1A and 3A are located, respectively, along the east border and in the center of LENHARDT SQUARE as shown on Exhibit “A” hereto. The use of the Lots in Tracts 1A and 3A is contemplated to be multi-family residential in scale and character. These tracts are intended primarily to accommodate apartments, townhomes, condominiums, and other multi-family and attached single-family complexes and uses permitted in the Residential Multi-Family-Restricted Zoning District as defined in the Unified Zoning Regulations; however, single family residences are permitted. Additional requirements for multi-family Units in Tracts 1A and 3A are set forth in Exhibit “B.”

**2. Tract 4A and Tract 5A.2 – Mixed-Use (MU).**

Tracts 4A and 5A.2 are located, respectively, on the southern and western borders of LENHARDT SQUARE near King Avenue West as shown on Exhibit “A.” Tracts 4A and 5A.2 are designed for residential and complementary commercial uses as further described in the definition of

“mixed-use” found in Article II, including, but not limited to, in-home and small-scale professional and retail space. These tracts may be developed as a combination residential-commercial-cultural center with retail activities conducted in a unified development designed to serve the residential Dwelling Units in the Tract and surrounding neighborhood with shopping facilities consisting of convenience, retail and personal service establishments that secure their principal trade by supplying the daily needs of the neighboring population. Multi-family residential uses are also permitted.

**3. Tract 5A.1 and Tract 2A – Residential Single Family and Residential Multi-Family (Four-Plex) (MF-4).** Tract 5A.1 is located along the northwest border and Tract 2A is located along the northern border of LENHARDT SQUARE as shown on Exhibit “A.” Use of the Lots in Tracts 5A.1 and 5 is contemplated to be residential in nature, including single family dwellings and multi-family structures containing up to four Dwelling Units.

**B. Procedure for Obtaining Reviewer Approval; Mixed-Use Requirements.**

Any Developer of property in LENHARDT SQUARE shall obtain the written approval of the Reviewer prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the Developer first presents written evidence of the Reviewer’s approval. Neither the Reviewer nor the City shall approve the Developer’s application unless the proposed development complies with the requirements of this Agreement. Any development proposed for Tract 4A or Tract 5A.2 shall be mixed-use in character as described in this Agreement. In making this determination the Reviewer and the City shall examine the plan for development of all property proposed for development by the Developer in the two tracts. An individual structure or Lot may be devoted to a single use that is not mixed-use as long as the Reviewer determines in its discretion that the Developer’s project as a whole satisfies the mixed-use requirements of this Agreement and:

1. There is or will be sufficient residential, commercial, professional, or other non-residential uses included in the subject structure or on other nearby Lots that are part of the Developer’s project to preserve and promote the mixed-use character of the project and Tracts 4A and 5A.2 intended by this Agreement; and

2. The Developer’s project will otherwise comply with all other requirements of this Agreement.

**C. Permitted and Prohibited Uses – Generally.** Lots in each of the Tracts identified below may be used for any of the uses specifically permitted below. Lots in each of the Tracts identified below may not be used for any of the uses specifically prohibited. If a use is neither specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by the Reviewer.

**D. Permitted Uses – Tracts 1A and 3A (MF-R).** Units in Tracts 1A and 3A, unless otherwise prohibited herein, may be used for any of the following uses:

1. Accessory uses and detached structures (other than garages) less than 300 square feet in size that are associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement.
2. Assisted living facilities serving up to eight (8) persons;
3. Bus stops;
4. Common Areas;
5. Community center;
6. Community residential facility as defined by Unified Zoning Regulations;
7. Garages, subject to size limitations described in Article V.B.4.(d);
8. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;
9. Home occupations;
10. Family day care home serving up to 6 children or adults;
11. Multi-family or attached dwellings including apartments, residential suites, condominiums, townhomes and other multiplex housing units;
12. Single family residential uses;
13. Any use that is permitted in a residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

**E. Permitted Uses – Tract 4A and Tract 5A.2 (Mixed-Use).** Units in Tract 4A and Tract 5A.2, unless otherwise prohibited herein, may be used for any of the following uses, provided that nonresidential permitted uses shall be restricted to spaces not exceeding 8,000 square feet of gross floor area except upon special review:

1. Animal grooming facilities;
2. Art galleries;
3. Assisted living facilities serving any number of persons;
4. Bakeries;

5. Banks, credit unions, and savings and loan offices;
6. Barber and beauty shops;
7. Bicycle sales, rental, and repair shops;
8. Boarding, lodging, and bed and breakfast houses;
9. Bookstores;
10. Building supply stores and hardware stores (but not lumber yards);
11. Bus stops;
12. Camera, hobby, toy, and gift stores;
13. Ceramics and pottery shops;
14. Charitable, religious, educational or nonprofit institutions;
15. Clothing and apparel stores;
16. Common Areas;
17. Community centers;
18. Community residential facility as defined by Unified Zoning Regulations serving up to 8 persons on a 24-hour-a-day basis;
19. Convalescent, nursing, and retirement homes;
20. Convenience and specialty food stores (but no gasoline sales);
21. Cultural, educational, and instructional facilities;
22. Day care center (as defined in Unified Zoning Regulations Sec. 27-201);
23. Denturists;
24. Department stores;
25. Drug stores - prescription and pharmacy;
26. Dry cleaning or laundry drop-off and pick-up store;
27. Eating and drinking establishments that do not sell alcohol for on-site consumption;

28. Education facilities, including elementary and secondary schools, colleges, universities, professional schools, and junior colleges;
29. Family day care home (as defined in Unified Zoning Regulations Sec. 27-201) serving up to six children or adults;
30. Finance and loan companies;
31. Florists;
32. Food and grocery stores;
33. Furniture - retail only;
34. Flower shops and nurseries (provided that there is no outside storage);
35. Garages, subject to size limitations described in Article V.B.4.(d);
36. Group day care home services (as defined in Unified Zoning Regulations Sec. 27-201) for 7 to 12 children or adults;
37. Hardware and appliance – retail only;
38. Health clubs, spas, and gymnasiums;
39. Health and fitness related businesses;
40. Home occupations (mixed-use area)
41. Hotels and motels;
42. Jewelry stores;
43. Libraries, museums, and art galleries;
44. Liquor stores
45. Medical and dental offices;
46. Membership organization offices;
47. Multifamily residential uses consistent with a mixed-use development, including apartments, residential suites, condominiums and townhomes;
48. Offices, including real estate, financial, counseling, professional, medical, and dental;



49. Office supply and equipment, copying and mail services stores – retail only;
50. Open spaces, park areas, gardens, squares, athletic fields, bike trails, playgrounds, and walking paths, and other Common Areas;
51. Parking facilities, including above or below ground parking garages;
52. Parks, playgrounds, pools, sport courts;
53. Pet stores;
54. Photo studios, shops, and processing - retail only;
55. Physical therapy facilities;
56. Postal service facilities;
57. Public administration facilities, including government facilities, except correctional institutions;
58. Publicly-owned or government operated buildings and uses;
59. Retail stores;
60. Satellite dishes up to 2 feet in diameter if not otherwise restricted by applicable design criteria or other restrictions;
61. Senior and assisted living residential facility;
62. Sports medicine and rehabilitation facilities;
63. Theaters;
64. Veterinary clinic, outpatient only;
65. Wine store;
66. Any use permitted in a residential multi-family, residential multi-family restricted, residential professional, neighborhood commercial or community commercial zoning district pursuant to the Unified Zoning, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

**F. Permitted Uses – Tracts 5A.1 and 2A.** Lots in Tracts 5A.1 and 2A, unless otherwise prohibited herein, may be used for any of the following uses:

1. Accessory uses and structures (other than garages) not larger than 300 square feet associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement;
2. Assisted living facilities serving up to eight (8) persons;
3. Bus stops;
4. Common Areas;
5. Community centers;
6. Community residential facilities as defined by Unified Zoning Regulations serving up to eight (8) persons on a 24-hour-a-day basis;
7. Family day care facilities serving up to six (6) children or adults;
8. Garages, subject to size limitations described in Article V.B.4(d);
9. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;
10. Home occupations;
11. Multi-family residential structures containing up to four (4) Dwelling Units;
12. Single family residential units;
13. Any use permitted in a single family residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

**G. Permitted Uses Subject to Special Review – All Tracts.** Uses identified below and designated with an asterisk (\*) are permitted in Tracts 4A and 5A.2 without special review under Article IV.E. above. The following uses are permissible in other Tracts only upon consent of the Reviewer and the approval of the City of Billings through the special review process and may be subject to appropriate conditions. For purposes of this provision, the special review procedures contained in the Unified Zoning Regulations shall apply subject to any additional requirements contained in this Agreement, including the requirement of Reviewer consent. The following special review uses may be permitted in Tracts 1A, 2A, 3A, 4A, and 5A unless specifically restricted to particular Tracts:

1. Accessory structures in Tract 4A and Tract 5A.2 (other than garages) associated with a permitted principal structure and subject to the additional allowances and requirements of Article V.B.9 of this Agreement;

2. Animal boarding facilities (allowed in Tract 4A and Tract 5A.2 only);
3. Assisted living facilities serving more than 8 persons;\*
4. Bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption (allowed on Tract 4A and Tract 5A.2 only). However, bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption are exempt from Sec. 27-612(a)(1).
5. Cell, communication and satellite towers and satellite dishes greater than 2 feet in diameter provided such towers are incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);
6. Convalescent, nursing and retirement homes;\*
7. Day care centers serving more than 12 children or adults;\*
8. Churches, synagogues, and places of worship;
9. Emergency services, including fire stations and ambulance services;
10. Funeral homes and mortuaries;
11. Group day care home serving 7 to 12 children or adults;\*
12. Health and fitness related businesses not associated with a residential facility;\*
13. Hospitals and hospital related services (allowed in Tract 4A and Tract 5A.2 only);
14. Medical, dental and health-related clinics (allowed in Tract 4A and Tract 5A.2 only);
15. Medical, dental, and other professional offices;\*
16. Medical laboratories (allowed in Tract 4A and Tract 5A.2 only);
17. Modular homes;
18. Offices and small-scale retail;\*
19. Pharmacies (allowed in Tract 4A and Tract 5A.2 only);
20. Physical therapy facilities;\*

21. Research and testing facilities (allowed in Tract 4A and Tract 5A.2 only);
22. Residential multi-family housing consisting of more than four (4) Dwelling Units (special review required only in Tracts Tract 5A.1 and 2A);
23. Non-residential permitted uses requiring more than 8,000 square feet of floor space (allowed in Tract 4A and Tract 5A.2 only);
24. Retirement facilities larger than eight (8) persons per Unit;
25. Sports and rehabilitative commercial facilities;\*
26. Veterinary clinic with boarding facilities (allowed in Tract 4A and Tract 5A.2 only).

**H. Permitted Uses Subject to Special Review – Factors to be Considered.** The City of Billings may authorize the preceding special review uses through the Special Review Approval process if the proposed use conforms to the following standards and criteria. To make this determination the City shall conduct a public hearing and make findings of fact to determine whether:

1. The proposed use is consistent with the terms, intent and objectives of this Agreement;
2. The proposed use is compatible with surrounding uses;
3. The proposed use is not detrimental to other property in LENHARDT SQUARE;
4. The proposed use complies with other provisions of law and ordinances of the City of Billings;
5. Reviewer has given its written consent to the special use (Reviewer may, in its discretion, withhold its consent, and no special review shall be granted for any use in LENHARDT SQUARE without the express written consent of Reviewer);
6. The proposed use will not attract large volumes of vehicular traffic or create traffic congestion that cannot be properly managed and regulated with traffic control equipment;
7. The proposed use is of a similar architectural scale to existing development in the neighborhood, or will use an existing building for its purposes;
8. Minimum visual and functional conflict will be created between the proposed use and nearby uses;

9. Anticipated noise and congestion created by the proposed use will be comparable to the levels created by other uses permitted on that Unit.

**I. Prohibited Uses.** The following operations and uses shall not be permitted on any property in LENHARDT SQUARE, regardless of where the property is located:

1. Amusement park services or facilities;
2. Animal shelters, public or private;
3. Apparel fabrication;
4. Arcades, including but not limited to video arcades;
5. Auction houses or auction yards;
6. Auto body and collision repair;
7. Automobile repair shops;
8. Automotive Sales and Service. Any establishment engaged in automotive sales, leasing, repair, service, salvage, rental, or storage;
9. Auto parts supply;
10. Competitive sporting facilities as described in Article IV.J.9.
11. Beverage bottling plant or wholesaling operations;
12. Billboard signs;
13. Body Alteration Salons. Any establishment engaged in body painting, body piercing, or tattooing;
14. Brewery (except as incidental to a restaurant, such as a brew pub);
15. Broadcasting (radio and television) stations, studios and antenna support structures;
16. Building fabrication, except construction of buildings for use on-site;
17. Building construction operations other than for temporary, on-site construction by general contractors or subcontractors unless office-only without outside equipment or materials storage;

18. Bus terminal and maintenance facilities, except for shuttle bus storage facilities intended to service shuttle buses that operate solely within LENHARDT SQUARE or the immediately surrounding neighborhood;
19. Campground;
20. Car wash;
21. Casinos and gambling or gambling activity, as defined in M.C.A. 23-5-112, unless permitted with legally enforceable restrictions described in the CCRs;
22. Chain link fencing;
23. Crematoriums;
24. Dumping concrete, cement residue, refuse, dirt, garbage, or fill materials without authorization of property owner;
25. Drugs or drug paraphernalia. Using, promoting, or facilitating the use of illegal drugs or any business engaged in selling so-called drug paraphernalia;
26. Dry cleaning, laundry plant or public laundromat, but this prohibition shall not be applicable to facilities for pickup and delivery by the ultimate consumer;
27. Electronic component manufacturing;
28. Equipment rental shop;
29. Excavation. Businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;
30. Exotic dancing. Any establishment permitting exotic dancing, including semi-nude and nude clubs;
31. Extractive industries. Any establishment engaged in the sale, extraction, or storage of sand, gravel, or minerals unless such sale or storage is an ancillary part of a hardware, home-improvement, or similar retail store;
32. Fire sale or bankruptcy sale;
33. Fireworks. Fireworks manufacture and/or sales;
34. Flea markets;
35. Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations;

36. Foundries and factory operations;
37. Furniture fabrication;
38. Garbage handling.. Any dumping, disposing, incineration or reduction of garbage, but this prohibition shall not prohibit garbage compactors located near the rear of any building or small-scale recycling containers intended to collect recyclable materials as a convenience for neighborhood residents;
39. Gas or diesel stations;
40. Go-cart tracks;
41. Greenhouses for commercial or retail purposes;
42. Gun or archery range unless located within a structure and not visible or audible from outside the structure;
43. Guns and Ammunition. The sale of firearms and ammunition, unless incidental to a general retail store or sporting goods store;
44. Heavy equipment sales and service;
45. Ice manufacturing for resale of ice not intended for use on-site ;
46. Illegal Drugs. The sale, manufacture, or possession of illegal drugs;
47. Industrial production or manufacturing facilities;
48. Jails. Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities, except public facilities if permitted by Section 76-2-411, Montana Code Annotated;
49. Junk shops, second-hand stores, and antique stores;
50. Livestock and Wild Animals. No swine, poultry, goats, horses, cows, or other livestock or domestic or wild animals shall be kept on the property within LENHARDT SQUARE except for domestic pets and other animals specifically permitted under this Agreement and, which shall be subject to any applicable restrictions contained herein, and no agricultural grazing is allowed unless specifically permitted by Founders in accordance with this Agreement;
51. Livestock Production. Any establishment engaged in livestock production or slaughter, except for agricultural grazing permitted by Founders on undeveloped tracts within LENHARDT SQUARE;
52. Livestock and Farm Equipment. Any establishment engaged in the sale of

livestock, ranch, or farm equipment;

53. Machine and welding shops;
54. Manufactured Homes and Manufactured Home Parks. The sale, use, maintenance, rental, repair or storage of manufactured housing or mobile homes;
55. Manufacturing businesses;
56. Metal fabrication and manufacturing;
57. Mill work and cabinet shops;
58. Motorized sports vehicle repair, storage, and/or sales (including parts sales);
59. Mining and Related Activities. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
60. Motocross tracks;
61. Motorcycle racing;
62. Nuisances. Any use that constitutes a nuisance under Article IV.J.3 of this Agreement.
63. Paper warehouses;
64. Pawn shops;
65. Power Poles and Overhead Power Lines. Installing new power poles and overhead power and utility lines; provided, however, this shall not prohibit existing power poles and lines and shall not prohibit adding new lines to the existing poles;
66. Product manufacturing unless the product is intended primarily for local consumption or use;
67. Propane sales;
68. Race tracks;
69. Recreational vehicles. The commercial sale, maintenance, rental, repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.
70. Recycling centers;



71. Rental car dealerships;
72. Vehicular, small engine and appliance repair shops;
73. Roller skating rinks;
74. Roping and rodeo arenas;
75. Sanitary dumps;
76. Scrap or waste material processing;
77. Septic systems;
78. Sexually Oriented Businesses. Sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations;
79. Repair shops. Shop facilities containing open or visible storage;
80. Stables;
81. Storage facilities other than garages associated with residential structures;
82. Super Stores. Retail sales uses (for goods and/or merchandise) by any person, firm, or entity that utilizes more than 40,000 square feet of any structure (nothing in this prohibition shall be interpreted to permit retail sales uses smaller than 40,000 square feet if otherwise prohibited in this Agreement);
83. Surplus store;
84. Taxidermists;
85. Tire sales, except as incidental to the operation of a general retail store;
86. Towers and Dishes. Freestanding communication and satellite towers and dishes greater than two (2) feet in diameter unless incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);
87. Trailer Parks and Campgrounds. Mobile home parks, trailer parks, recreational vehicle campgrounds, or any commercial establishment that permits overnight parking of recreational vehicles;
88. Truck Stop. Truck stop, as defined by Section 27-201 of the Unified Zoning Regulations;

- 89. Truck Terminals. Truck terminals, cartage operations, and similar uses;
- 90. Truck Wash. Truck wash as defined by Section 27-201 of the Unified Zoning Regulations;
- 91. Trucks. Sale, leasing, manufacture, rental or repair of trucks;
- 92. Trucking operation offices and warehouses;
- 93. Utility sub-stations and other utility installations other than utility lines, utility boxes, and other utility facilities used to service an individual Lot;
- 94. Warehouses;
- 95. Wholesale lumber and wholesale building materials;
- 96. Wild Animals and Livestock. Any establishment, structure, or enterprise housing any wild animals, poultry, or domestic livestock unless sold as domestic pets in a retail pet store;
- 97. Wholesale distribution and sales.

**J. Other Use Regulations**

**1. Continued Farming Operations.** Founders may, in their sole and unreviewable discretion permit farming operations (including livestock grazing) on undeveloped parcels within LENHARDT SQUARE on a case-by-case basis. No Unit may be farmed or flood-irrigated without the prior express written consent of Founders. Written consent to farm and to irrigate must be obtained on an annual basis. Livestock grazing, if permitted, will be limited to a reasonable carrying capacity that prevents overgrazing. Founders may prohibit farming and/or flood irrigation in LENHARDT SQUARE in the sole, exclusive and unreviewable discretion of Founders.

**2. Irrigation.** Founders, in their sole and unreviewable discretion, may elect to retain any shares in the irrigation district serving LENHARDT SQUARE, transfer such shares to the Master Association, or transfer such shares back to the irrigation district. Founders specifically reserve, and do not waive or abandon, irrigation and drainage easements for the conveyance of water and collection of waste water wherever irrigation or drainage ditches are currently located in LENHARDT SQUARE. Without limiting the foregoing, Founders currently believe that such ditches are currently located generally along the north and south boundaries of the property. All such easements shall continue as long as flood irrigation is conducted on any Tract of LENHARDT SQUARE or as long as any such easement is necessary to convey or drain water for the benefit of an adjacent property owner. In addition, Founders reserve a fifteen (15) foot easement along the east boundary of Tract 1A for purposes of installing and maintaining a new irrigation drainage ditch for so long as flood irrigation is conducted on any Tract within LENHARDT SQUARE.

**3. Nuisance.** No nuisance shall be permitted to exist or operate on any property in LENHARDT SQUARE so as to be offensive or detrimental to other property or occupants in LENHARDT SQUARE. A nuisance includes, but is not limited to, any operations or uses that create vibration, electro-magnetic disturbances, radiation, air or water pollution, dust, emissions of odorous, toxic or nontoxic matter (including steam), and excessive noise; provided, however, that agricultural activities authorized by Founders shall not be considered a nuisance. No noxious, offensive, or hazardous activities shall be permitted upon any Unit in LENHARDT SQUARE, nor shall anything be done or placed upon any Unit that is or may become a nuisance to others. No light shall trespass onto another Unit unless approved by adjacent Unit owners or in conjunction with shared parking facilities, nor shall any light be produced from any Unit that is unreasonably bright or causes unreasonable glare. No sound shall be produced upon any Unit that is unreasonably loud or annoying, including but not limited to speakers, horns, whistles, bells, excessive barking, or other animal noises.

**4. The Shiloh Drain.** Any Unit Owner or Developer in LENHARDT SQUARE shall at all times conduct its use and activities in a manner that will preserve the integrity of the Shiloh Drain and the Shiloh Drain Easement Area, including preventing any degradation of water quality, any reduction in the flow of water, and any damage to the bed or banks of the Shiloh Drain. Certain portions of the Shiloh Drain Easement Area may require modifications during the course of development of LENHARDT SQUARE to accommodate storm drainage from within the property. No such modifications shall be made without first obtaining written permission from the City of Billings. The cost of these modifications shall be the responsibility of Developer or Unit Owner(s) requiring access for drainage to the Shiloh Drain. In addition to the foregoing, the owner of any Unit or Tract in LENHARDT SQUARE shall not conduct or permit the conduct of the following activities:

(a) The discharge of any liquid (except storm water runoff as directed by an approved, engineered storm drainage management plan), solid, or gas into the Shiloh Drain;

(b) Planting or dropping any non-native fish, animal, reptile, or plant into the Shiloh Drain area;

(c) The dumping of grass clippings or landscaping material or debris into the Shiloh Drain;

(d) Any activities that permit or encourage refuse dumping in the vicinity of the Shiloh Drain;

(e) Polluting water in the Shiloh Drain;

(f) The discharge of any Hazardous Materials. The term "Hazardous Materials" shall mean: petroleum products, asbestos, poly-chlorinated biphenyls, radioactive materials, and all other dangerous, toxic, or hazardous pollutants,

contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. The term “Environmental Law” shall mean all federal, state, county, city, local, and other statutes, laws, ordinances, and regulations that relate or deal with human health or the environment, all as may be amended from time to time.

**5. Domestic Pets Limitation.** Unit Owners must comply with all ordinances or laws applicable to pet ownership. In addition, any establishment, commercial building, or single family residence may not house more than two (2) dogs and no more than a total of four (4) domestic pets other than fish (for example two (2) dogs and two (2) cats). Any Dwelling Unit in a multi-family residence facility may not house more than two (2) domestic pets (excluding fish). Any pet or animal shall be leashed at any time it is outdoors unless it is being kept in a fenced yard area. No pets shall be raised or cared for on a commercial basis except in a retail pet store or as otherwise allowed in this Agreement. Pet owners shall retrieve excrement deposited by household pets on public or private property and dispose of such excrement in a manner so as not to create a nuisance.

**6. Inoperable and Junk Vehicles.** No inoperable or junk vehicle shall be permitted to park on any street within LENHARDT SQUARE for a period of more than two (2) days and shall not be stored for more than seven (7) days on any Lot unless enclosed within a structure.

**7. Recreational Vehicles.** Recreational vehicles, including but not limited to snowmobiles, all-terrain vehicles, or motorcycles not licensed to operate on city streets shall not be permitted to operate within the confines of LENHARDT SQUARE. Recreational vehicles may not be stored for more than seven (7) cumulative days in any thirty (30) day period on any Lot unless enclosed within a structure or completely screened from view by a solid privacy fence.

**8. Home Occupations.** Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by Developers or an Owners Association, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations (Sec. 27-606). Vehicle trips to a dwelling not located in Tract 4A or Tract 5A.2 where the occupant carries on a Home Occupation shall not exceed, on average, more than two (2) vehicle trips during any hour. A Home Occupation in Tract 4A or Tract 5A.2 is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

- (a) Hours of operation may extend from 7:30 A.M. to 9:00 P.M.;
- (b) The activity must constitute a permitted use in the mixed-use zone established in this Agreement;
- (c) The business may employ up to three persons, including the residents of the dwelling, who are present on the property at any given time or who visit the property at least once a day. The unit must meet any applicable

building and fire codes; and

(d) The business may employ sign advertising, but such advertising must be located on the Lot where the Home Occupation is located and shall comply with all applicable government regulations and private covenants or restrictions. In addition, any signage advertising a Home Occupation shall be displayed in a lobby or other place inside the structure where the business is located or, if located on or outside of the structure, the sign shall not exceed two (2) square feet in size. Only one sign may be displayed for each Home Occupation. Section 27-606(f) and (g) of the Unified Zoning Regulations shall not apply to such a business to the extent those provisions are inconsistent with this subparagraph.

(e) Residents and Unit Owners are advised that carrying on certain Home Occupations, including those that include employees, may require compliance with special code requirements applicable to commercial establishment. All residents and Unit Owners are advised to consult with local building officials before establishing a Home Occupation. Residents and Unit Owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

**9. Scheduled Sporting Events and Related Facilities.** Parks and other Common Areas located in LENHARDT SQUARE are intended primarily for the benefit of residents of LENHARDT SQUARE and only secondarily for the benefit of other persons. Common Areas should be constructed to include attractive landscaping, benches, picnic and game tables, walkways, children's play facilities, and other amenities that serve the immediate neighborhood and appeal to a diversity of users. Amenities that promote traffic and parking congestion should be avoided as much as possible. To that end no Common Area shall be used for, and no Common Area shall be constructed to include infrastructure that is specifically intended to be used for the organized play of football, baseball, soccer, track, or other similar sports by competing teams on a scheduled or regular basis. No permanent goal posts, field-striping, baseball diamonds, baseball pitching mounds, dugouts, or score boards shall be constructed in any Common Area. Nothing in this Agreement shall prohibit the construction of baseball backstops and outdoor basketball or tennis courts in the Common Areas

## **ARTICLE V – INFRASTRUCTURE AND TRACT DEVELOPMENT STANDARDS**

**A. Infrastructure Development Standards.** The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute the Annexation Agreement that will prescribe additional standards for the dedication, construction and maintenance of public rights-of-way, streets, sidewalks, utilities, and other infrastructure in LENHARDT SQUARE. The standards described in the Annexation Agreement shall apply to all Tracts within LENHARDT SQUARE unless Developer applies for and obtains a variance from the City of Billings. All applications for variance must be approved in writing by Reviewer

prior to submittal to the City. Reviewer may approve or disapprove the variance in its sole discretion.

**B. Tract Development Standards.** Tract development standards are provided to establish minimum guidelines for the development of facilities within LENHARDT SQUARE, including site work, buildings, accessory structures, parking, signage, lighting, fencing and landscaping. These standards establish the minimum construction requirements to be adopted by Developers within LENHARDT SQUARE. More detailed architectural and landscape design guidelines (Master Design Guidelines) will be adopted by the Founders pursuant to the CCRs to govern the aesthetic and functional standards for public areas, streetscape, pedestrian areas, buildings and signage. Developers may, subject to approval by the Reviewer, adopt more (but not less) detailed and/or stringent site, building and landscape design criteria to govern construction within their respective Tracts. All construction within LENHARDT SQUARE shall comply with the Unified Zoning Regulations, International Building Code, or any other building codes or building regulations applicable under local, state, or federal law.

**1. Lot Size.** Developers shall be responsible for submitting plats for further subdivision of each Tract to the City of Billings for subdivision approval. Within these plats, Lots designated for single family construction shall comply with the minimum size requirements described in Exhibit B. In accordance with Exhibit B, Lot size for multi-family, commercial, and mixed-use structures may vary in size depending upon the number of dwelling units contained in the structure. There are no maximum Lot size requirements. All Lots must comply with the lot coverage and setback standards set forth in this Agreement.

**2. Lot Coverage.** Lot coverage requirements are set forth in the General Requirements in Exhibit B and are based upon a percentage of total square footage of the Lot. The total combined lot coverage for all structures on any Lot shall not exceed the maximum requirements established in Exhibit B.

**3. Setbacks.** Minimum setback requirements are set forth in the General Requirements in Exhibit B.

**4. Parking.**

**(a) Required Parking.** Adequate parking shall be provided by each Unit Owner for residents, visitors, customers, renters, and employees. Parking requirements may be satisfied by on-site parking, approved street parking, off-site parking facilities, or any combination thereof. The following requirements shall apply in each zone:

**(i) MF-4.** At least two enclosed parking spaces must be provided for each Dwelling Unit in the MF-4 zone.

**(ii) MF-R.** Minimum parking requirements for multi-family residential uses shall be 1.5 parking spaces times the number of Dwelling Units (rounded to the next highest number of spaces). Except as provided

hereafter, the maximum number of parking spaces shall not exceed 1.75 times the number of Dwelling Units (rounded to the next highest number of spaces). Developer may construct more than 1.75 parking spaces per Dwelling Unit, but all spaces in excess of that number must be incorporated as part of a structure that includes multi-family Dwelling Units or in a separate underground or multi-level parking facility. At least one parking stall for each Dwelling Unit shall be provided in covered or enclosed parking facilities. In order to insure adequate parking, parking spaces, including enclosed spaces, must be maintained in a manner that accommodates vehicle parking and may not be used primarily for non-vehicular storage.

(iii) **MU**. The minimum parking requirements for residential dwelling units within the MU district shall be determined as set forth in the attached Exhibit C. No more than ten percent (10%) of the area of any lot within Tract 4A or 5A.2 may be utilized for surface parking.

(b) **Joint Parking**. Joint parking agreements are encouraged. Unit Owners may enter into agreements with other Unit Owners located within a 600-foot radius to share parking spaces provided the agreement complies with the requirements set forth in Exhibit C. For uses not referenced in the joint use matrix found in Exhibit C, allowable joint use parking reductions requested by the Developer shall be determined by the City zoning coordinator with the consent of Reviewer up to, and not exceeding, a total reduction factor of 1.5.

(c) **Off-Site Parking**. Each off-site parking area shall be accessible by a public right-of-way. If space is leased in an off-site parking area to meet minimum parking requirements, the term of any lease while minimum parking requirements are in effect shall be for the duration of the time that the building, use, or activity served by such parking area is in existence at such location. Each such lease shall be subject to prior review by the City of Billings and shall provide that if the right to use the designated off-site parking is for any reason terminated or forfeited the City shall be immediately advised. In case of such termination or forfeiture, all uses and activities so served shall cease until adequate off-street parking meeting the requirements of this Agreement is again provided. All requirements for setbacks, landscaping, signage, and lighting established in this Agreement, the CCRs, and/or the Master Design Guidelines or other applicable standards shall apply to off-site parking facilities. All off-site and on-site parking facilities shall satisfy any applicable handicapped accessibility requirements. Off-site parking shall be located within six hundred (600) feet of the building or use for which it is required, which distance shall be measured along a straight line between the two (2) nearest points of the Lots containing the main use and the accessory parking use.

(d) **Garages**. The incorporation of multi-level parking garages into principal building structures in the Mixed-Use and Multi-Family-Restricted zones

is encouraged. Ground level parking garages shall be limited to 2,500 square feet and may accommodate no more than ten (10) vehicles unless approved by the Reviewer. Freestanding multi-level parking garages shall be considered a principal structure. A minimum of ten (10) feet, or the applicable IBC minimum standard, whichever is greater, shall be maintained between garages and other structures. Parking garages must conform to CCRs and Master Design Guidelines.

(e) **Landscaping.** Parking lots shall be landscaped in accordance with the CCRs and the Master Design Guidelines.

**5. Right-of-Way and Landscaped Green Belt Improvements Generally.**

A minimum 10-foot landscaped green belt, which may be incorporated into any required building setback, shall be landscaped and maintained along any property line that abuts the Shiloh Drain or a public or private right-of-way or street unless the same is bordered by a developed Pathway or Linear Parkway maintained by the Master Association, an Owners Association, or the City. Founders shall establish design standards for such landscaped green belt areas. Developers shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. Unless maintenance responsibilities are specifically accepted by the Master Association and/or City, Unit Owners shall maintain their yards as well as the space in the landscaped green belt area and any easement or right-of-way up to the back of the curb, the edge of paving of the street, or the midline of any easement not bordering a street, in conformance with the CCRs and Master Design Guidelines. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

**6. Average Density Limits.** The number of residential Dwelling Units shall not exceed the maximum density-per-acre limits set forth in Exhibit B. For purposes of determining compliance with this requirement, the total number of residential Dwelling Units in the subject Tract or parcel of the development shall be divided by the gross acres of the Tract or parcel excluding any open space/pathways set aside in such Tract or parcel pursuant to the Master Plan. Average density limits shall be measured by evaluating the average, overall per-acre density for each part of a Developer's project that is subject to a different density limitation. Density limits shall not be measured by evaluating the actual density for each individual acre. Actual per-acre densities in a particular part of a Developer's project area may be higher than the allowed limits if the average density for the Developer's property in each zone as a whole complies with the density limitations set out in Exhibit B.

**7. Landscaped Green Belts Along King Avenue, C/S 2064, C/S 3125 and C/S 1400.** A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of all Units in Tracts 1A, 4A and 5A adjoining King Avenue. A minimum fifteen (15) foot wide landscaped green belt shall be maintained inside the property line of the portion of Tract 1A adjoining C/S 2064 (Tracts 6B), C/S 3125 (Tract 4A), and C/S 1400 (Tract 1A). The Developers of Tracts 1A, 4A, and 5A



shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. The landscaped green belts described in this paragraph shall be maintained in accordance with Article V.B.5. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

**8. Loading, Storage and Service Areas.** Loading and service areas shall not be permitted in the front of any Lot or in any side yard adjacent to and visible from a street within LENHARDT SQUARE and shall be subject to design standards adopted by the Founders.

**9. Fence, Wall, Berms and Hedge Improvements.** Fences, walls, berms and hedges within LENHARDT SQUARE shall be constructed according to the following minimum standards:

(a) All improvements shall comply with the City of Billings, Montana clear vision standards and the maximum height restrictions set forth in Exhibit B;

(b) All improvements shall comply with the CCRs and Master Design Guidelines;

(c) A permit shall be obtained from the City prior to constructing any fence over six (6) feet in height or any wall over four (4) feet in height.

**10. Accessory Structures.** Detached accessory structures other than garages shall be no larger than 300 square feet. A minimum of 5 feet, or the applicable Unified Zoning Regulations minimum standard, whichever is greater, shall be maintained between detached accessory structures other than garages and any other structure. All detached accessory structures must conform to the CCRs and Master Design Guidelines. Accessory structures in Tract 4A and Tract 5A.2 are subject to special review in accordance with Article V.G.1. above.

**11. Projections.** In Tracts other than Tract 4A and Tract 5A.2, awnings, stoops, open porches, balconies, bay windows, cantilevered decks, permitted signage, and similar projections may extend into fifty percent (50%) of the width of any required building setback provided the projection does not cause a hazard or interfere with any improved Linear Parkway located within the setback. In Tract 4A and Tract 5A.2 such projections may extend to, but not over, the boundary of the public right-of-way. The lowest point of any projection must be at least eight (8') feet beyond the surface of any sidewalk, pathway, driveway or other travel surface located below the projection.

**12. Signage.** The signage requirements included in Article 27-700 of the Unified Zoning Regulations ("Sign Code") and any subsequent amendments thereto shall govern the regulation of signage in LENHARDT SQUARE so far as they are not inconsistent with this Agreement. To the extent that different Sign Code regulations apply depending upon the zoning category where the signage is located, for this purpose only Tracts 1A and 3A shall be deemed to be a residential professional zone; Tracts 4A

and 5A.2 shall be deemed to be a commercial zone; and Tracts 5A.1 and 2A shall be deemed to be a residential zone. For purposes of regulating signage the mixed-used areas (Tract 4A and Tract 5A.2) shall be subject to the same regulations that govern the Central Business District, including Ordinance No. 07-5437 approved October 22, 2007 amending Section 27-705(c) of the Unified Zoning Regulations. In addition all signs shall comply with CCRs and Master Design Guidelines.

**13. Lighting.**

(a) All outdoor pole lighting shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than twenty (20) feet above grade;

(b) All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

(c) Canopy, marquee and “wall pack” lighting shall be fully shielded. No internally illuminated fascia shall be allowed.

(d) All lighting shall comply with CCRs and Master Design Guidelines.

**14. Design Standards.** Additional Design Standards may be included within the CCRs and/or Founders may adopt Master Design Guidelines for use in LENHARDT SQUARE. Such standards and guidelines shall govern building, landscape and Common Area construction. Developers may adopt more stringent standards or guidelines and/or additional compatible standards or guidelines for areas located within the Tract being developed, provided such standards or guidelines are compatible with the Master Design Guidelines and approved by the Reviewer. All construction within LENHARDT SQUARE shall comply with the International Building Code, the International Fire Code, and any other building codes or building regulations applicable under local, state, or federal law.

**ARTICLE VI – OPEN SPACE**

**A. Master Plan Common Areas Generally.** Founders hereby agree that certain portions of LENHARDT SQUARE will be permanently set aside for park and recreational uses sufficient to meet the needs of the residents of LENHARDT SQUARE. Founders further agree that they will cause an easement for pedestrian and bike travel by the general public to be dedicated in or near the Shiloh Drain Easement Area for inclusion in the Heritage Trail System. The lands set aside in accordance with this Article VI.A. will include the Master Common Areas shown on the Master Plan (Exhibit A) and may include, but are not limited to, open spaces, Green Roofs and other roof-top amenities, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, walking paths, exercise or play areas or

other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. The total acreage set aside for park and recreational use as depicted on Exhibit A is approximately 15.35 acres. The general size, location, and design of Master Common Areas described in this Agreement and designated in the Master Plan are conceptual in nature and are subject to modification by Founders and future Developers through the platting process. Any such modifications must, however, be approved by the Reviewer, and the City of Billings must receive the consent of the Reviewer prior to approving any plat that modifies the size, location, or design of the Master Common Areas described herein. The City of Billings shall be entitled to review and approve any material reduction in the size of the Master Common Areas or material change of the function of those areas if such reduction or change would entitle the City to withdraw its waiver of statutory and local park dedication requirements mandated under M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A. Nothing in this Agreement shall prohibit a Developer from establishing Developer Common Areas within its Tract, provided maintenance of such additional common areas shall be the responsibility of the Developer and/or any Owners Association created by the Developer, unless the Master Association agrees in writing to undertake such maintenance responsibilities. Developers may agree to assume maintenance responsibilities for Master Common Areas by entering into a written agreement with the Master Association.

**B. Annexation Agreement to Prescribe Standards for Common Areas.** The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute an annexation agreement that will prescribe standards for the designation, development, and maintenance of parks and other Common Areas in LENHARDT SQUARE. Although the particular terms of the annexation agreement will be determined later, it is currently anticipated that the agreement will address these and other issues: (1) waiver by the City of statutory and local regulatory park dedication requirements in accordance with M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A.; (2) maintenance obligations of the Master Association, Developers and the City; (3) construction standards for linear parkways; and (4) mutual easements for the construction and maintenance of Common Areas on private and public property.

**C. Roof-Top Amenity Areas.** The roof area of each building over forty feet (40') in height (measured to the top of the enclosed structure and not including non-enclosed structures, towers, antennae, etc.) in a mixed-use zone (Tract 4A and Tract 5A.2) shall include roof-top amenities that comply with this Agreement. Such roof-top amenities may include, but are not limited to, one or more of the following: Green Roofs, gardens, pools, terraces, decks, balconies, porches, atriums, greenhouses, picnic areas, recreational facilities, or similar amenities. For purposes of this Article VI.C. "roof area" shall include both the roof structure immediately above the uppermost floor of the building and also any horizontal setback areas created when a floor of the building is recessed from the line of the façade of the floor below. One hundred percent of each roof area not necessary for the use, storage, or operation of mechanical equipment related to the function of the building shall be devoted to such roof-top amenities unless the Reviewer grants a partial exemption from this requirement after receiving a written request from the Developer. The Reviewer may exempt part of the roof area from this requirement if the Reviewer determines in its discretion that the portion proposed for exemption is too small, inaccessible, or otherwise unavailable for reasonable construction or maintenance as a roof-top amenity. All roof-top amenities shall be professionally designed and constructed and

shall comply with all applicable building codes, ordinances, and laws. ~~Neither Reviewer nor the City~~ shall not be required to review any building design, specifications or drawings for compliance with such codes, ordinances, laws or other building standards and therefore shall not be responsible for any violation of the same or any negligence in the design or construction of any roof-top amenity or other element of any structure. All roof-top amenities shall be well constructed, according to any applicable building and safety codes, repaired, and maintained so that they provide a useful and attractive area for the private or semi-private use of tenants or owners in the subject building or adjacent mixed-use neighborhood in the Tract.

## **ARTICLE VII - CROSS EASEMENTS FOR PEDESTRIANS AND VEHICLES**

At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the Common Areas of LENHARDT SQUARE (or the Tract) devoted to pedestrian walkways, bike paths, and private roadways intended for common use.. At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of LENHARDT SQUARE (or the Tract).

## **ARTICLE VIII - ENFORCEMENT**

**A. Statement of Purpose.** The parties acknowledge that from time to time disputes may arise involving the City, Founders, Unit Owners, the Master Association, Owners Associations, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

**B. Right to Enforce by City.** The terms of this Agreement may be enforced by the City as provided for in Article 27-1600 of the City Code of Billings, Montana.

**C. Right to Enforce by Unit Owners and Master Association.** The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within LENHARDT SQUARE and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as the Unit Owners within LENHARDT SQUARE. The parties further agree that the Master Association shall have standing to enforce the terms of this Agreement relative to the City or any

Unit Owner or Owners Association regardless of whether the Master Association owns property in LENHARDT SQUARE. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

## **ARTICLE IX –AMENDMENTS AND VARIANCES**

**A. Amendments or Changes.** Amendments or changes to this Planned Development Agreement shall be processed using the same procedures for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent above those approved pursuant to Exhibit B.
3. Create additional allowed uses;
4. Reduce open space greater than two (2) percent in any Tract; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

**B. Variance Procedures.** Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not listed within this Agreement or for uses prohibited within the Unified Zoning Regulations.

**C. Zone Change Procedures.** Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

## **ARTICLE X - GENERAL PROVISIONS**

**A. Neutral Interpretation.** Founders and the City hereby stipulate and agree that this Agreement shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party.

**B. Coordination with Other Regulations.** In the event that there is any conflict between this Planned Development Agreement and other zoning regulations and/or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Planned Development Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of LENHARDT SQUARE either by its express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations and/or ordinances applicable to LENHARDT SQUARE are subsequently amended, the amended version of such regulations and/or ordinances shall likewise continue to be applicable to LENHARDT SQUARE to the extent they are not inconsistent with this Agreement.

**C. Streets.** Founders have provided a list of names for future streets in LENHARDT SQUARE. Developers may use any of these names without further approval of Founders. Proposed street names not contained on this list must be approved by Founders prior to adoption by the City. Both street names and addresses shall be determined in cooperation with the City and the City Fire Department.

**D. Notices.** All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipt therefore.

All notices or demands to Founders or the City shall be given at the following addresses or such other addresses as Founders or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Founders: Lenhardt Property, LP  
4035 Cedarbrook Court  
Bellingham, WA 98229-5007

[and]

Lenhardt Enterprises, LLC  
c/o Allan R. Lenhardt  
240 East Drive  
Baton Rouge, LA 70806

[and]

Lenhardt Farm, LLC  
c/o Janice L. Rehberg  
4401 Highway 3  
Billings, MT 59106

With copies to: William A. Cole  
Cole Law Firm, PLLC  
3860 Avenue B, Suite C West  
Billings, MT 59102-7550

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

With Copies to:

City-County Planning Department  
510 N. Broadway, 4<sup>th</sup> Floor Parmly Library  
Billings, MT 59101

City Attorney's Office  
P.O. Box 1178  
Billings, MT 59103-1178

**E. Waiver.** Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

**F. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

**G. Limitation on Enforcement.** This Agreement is for the benefit of Founders, the City, the Unit Owners, the Master Association, and their heirs, devisees, assigns, and trustees, and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce the covenants, conditions, and restrictions contained herein, judicially or otherwise.

**H. Force Majeure.** Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restrictions, terrorist acts, governmental regulations, inclement weather, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

**I. Attorneys' Fees and Costs.** In the event either party shall file any proceeding, whether at law or in equity, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court costs, if any, from the other party.

**J. Severability.** Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

**K. No Partnership.** The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

**L. Captions and Headings.** The paragraph headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no

way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

**M. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

**N. Construction.** In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

**O. Joint and Several Obligations.** In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

**P. Recordation.** This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Yellowstone, State of Montana.

### **NOTICE**

**THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN LENHARDT SQUARE, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN LENHARDT SQUARE, AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.**

**Q. Run with the Land.** The terms and conditions of this Agreement shall run with the land, and shall be binding upon and shall inure to the benefit of Founders, the City, Developers, Unit Owners, the Master Association, and their heirs, successors, and assigns.

**R. Contact Person.** The Founders hereby designate a contact person who may be contacted with respect to any questions, comments, or concerns. The contact person shall be Janice Rehberg, 4401 Highway 3, Billings, MT 59106.

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

**FOUNDERS:**

LENHARDT PROPERTY, LP

By: \_\_\_\_\_



LORRAINE NEWMAN

Its: \_\_\_\_\_

LENHARDT FARM, LLC

By: \_\_\_\_\_  
JANICE L. REHBERG

Its: \_\_\_\_\_

LENHARDT ENTERPRISES, LLC

By: \_\_\_\_\_  
ALLAN R. LENHARDT

Its: \_\_\_\_\_

**CITY:**

CITY OF BILLINGS

By: \_\_\_\_\_  
Ron Tussing  
Its: Mayor

By: \_\_\_\_\_  
Cari Martin  
Its: City Clerk

STATE OF \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_  
\_\_\_\_\_ known to me to be a partner of Lenhardt Property,  
L.P.

\_\_\_\_\_  
[signature]  
\_\_\_\_\_  
[typed/printed name]  
Notary Public for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_, \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by Janice L. Rehberg known to me to the \_\_\_\_\_ of Lenhardt Farm, LLC

\_\_\_\_\_  
[signature]  
\_\_\_\_\_  
[typed/printed name]  
Notary Public for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_,  
My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF MONTANA                    )  
  )ss.  
County of Yellowstone            )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by Allan R. Lenhardt known to me to the \_\_\_\_\_ of Lenhardt Enterprises, LLC

\_\_\_\_\_  
[signature]  
\_\_\_\_\_  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF MONTANA                    )  
  )ss.  
County of Yellowstone            )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by Ron Tussing, known by me to be the Mayor of the City of Billings.

\_\_\_\_\_  
[signature]  
\_\_\_\_\_  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_, Montana

My Commission Expires: \_\_\_\_\_, 20\_\_

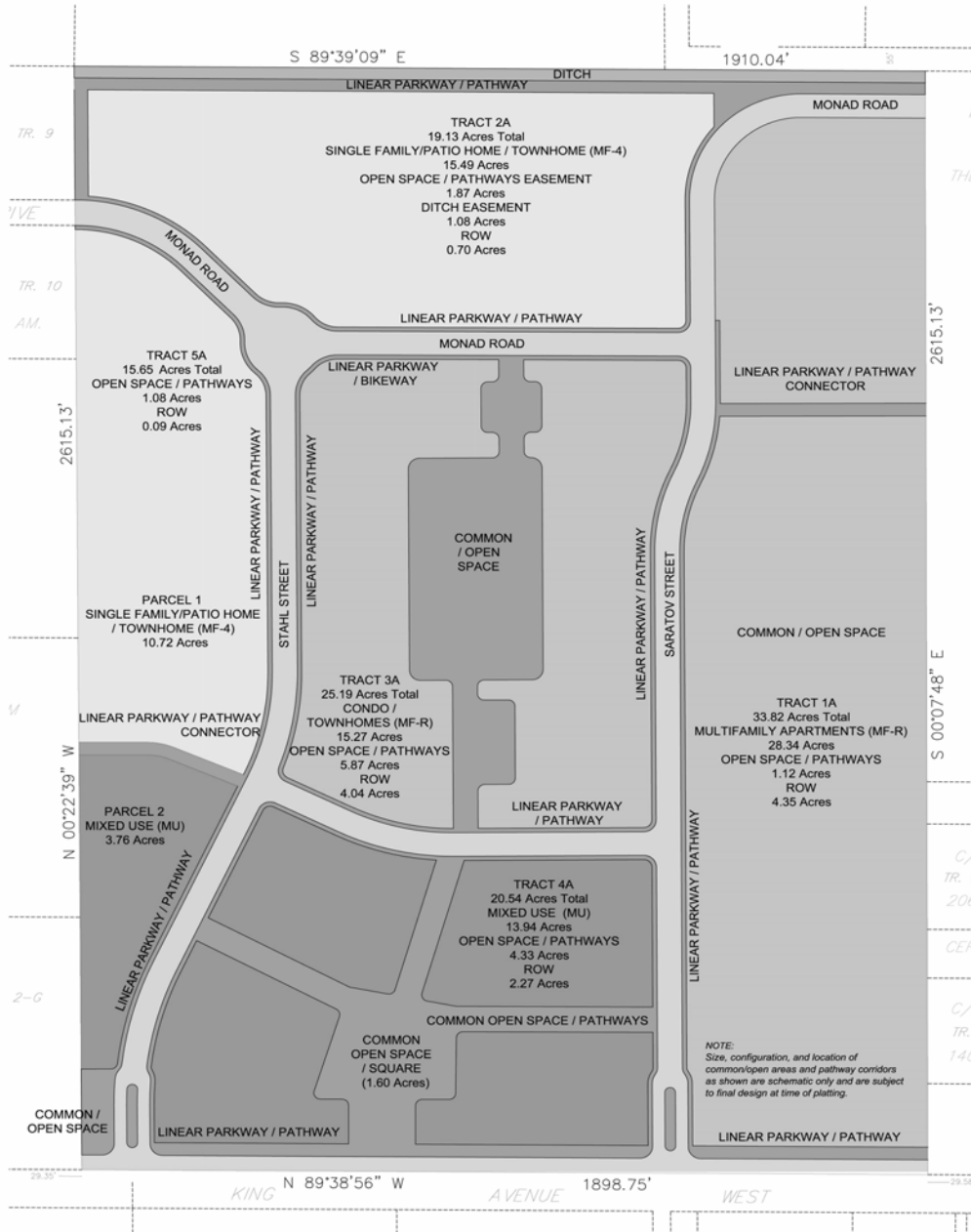
STATE OF MONTANA                    )  
  )ss.  
County of Yellowstone            )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by  
Cari Martin, known by me to be the City Clerk of the City of Billings.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_, 20\_\_

# EXHIBIT A



## LENHARDT SQUARE

CONCEPTUAL MASTER PLAN

Billings, Yellowstone County, Montana

January 22, 2008



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



\* Streets and area shown as right-of-way will be stricken and the area added to the developable area of each Tract for purposes of calculating average density limits under Article V.B.6.

**EXHIBIT B**  
**GENERAL REQUIREMENTS\***

<i>Minimum Lot Size Per Structure</i>	<i>MF-4**</i>	<i>MF-R**</i>	<i>MU**</i>
<b>1 dwelling unit</b>	<b>6,000</b>	<b>6,000</b>	
<b>2 dwelling units</b>	<b>7,000</b>	<b>7,000</b>	
<b>3 dwelling units</b>	<b>8,500</b>	<b>8,500</b>	
<b>4 dwelling units</b>	<b>10,000</b>	<b>10,000</b>	
	<b>0</b>		
<b>5 dwelling units</b>		<b>11,000</b>	
<b>6 dwelling units</b>		<b>12,000</b>	
<b>7 dwelling units</b>		<b>13,000</b>	
<b>8 dwelling units</b>		<b>14,500</b>	
<b>9 dwelling units</b>		<b>16,000</b>	
<b>10 or more dwelling units</b>		<b>1,500 sq.ft. each additional dwelling unit</b>	
<i>Setback Requirements (in feet)<sup>4</sup></i>			
<b>Front:<sup>2</sup></b>			
<b>From Linear Parkway</b>	<b>5<sup>1</sup></b>	<b>5</b>	<b>5</b>
<b>From streets (right-of-way)</b>	<b>20<sup>2</sup></b>	<b>20</b>	<b>0<sup>3</sup></b>
<b>Sides:<sup>4</sup></b>			
<b>1 Story</b>	<b>5</b>	<b>5</b>	<b>5</b>
<b>2 Story</b>	<b>8</b>	<b>8</b>	<b>8</b>
<b>3+ Story</b>	<b>9 + 1</b>	<b>9 + 1</b>	<b>0</b>
<b>Side Adjacent to Street</b>	<b>10</b>	<b>10</b>	<b>0</b>
<b>Rear:<sup>4</sup></b>			
<b>Arterials</b>	<b>20</b>	<b>15</b>	<b>0</b>
<b>Maximum Height (in feet)</b>	<b>25</b>	<b>25</b>	<b>25</b>
<b>Maximum Lot Coverage</b>	<b>34</b>	<b>40</b>	<b>80<sup>5</sup></b>
	<b>50%</b>	<b>50%</b>	<b>100%</b>

<i>Maximum Average Density (Dwelling Units/Acre)</i>	<b>10</b>	<b>20 (Tract 1 A )</b>	<b>20<sup>7</sup></b>
<i>Fence/Wall/Berm/Shrub Max. Height</i>		<b>15 (Tract 3 A )</b>	
<b>Front Yard and Adjacent to Street</b>	<b>2</b>	<b>2</b>	<b>2</b>
<b>Rear and Side Yards not on Street</b>	<b>8</b>	<b>8</b>	<b>6</b>

\* The limitations described in this table are subject to, and in no way supersede, all applicable building codes and regulations. Developers shall at all times comply with the International Building Code, the International Fire Code, and all other local, state, or federal building codes or regulations.

\*\* As of the date this Agreement was originally approved, these zones correspond to the following Tracts: MF-4 (Tract 2A, Tract 5A.1); MF-R (Tract 1A, Tract 3A); MU (Tract 4A, Tract 5A.2).

<sup>1</sup> If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway.

<sup>2</sup> Staggered building facades and angled placement of structures relative to the front lot line are encouraged in all zones. The minimum setback requirement in the MF-4 zone is also a maximum setback or “build-to” requirement. In that zone at least 20% of the façade must be at the setback line (from the street right-of-way and Linear Parkway) if the structure is oriented parallel to the street. If the structure is oriented at an angle to the street, at least one structural corner of the structure must be located at the setback line.

<sup>3</sup> At 40 feet or 3 stories visible from street, remainder of floors must be set back at least 30% of the depth of the lot.

<sup>4</sup> Zero lot lines allowed pursuant to 27-617 Unified Zoning Regulations and for accessory structures and garages.

<sup>5</sup> Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15’) above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

## EXHIBIT C

### PART 1

#### PARKING REQUIREMENTS – MIXED-USE ZONE

<b>TYPE OF USE</b>	<b>REQUIRED PARKING (spaces / dwelling unit)</b>
<i>Residential</i>	<i>1.0/dwelling unit</i>
<i>Lodging</i>	<i>1.0/bedroom</i>
<i>Office</i>	<i>2.0/1,000 square feet</i>

Retail  
Other Uses

3.0/1,000 square feet  
To be determined by Zoning  
Coordinator  
upon request of  
Developer and  
consent of  
Reviewer

**PART 2**  
**JOINT PARKING FACTORS REDUCTION MATRIX**

Joint use parking agreements may result in a reduction of the combined parking requirements for the Units entering into the agreement. Allowable reductions shall be determined using the following joint parking reduction matrix by dividing the sum of the required parking minimums for each use as specified in Exhibit C, Part 1 by the joint parking reduction factor set forth in the following matrix.

	RESIDENTIAL	LODGING	OFFICE	RETAIL
RESIDENTIAL	1	1.1	1.4	1.2
LODGING	1.1	1	1.7	1.3
OFFICE	1.4	1.7	1	1.3
RETAIL	1.2	1.3	1.2	1

Example: A residential building with ten units requires 10 parking spaces and a neighboring 2,000 square feet office building requires 4 parking spaces. The adjusted minimum parking requirement for the two buildings is 10. ( $10 + 4 = 14 \div 1.4 = 10$ ). Similarly the adjusted minimum parking requirement for a ten unit residential unit and a 3,000 square foot retail store would be 16. ( $16 + 9 = 19 \div 1.2 = 15.83$ ). (Any remainder shall be rounded up.)

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



**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

---

**TITLE:** Nuisance Weeds, 2<sup>nd</sup> Reading of Ordinance  
Amending Section 25-300

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Nicole Cromwell, AICP, Planner II, Zoning Coordinator

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**PROBLEM/ISSUE STATEMENT:** Section 25-300 of the BMCC defines and regulates nuisance weeds within the city limits. The current regulations do not provide a method for property owners to properly appeal notices of violation or charges, fees and penalties for city removal of nuisance weeds. In addition, some of the language of the existing regulations is not in conformance with current state statute and is ambiguous. The City Council directed the Code Enforcement Division, the Planning and Community Services Department and the City Attorney to consider appropriate revisions to the existing regulations to address these deficiencies. The City Council held a public hearing on April 14, 2008, and voted to approve the ordinance on first reading.

**ALTERNATIVES ANALYZED:** The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed weed regulation amendments.

**FINANCIAL IMPACT:** There should be no direct financial impact to the City as a result of the new regulations.

**RECOMMENDATION**

The Code Enforcement Division, Planning & Community Services Department and the City Attorney recommends that the City Council approve the amendments to the nuisance weed regulations.

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

**ATTACHMENTS:**

A: Ordinance

**ATTACHMENT A**  
**ORDINANCE NO. 08-\_\_\_\_\_**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 25-300, WEEDS AND/OR OFFENDING VEGETATION, TO AMEND DEFINITIONS, DUTY TO REMOVE NUISANCE VEGETATION, NOTICE AND ADD APPEAL PROCEDURES, ADOPT THE REVISIONS AS AN AMENDMENT TO THE VEGETATION REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

**Section 1. RECITALS.** *Title 7, Chapter 22, Part 41, MCA, and Section 25-300*, allows the City of Billings to declare and determine what vegetation within the city or town shall be nuisance weeds; require the owner or owners of any property within the city to exterminate or remove nuisance weeds from their premises and the one-half of any road or street lying next to the land or boulevard abutting thereon; and provide the manner in which they shall be exterminated; and, in the event the owner or owners of any of said premises neglect to exterminate or remove the nuisance weeds, for levying the cost of such extermination or removal as a special tax against the property.

**Section 2. DESCRIPTION.** The regulation shall apply to all land within the City of Billings.

**Section 3.** That the Billings, Montana City Code be amended by revising Section 25-300 to delete language and add new language to the existing regulations to read as follows:

Sec. 25-301. Definitions.

[For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein:]

*Developed parcel* means any parcel of land that has been used or is being used for commercial or residential use with a principal structure covering over five (5) percent of the parcel.

~~*Offending vegetation* means vegetation which violates the sections of this article.~~

*Nuisance Weeds* means:

- (a) all weeds, grasses, noxious weeds, and untended vegetation growing in excess of twelve inches (12") in height located on any premises in the City,
- (b) any other untended vegetation creating a potential fire hazard, visual or physical obstruction for pedestrians or vehicles, potential for the spread of said vegetation, or unsightly condition.

~~*Owner and/or occupant* means any person who alone, jointly, or severally with others:-~~

~~(1) Has a legal or equitable interest in a dwelling unit, with or without accompanying actual possession thereof;~~

~~(2) Acts as the agent of a person having a legal or equitable interest in a dwelling or dwelling unit thereof; or~~

~~(3) Is the general representative or fiduciary of an estate through which a legal or equitable interest in a dwelling unit is administered.~~

means the title owner(s), representative(s) of any title owner, occupant(s), contract purchaser, or any other person or representative of any entity which holds a legal or equitable interest in any parcel.

*Ownership* means ownership of land which shall be deemed to exist from the center line of any abutting alley, to and including the curb and gutter area of any abutting street of such lot or tract of land.

*Parcel* includes both developed and undeveloped parcels.

*Undeveloped parcel of land* means any parcel of land zoned for but not currently being used for commercial or residential use.

~~*Weed* means any plant which:-~~

~~(a) Ordinarily grow without cultivation; and~~

~~(b) Is not grown for the purposes of landscaping or food production.~~

*Weeds cut or removed* means weeds that can normally be cut by the use of a push or ridden mower.

Sec. 25-302. Duty to remove nuisance weeds.

The existence of nuisance weeds ~~or offensive vegetation~~ in violation of this section constitutes a public nuisance.

(a) *Developed parcel.* It shall be the duty of every owner ~~(occupant)~~ of a developed parcel to cut, destroy or remove, or cause to be cut, destroyed or removed, all nuisance weeds in excess of twelve (12) inches in height growing thereon and upon one-half (1/2) of any road, street or alley abutting this property to a height of four (4) inches or less.

(b) *Undeveloped parcel.* It shall be the duty of every owner ~~(occupant)~~ of an undeveloped parcel to cut, destroy or remove, or cause to be cut, destroyed or removed, all nuisance weeds in excess of twelve (12) inches in height growing thereon and upon one-half (1/2) of any road, street or alley abutting this property to a height of four (4) inches or less on property located within one hundred fifty (150) feet of any developed parcel, road, or park.

(c) *Traffic hazards.* All nuisance weeds ~~and offensive vegetation in developed and undeveloped areas~~ on any parcel shall also comply with and be subject to all requirements imposed under sections ~~6-1204(b) and section 6-1205 [concerning]~~ 22-441, 22-443 and 27-615, B.M.C.C. concerning visibility at intersections, alleys and drive approaches.

(d) *City Property.* The City Administrator shall designate responsibility for removal of nuisance weeds on City properties to the appropriate City Department(s).

Sec. 25-303. Notice to destroy.

The city clerk or designee shall give notice to destroy nuisance ~~offending~~ weeds within the city limits by publishing notice to the public at least once each week for two (2) consecutive weeks in a newspaper of wide circulation within the city. The last publication shall not be less than seven (7) days prior to April 30<sup>th</sup> ~~thirtieth~~. Such notice shall at a minimum advise the public as follows:

(1) That all owners of real property ~~or agents having control thereof~~ are responsible for destroying all nuisance weeds in prohibited areas by extermination, removal or cutting not later than April 30<sup>th</sup> ~~thirtieth~~ of each year and to keep the areas free of nuisance weeds through September 30<sup>th</sup> ~~October thirtieth~~ of that year.

(2) Failure to remove the ~~offending~~ nuisance weeds may cause the city to cut or remove the weeds and charge the cost thereof against the real property together with an administrative cost equal to twenty-five (25) percent of the removal cost and a penalty of twenty-five dollars (\$25.00) for the first time the city provides the cutting/removal, fifty dollars (\$50.00) for the second cutting/removal and seventy-five dollars (\$75.00) for the third and any ~~following~~ subsequent times the city provides cutting/removal per ~~season~~ calendar year.

#### Sec. 25-304. Failure to comply.

Upon first failure, neglect or refusal to maintain the prohibited areas free from nuisance weeds during the prescribed period, the city shall give notice to the non-complying owner, agent or occupant thereof. Such notice shall provide as at a minimum:

(1) That the non-complying owner, or agent thereof, is shall be allowed seven (7) ten (10) days from the date of notice of noncompliance to exterminate or remove nuisance weeds;

(2) That upon failure to comply the city may by its own work forces or by contract cause the weeds to be exterminated, removed or cut and the cost thereof shall be assessed against the non-complying real property together with an additional administrative cost fee as set forth in sec. 25-303(2) ~~equal to twenty-five (25) percent of the cost of removal and a twenty five dollar (\$25.00) penalty~~;

(3) If the owner, ~~or agent of the property~~ of any parcel continues to neglect to maintain the prohibited areas free from weeds, allow nuisance weeds to grow in violation of this article after the City has already exterminated, removed, or cut nuisance weeds at that same parcel during the preceding 12 months, the city may at its sole discretion exterminate, remove or cut the weeds again as needed without any additional notice to the owner ~~of any kind~~. Charges as in Sec. 25-303(2) subsection (2), including penalty, will be assessed for each time the city removes the nuisance weeds;

(4) That the assessed amount together with costs and penalties shall constitute a lien on the non-complying real property and will be taxed as a special assessment against the real property.

#### Sec. 25-305. Notice.

~~Notice under this article is sufficient if served personally or mailed regular mail to the last known address or the last address shown on the tax rolls of the county. Upon mailing, the city clerk shall execute an affidavit of mailing. Notice shall be deemed given when deposited in a United States Postal Service receptacle.~~

Notice of a violation under this article shall be made by either:

(a) Posting a copy of the notice on the parcel;

(b) Mailing a copy of the notice by first class U. S. Mail to the owner of the property at the last known address shown on the tax rolls of Yellowstone County; or

(c) Personal service upon the owner.

Notice shall be deemed given and complete the day the notice is posted, mailed, or personally served.

Sec. 25-306. Failure to comply misdemeanor.

Any person who willfully fails to comply with the provisions of this article is guilty of a misdemeanor and upon a signed complaint or citation shall be punished as provided in section 1-110.

Sec. 25-307. Assessment.

(a) Annually the city shall prepare a list of all lots, tracts and parcels of real property within the city from which and adjacent to which nuisance weeds were removed or exterminated by the city and for which such charges and penalties have not yet been paid, the list shall include as a minimum the following:

- (1) Name as shown by the tax rolls, common address if known;
- (2) Tax code of the property;
- (3) Legal description of the lot, tract or parcel;
- (4) Cost of the weed removal for that property;
- (5) Administrative costs;
- (6) Penalty assessed.

(b) The assessment list shall be incorporated into a special assessment resolution in proper form which resolution shall be presented to the city council ~~for consideration~~. From and after passage of the resolution, the assessments stated therein, together with administrative costs and penalty shall constitute a special tax, as provided in MCA 7-22-4101 and a lien on the real property shown on the assessment list. A copy of the resolution after passage shall be certified to the official collecting the city taxes and assessments.

Sec. 25-308. Appeals

(a) In the event an owner disagrees with a notice of violation, or due to extreme hardship is incapable of complying with the provisions of this article, the owner may appeal a violation notice to the Director of Planning within seven (7) days of receiving the violation notice. Such appeal must be in writing and must set forth the specific reasons why the violation notice is not well taken, or why the owner is unable to comply with the provisions of this chapter. The Director of Planning shall review the appeal and make a determination as to the validity of the owner's basis for objecting to the action demanded, and shall promptly notify the owner of the decision reached. For good cause shown, or in cases of extreme hardship, the Director of Planning may make a determination that the provisions of this article are inapplicable to a certain parcel. Decisions of the Director of Planning are final, and subject only to judicial review.

(b) An owner may file a written appeal of any costs, fees and penalties imposed under this article to the Director of Planning within seven (7) days of being billed. Such appeal must be in writing and must set forth the specific reasons as to the owner's objections to the costs, fees, and penalties imposed. The Director of Planning shall review the appeal and make a determination as to the validity of the owner's basis for objecting the costs, fees, and penalties imposed, and shall promptly notify the owner of the decision

reached. For good cause shown, or in cases of extreme hardship, the Director of Planning may modify or waive costs, fees and penalties imposed under this article. Decisions of the Director of Planning are final, and subject only to judicial review.

Sec. 25-309. Time Calculations

All time periods referenced in this article shall be calculated as actual calendar days, including weekends and holidays.

**Section 6. REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 7. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 8. EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading April 14, 2008.

PASSED, ADOPTED AND APPROVED on second reading April 28, 2008.

CITY OF BILLINGS:

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

ATTEST:

BY:  
Cari Martin, City Clerk

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

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

TITLE: Amended Tract 1, Certificate of Survey 1815  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** The Amended Plat of Tract 1, Certificate of Survey 1815 is being presented to the City Council for approval. This exempt plat is being presented to Council, as the City owns the property involved in the boundary line adjustment and requires the Mayor’s signature on the plat. The result of this plat will be two parcels; the first is extending the boundary line of Lot 1 of Certificate of Survey 1815 and the second is creating a 10 acre remainder parcel located on the northwestern portion of the property for the school district to purchase. The plat would also grant a 30-foot wide access easement along the northern border of the property for access to the remainder (future school property) and will aide in the future widening of Poly Drive when the parcel is developed. In addition to the access easement, there is an extra 10-feet of right-of-way along 54<sup>th</sup> Street West to be dedicated with this plat in order to clean up the right-of-way along this street. The subject property is zoned Public and is on the northwest corner of the intersection of 54<sup>th</sup> Street West and Colton Boulevard.

**FINANCIAL IMPACT:** There should be no financial impacts to the city as a result of this plat.

**RECOMMENDATION**

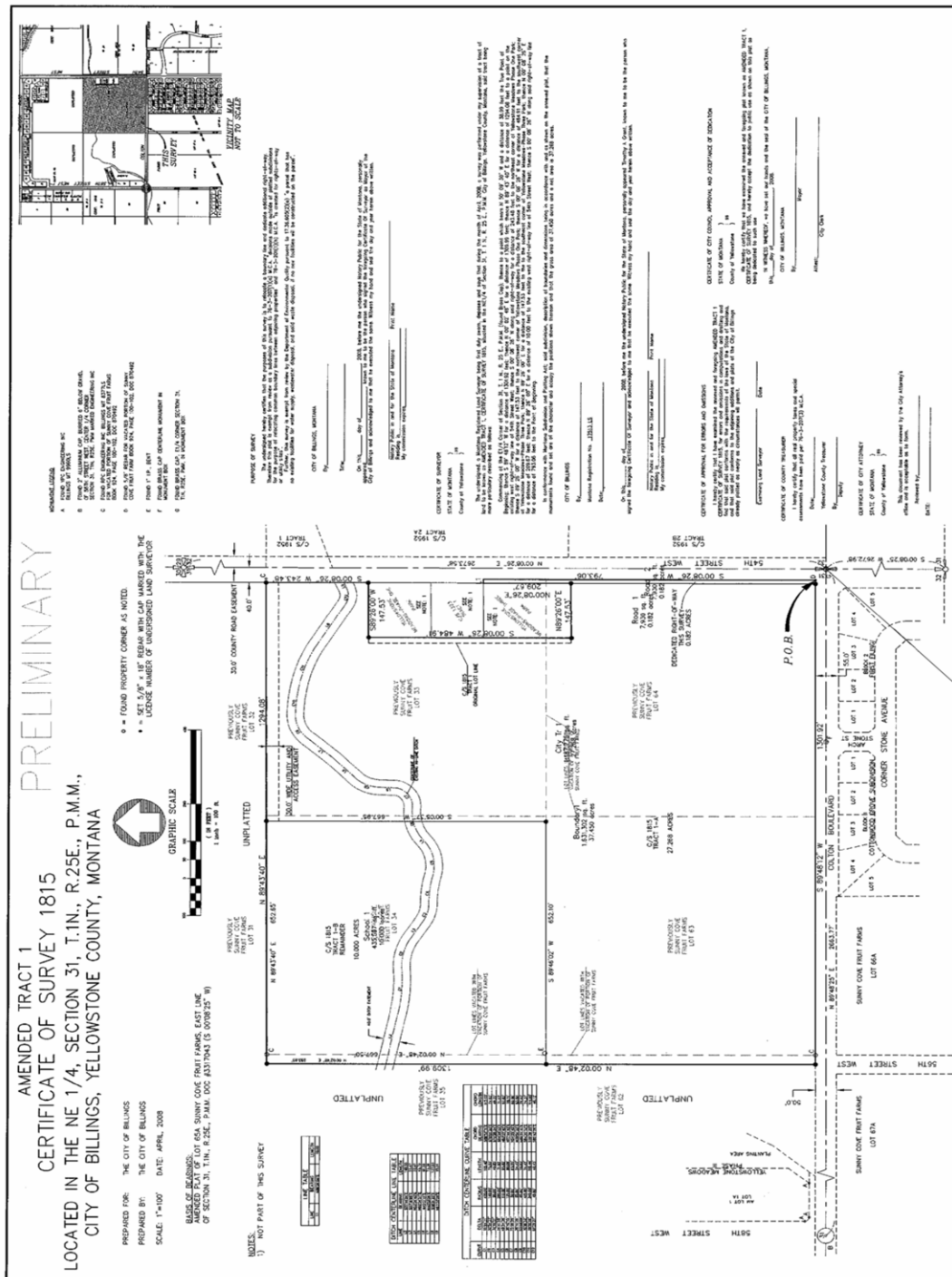
Staff recommends that the City Council approve the exempt amended plat of Tract 1 of Certificate of Survey 1815.

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

**ATTACHMENT**

A: Exempt Amended Plat

**ATTACHMENT A**  
Exempt Amended Plat



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



AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

**TITLE:** Final Plat of Amended Plat of Lot 4, Block 1, Stardust Subdivision  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** David Green, Planner I

**PROBLEM/ISSUE STATEMENT:** The final plat of Amended Plat of Lot 4, Block 1, Stardust Subdivision is being presented to the City Council for approval. The subject property is zoned Residential-9600 (R-96) and is located in the Billings Heights on the southeast corner of the intersection of Southern Hills Drive and Venus Circle. On November 26, 2007, the City Council conditionally approved the 2-lot preliminary subsequent minor plat on 31,505 square feet of land for residential development. Montana Assets, LLC, Arlin Stutznegger, owner, and the representing agent is Atlas Engineers.

The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

**RECOMMENDATION**

Staff recommends that the City Council approve the final plat of Amended Plat of Lot 4, Block 1, Stardust Subdivision.

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

**ATTACHMENT**

A: Final Plat

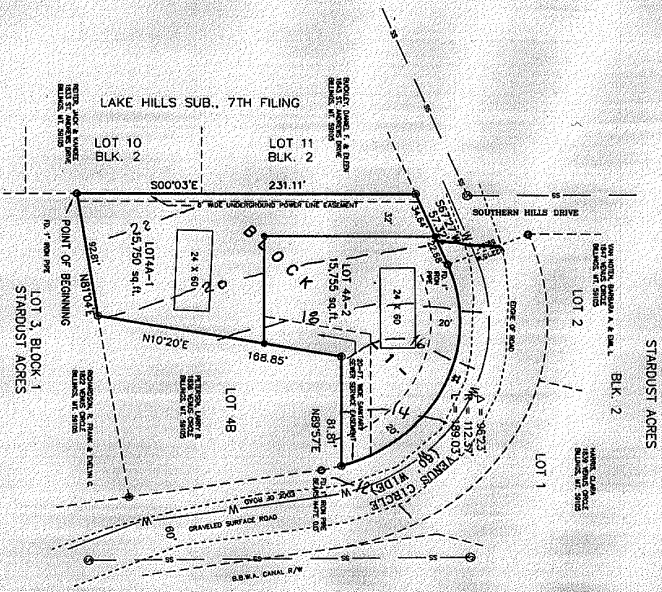
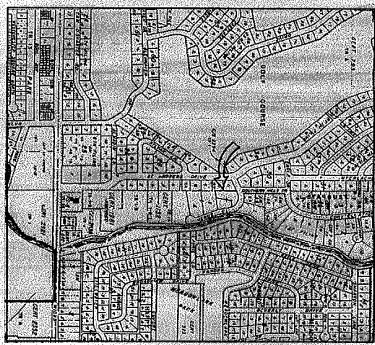
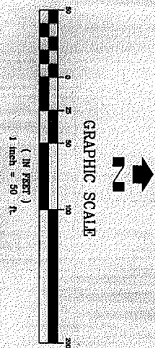
# ATTACHMENT A

## Final Plat

**PRELIMINARY  
AMENDED PLAT OF LOT 4A, BLOCK 1,  
OF THE AMENDED PLAT OF LOT 4, BLOCK 1,  
STARBUST ACRES SUBDIVISION**

LOCATED IN THE SW1/4 SECTION 15, T.1N., R.26E., P.M.M.,  
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

FOR: ARUN STUTZNEGER  
BILLINGS, MT.  
BY: ATLAS ENGINEERS INC  
BILLINGS, MT.  
DATE: JULY, 2007



**MONUMENTS:**  
CORNER MARKED WITH SYMBOL...  
WHICH PLACED OR SHOWN...  
SET BY THIS SURVEY OR AS MAY BE NOTED  
OTHERWISE.

**CORNER MARKED WITH SYMBOL...**  
WHICH PLACED OR SHOWN...  
SET BY THIS SURVEY OR AS MAY BE NOTED  
OTHERWISE.

**PURPOSE OF SURVEY:**  
THE PURPOSE OF THIS SURVEY IS TO CREATE A  
LOT FOR CONVEYANCE.

**BASE OF BEARINGS:**  
THE BASE OF BEARINGS FOR THIS SURVEY IS THE  
PLAT OF STARBUST ACRES.

SITE DATA	2 EA.	NOTE
NUMBER OF LOTS	2 EA.	NOTE
PARK DEDICATION	15,755 S.F.	
LARGEST LOT	15,755 S.F.	
SMALLEST LOT	15,755 S.F.	
GROSS ACREAGE	0.723 ACRES	
LENGTH OF STRIPTS (FEET)	NOTE	
ZONING	R-1810	

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

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

**TITLE:** Final Plat of Twin Oaks Subdivision  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Aura Lindstrand, Planner II

**PROBLEM/ISSUE STATEMENT:** The final plat for Twin Oaks Subdivision is being presented to Council for approval. On July 24, 2008, the City Council conditionally approved 132 lots on approximately 33.71 acres for residential development. The subject property is addressed as 120 Wicks Lane and is located directly adjacent to the north of Uinta Park Subdivision, south of Wicks Lane. The north half of the subject property is located within the Residential 5000 (R-5000) zoning district and the southern half is located within the Residential 6000 (R-6000) zoning district. The owner is Twin Oaks Development, LLC and the representing agent is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

**RECOMMENDATION**

Staff recommends that the City Council approve the final plat of Twin Oaks Subdivision.

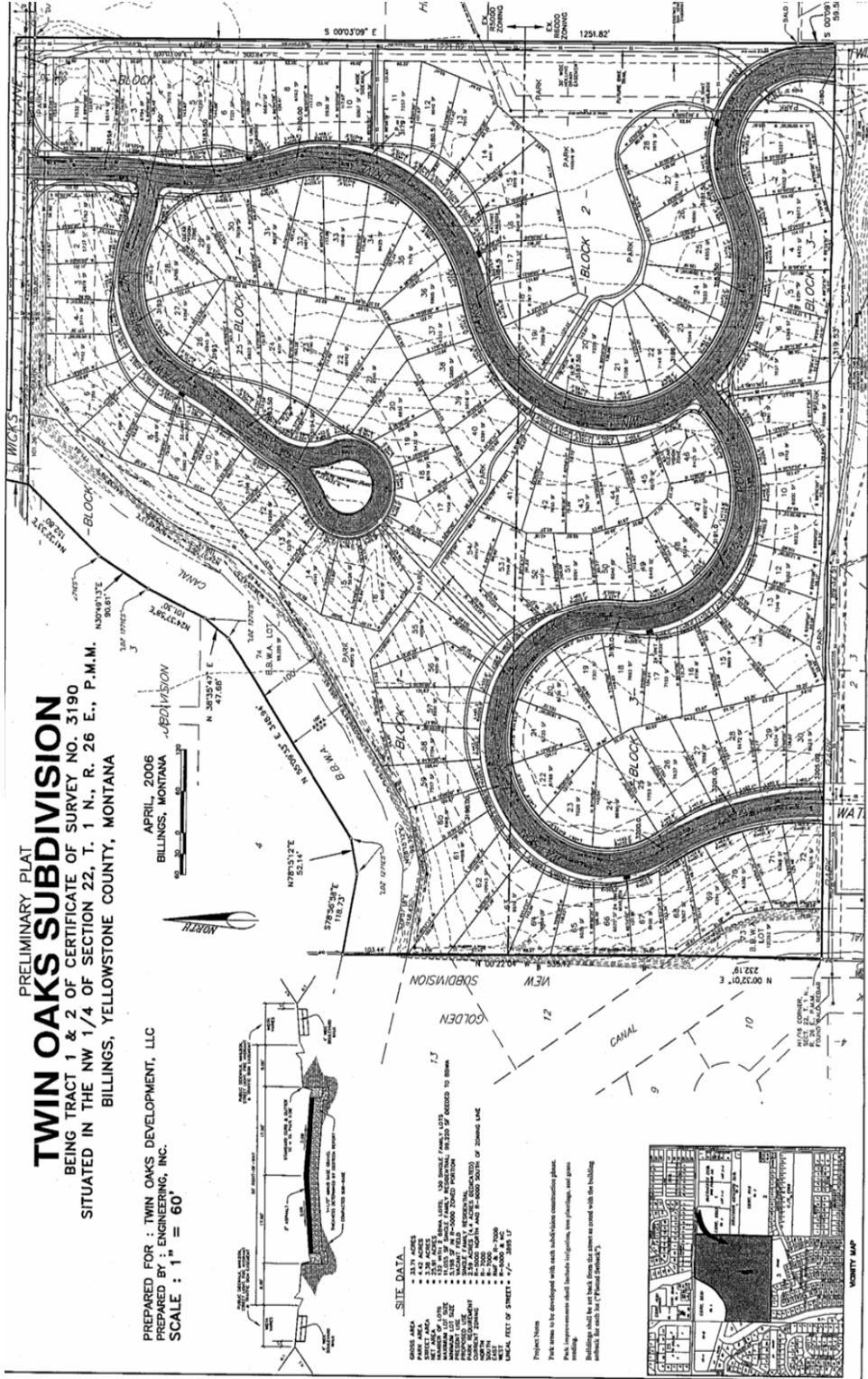
**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

A: Plat



# ATTACHMENT A



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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$905,881.34 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 28, 2008, are on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

---

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,104,799.28 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 4, 2008, are on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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TITLE: Public Hearing for Site Development Ordinance Variance # OP-08-02  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: Dave Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The Arthritis and Osteoporosis Center requests a variance from Section 1203(j) of the site development ordinance pertaining to the off-street parking so it may locate to an existing building that is currently unoccupied (Attachment B). The building is located at 708 Broadwater Avenue, on Lots 40 - 50, Block 4, Yellowstone Addition Subdivision. This property is located between 7<sup>th</sup> Street West and 8<sup>th</sup> Street West along the south side of Broadwater Avenue. The building was previously used as a grocery store, a second hand clothing store and a Lazy Boy Furniture store. The previous uses were retail. The new use is medical and constitutes a change of use and a change in the off-street parking requirements.

**ALTERNATIVES ANALYZED:**

1. Approve the variance. Approval of this variance will allow the Arthritis and Osteoporosis Center to operate the Center facility without meeting the Site Development Ordinance which covers the requirements for off-street parking needs.
2. Approve the variance with Conditional Deed Restrictions. Approval of this variance will allow the Arthritis and Osteoporosis Center to operate the facility without meeting the Site Development Ordinance which covers the requirements for off-street parking needs. These conditions would place restrictions on the property and the type of facility and usage that could be operated under the variance for this Owner and property. The Deed Restrictions for the property and variance are listed in "Attachment F".
3. Do not approve the variance. If this variance is denied, the owner's options to meet the requirements of the Site Development Ordinances will require redesign or relocation of the facility.

**FINANCIAL IMPACT:** There is no direct financial impact to the City. Advertising costs for the public hearing are offset by the variance application fee.

## **RECOMMENDATION**

Staff recommends that Council approve the variance with Conditional Deed Restrictions allowing the reduced number of off-street parking spaces required.

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

## **ATTACHMENTS**

- A. Application for Variance
- B. Photograph of the existing Building
- C. Proposed Site Plan - showing the 40 parking stalls
- D. Site Plan of Existing Site and Parking Lot Layout
- E. Letter From the Owners on Parking Needs
- F. Conditional Deed Restrictions



## **INTRODUCTION**

The Arthritis and Osteoporosis Center desires to relocate to an existing building. The building will be located at 708 Broadwater Avenue, on Lots 40 - 50, Block 4, Yellowstone Addition Subdivision. This property is located between 7<sup>th</sup> Street West and 8<sup>th</sup> Street West along the south side of Broadwater Avenue. The building was previously used as a second hand clothing store and before that Lazy Boy Furniture store. The previous uses were retail. Thus the new use is medical and constitutes a change of use and a change in the off-street parking requirements. The Arthritis and Osteoporosis Center therefore, requests variances for Section 6-1203(j) of the Site Development Ordinance. Section 6-1203(j) pertaining to the number of off-street parking stalls required.

## **BACKGROUND**

Collaborative Design Architects is the consultant for the design of The Arthritis and Osteoporosis Center and they provided a Proposed Site Plan for the variance showing the proposed lay out for the facility's off-street parking that will be constructed with the project and the parking that is located on the Arthritis and Osteoporosis Center's property (see attachment Exhibit "C").

In accordance with past City practices, Collaborative Design Architects and the owner is calculating the required parking 70 off-street parking requirements, based on Section 6-1203. Off-street parking requirements using the following parking requirements from Section 6-1203(j) Table of minimum standards.

### TABLE OF MINIMUM STANDARDS – OFF-STREET PARKING

- A. Medical doctor and dental clinics or offices located outside the medical corridor - 1 per 200 sq. ft. of gross floor area.

The existing building was previously used as a grocery store, a second hand clothing store and a Lazy Boy Furniture store. The previous uses were retail.

The new proposed use is medical and constitutes a change of use and a change in the off-street parking requirements.

The original retail requirements for off-street parking at this location required 52 parking stalls.

The change of use for the Arthritis and Osteoporosis Center would require 70 off-street parking stalls.

While the original existing site required 52 parking stalls 15 were actually in the arterial setback and under the city code are not to be counted as available off-street parking. Thus an actual off-street parking count according to the city code requirements and conditions would have been 37 parking stalls (Attachment D).

The Arthritis and Osteoporosis Center's proposed site plan (Attachment C) has revised the parking area in terms of closing drive approaches on to Broadwater Avenue and eliminating parking stalls that were previously in the arterial setback and in so doing have actually increased the off-street countable parking to 40 parking stalls. While also improving the traffic flow ingress and egress to the property as well as the public safety for pedestrians by removing the accesses from a principal arterial street.

Even with the revisions proposed by the Arthritis and Osteoporosis Center the center would still have a shortage of off-street parking of 30 parking stalls and would not meet the required off-street parking required in accordance with City Codes at this time.

The Arthritis and Osteoporosis Center has provided a letter addressing daily parking needs concerning the number of employees and patients estimating approximately 30 to 35 parking spaces on a daily bases. In addition, there is no walk-in business. (Attachment E).

Note worthy is the fact that the Arthritis and Osteoporosis Center has been working with property owners on the west side of the property to possible obtain some additional property to construct an additional parking lot, however, that option has not or may not materialize as a possibility.

- For the requested variance, the Site Development Ordinance reads as follows:
- Section 6-1203(j):
- *Table of minimum standards.* Required parking spaces shall be in conformance with the following table and where alternative standards are indicated, the greater requirement applies in conflicting computation; where the total quota results in a fraction the next highest full unit shall be provided.

### **ALTERNATIVES ANALYSIS**

1. Approve the variance. Approval of this variance will allow the Arthritis and Osteoporosis Center to operate the Center facility without meeting the Site Development Ordinance which covers the requirements for off-street parking needs.
2. Approve the variance with Conditional Deed Restrictions. Approval of this variance will allow the Arthritis and Osteoporosis Center to operate the facility without meeting the Site Development Ordinance which covers the requirements for off-street parking needs. These conditions would place restrictions on the property and the type of facility and usage that could be operated under the variance for this Owner and property. The Deed Restrictions for the property and variance are listed in "Attachment F".
3. Do not approve the variance. If this variance is denied, the owner's options to meet the requirements of the Site Development Ordinances will require redesign or relocation of the facility.

## **SUMMARY**

The Arthritis and Osteoporosis Center will only provide 40 of the 70 required parking stalls. On street parking is not recognized in this district as meeting part of the off-street parking requirements. The proposed site does not have the adequate space for any additional parking stalls as the site is currently proposed. It could eventually meet the requirements in the future should additional property be purchased or leased and a parking lot be constructed.

In the future, if the building is sold to be used as medical offices or similar usage and a change in use reducing the requirements does not occur, the new tenant would not be able to install or meet the parking requirements as the site currently is proposed or exists. Parking could become an issue if the new tenant is not interested in offering incentives for creating alternative transportation such as carpooling, riding the bus, walking, and riding bikes.

The parking that is being proposed or provided is a significant difference than what is required parking by City Ordinance.

## **RECOMMENDATION**

Staff recommends that Council approve the variance with Conditional Deed Restrictions allowing the reduced number of off-street parking spaces required.

## **ATTACHMENTS**

- A. Application for Variance
- B. Photograph of the existing Building
- C. Proposed Site Plan - showing the 40 parking stalls
- D. Site Plan of Existing Site and Parking Lot Layout
- E. Letter From the Owners on Parking Needs
- F. Conditional Deed Restrictions

Attachment "A"

Application # \_\_\_\_\_

APPLICATION FOR VARIANCE

- 1. Legal description of property: Lots 40-50, Block 4  
Yellowstone Addition
- 2. Address (if unknown, contact the City Engineer's office) or general location: 102 Broadwater
- 3. Owner(s): Broadwater Inc.  
(Recorded Owner)  
2108 1st Ave North, Suite 300  
(Address)  
298-0100  
(Phone Number)
- 4. Agent(s): Collaborative Design Architects  
(Name)  
2200 Grant Road  
(Address)  
298-2443 Jeff Fanning  
(Phone Number)
- 5. Section of the Site Development Ordinance that this request for variance applies to: 0-1203 off-street parking requirement
- 6. Reason for request: The existing building and parking is surrounded by public utility streets and private residences. There is no land available to expand the current parking area. The variance is requested to allow the remodeling and occupancy of an unoccupied bldg.
- 7. Covenants for deed restrictions on the property: Yes \_\_\_ No  (if yes, please include a copy)

I understand that the filing fee accompanying this application is not refundable, and that the fee does not constitute a payment for variance requested. Also, that all the information presented is true and correct.

Signature: [Signature] Date: 13 Mar 08  
(Recorded Owner)

Fee: \$ 00.00 Receipt #: \_\_\_\_\_

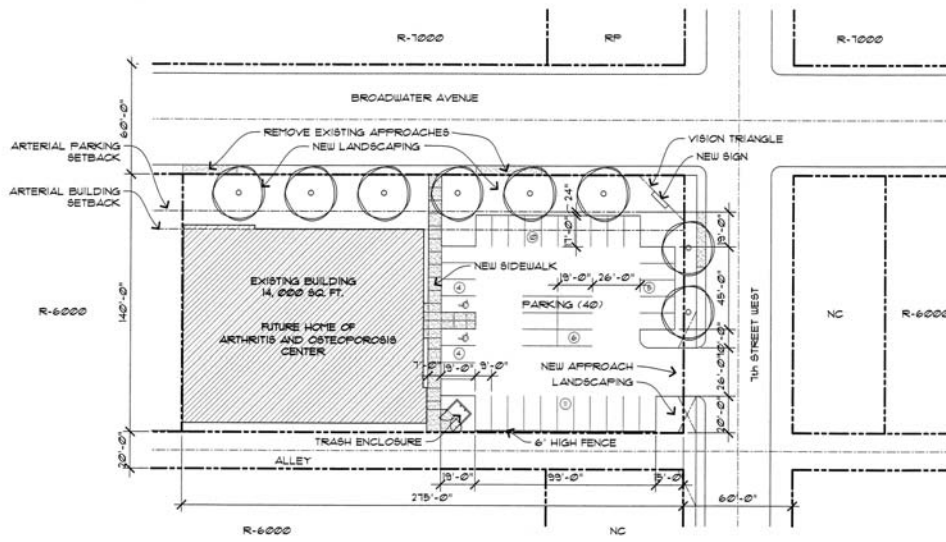
Hearing Date: \_\_\_\_\_

**Attachment " B "**



**EXISTING BUILDING – 708 BROADWATER AVENUE  
PROPOSED FUTURE HOME OF:  
ARTHRITIS AND OSTEOPOROSIS CENTER**

Attachment "C"



**1 SITE PLAN**

81 1'-00'-0"

TOTAL LOT AREA: 38,500 SQFT. (0.88 ACRES)  
 ZONING: NC - NEIGHBORHOOD COMMERCIAL  
 PARKING REQUIRED: MEDICAL 1 SPACE PER 200 SQFT.  
 EXISTING PARKING: 43 SPACES  
 NEW PARKING PROVIDED: 40 SPACES

SITE COVERAGE: 14,000 SQFT./38,500 SQFT. = 36%  
 LANDSCAPING CANOPY TREES @ 40' O.C. ALONG STREETS  
 GRASS - 8,193 SQFT. - 23%  
 ACTUAL PARKING NEEDS: PATIENTS - 20 SPACES  
 STAFF - 5 SPACES



PRELIMINARY - NOT FOR CONSTRUCTION

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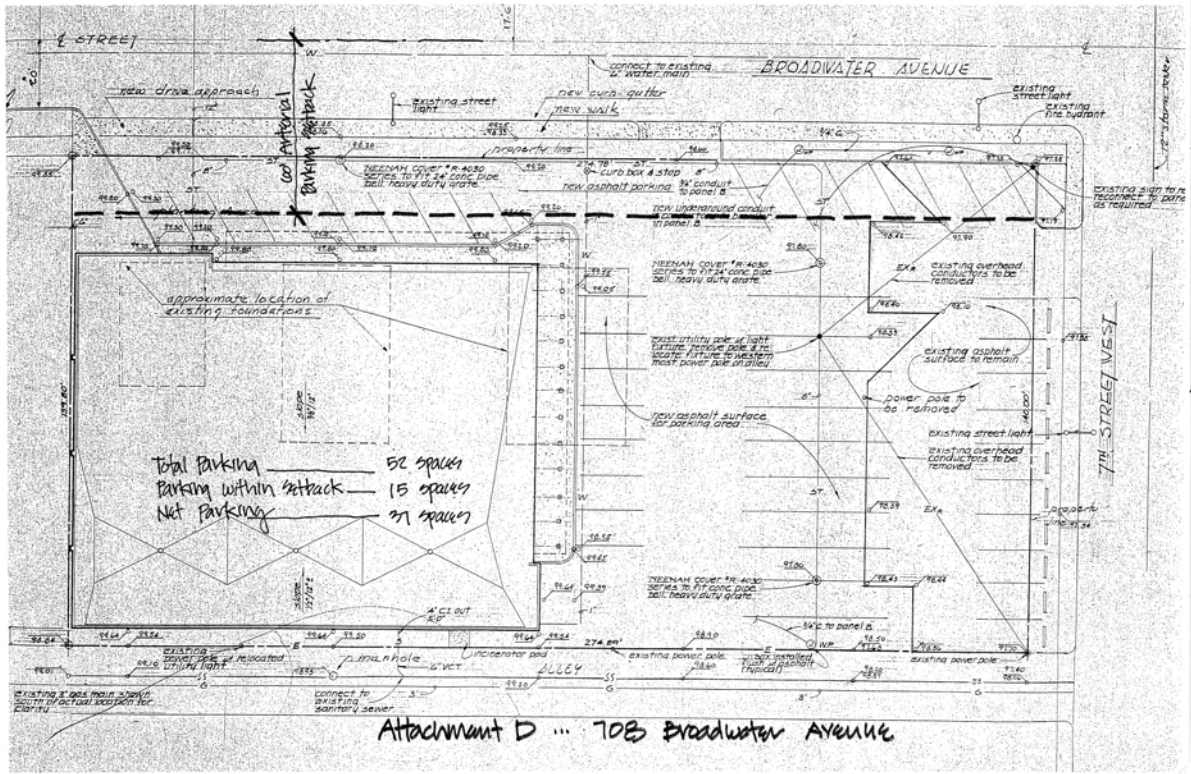
COLLABORATIVE  
 DESIGN  
 ARCHITECTS

PROJECT:  
 A+O CENTER REMODEL  
 LOCATION AND BROADWATER  
 BELLINGHAM, WA  
 ARCHITECT:  
 A+O CENTER

DATE:	
SCALE:	
BY:	
CHECKED:	
DATE:	
SCALE:	
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PROPOSED  
 SITE PLAN

S11



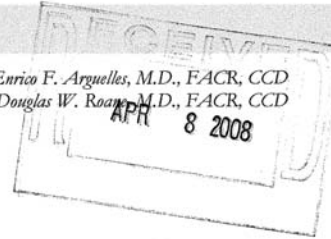


Attachment " E "

April 7, 2008

Wayne Ware, Senior Engineering Technician  
City of Billings Engineering Division  
510 North Broadway, 4<sup>th</sup> Floor  
Billings, MT 59101

Enrico F. Arguelles, M.D., FACR, CCD  
Douglas W. Roane, M.D., FACR, CCD



RE: Request for Variance (parking) at 708 Broadwater Avenue

Dear Wayne:


We are requesting a variance for the parking at the above referenced site. I would like to provide some information on our medical practice. We are a private practice, owned solely by the 2 rheumatologists, and we currently employ 16 people (some job-share and some are independent contractors who do not work in the office). We are a rheumatology practice (a sub-specialty) and our services include consults, bone density testing, and IV infusion therapy. We do not have any walk-in business. On any given day, we anticipate that we would require a *maximum* of 15 parking spaces for employees and another 15-20 *maximum* spaces for patients (a total of 30-35 spaces). The current parking at the building is 57 spaces. The architect has reconfigured the parking to meet city codes and it will now accommodate 40 parking spaces. We believe that the revised parking is quite adequate for the needs of our practice, now and into the future.

Since we have been working on getting the variance we have looked into the availability of additional property for parking. There is none currently available that would fit the requirements. We would ask that the city seriously consider our request for a parking variance that would allow us to renovate and develop this entire old building into a new and dynamic business. Without such a variance to allow us to develop the entire building, we will be unable to proceed with our plans. Our hope is that the city will see the benefits of allowing this variance in terms of increased property values in the neighborhood, increased tax revenue to the city, and increased employment opportunities for our community and state.

If we can provide any additional information, please do not hesitate to contact our office at 238-6102.

Sincerely,

  
Enrico F. Arguelles, MD, FACR, CCD

  
Douglas W. Roane, MD, FACR, CCD

cc: Jeff Kanning, AIA

2900 12<sup>th</sup> Avenue North, Suite 201E & 235W  
Billings, MT 59101  
(406) 238-6100 or (800) 648-6274 FAX (406) 238-6110



## Conditional Deed Restrictions

1. This parking variance reduces the number of required off-street parking spaces from 70 spaces to 40 parking spaces.
2. This variance approval is for the Arthritis & Osteoporosis Center’s proposed location of 708 Broadwater Avenue on property described as Lots 40 - 50, Block 4, Yellowstone Addition Subdivision. No other use or expansion of this approval is approved or implied.
3. Development of the property shall be in substantial conformance with the site plan dated this the \_\_\_\_\_ day of \_\_\_\_\_, 2008, unless specifically modified by this variance approval. Deviations from the approved site plan that changes the size, shape, square footage, use or location of buildings or parking spaces/areas will require additional City Council review and approval. Any unapproved deviation immediately revokes the variance and all applicable City of Billings parking regulations shall be met and will be enforced.
4. This variance approval shall run with the land, shall be filed and recorded as a permanent deed restriction of record and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
5. Approval of this parking variance does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This variance is for the use as noted and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted and approved site and parking plans.

A permanent deed restriction(s) will be placed on the property located at 708 Broadwater Avenue, and described as Lots 40 - 50, Block 4, Yellowstone Addition Subdivision, and is to run with the property ownership regarding a variance from the required off-street parking requirements. The variance is for a reduction of the required 70 parking spaces to 40 parking spaces. The parking variance is approved and affective as long as the property is used for the and limited to the activates which include the following:

Arthritis and Osteoporosis Center – The primary use is used for Rheumatologists, Consultations, Bone Density Testing & IV Infusion Therapy.

The property uses must conform to those mentioned above. If the property use does not meet those described, the parking variance will be immediately revoked and the parking must meet the City of Billings current parking requirements for the proposed use.

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Public Hearing and Contract to Real Estate Dynamics, Inc.  
 King's Green Phase III Housing Construction

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Candi Beaudry, Planning and Community Services Department  
 Brenda Beckett, Community Development Manager

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**PROBLEM/ISSUE STATEMENT:** The Community Development Division received a proposal from Real Estate Dynamics, Inc. (RED) in response to a Request for Proposals (RFP) issued by the Division for Phase III of King's Green Subdivision. Only one response was received. They are proposing to build 14 homes similar to those built in Phase I and Phase II. RED anticipates building 6 two-bedroom homes, 6 three-bedroom homes, and 2 four-bedroom homes. RED is proposing 100% of the total 14 homes will be affordable for households below 80% of Area Median Income. The Community Development Board reviewed the RFP and voted to approve the Development Agreement with RED on March 31, 2008.

**ALTERNATIVES ANALYZED:** (1) To approve the Development Agreement with Real Estate Dynamics, Inc.; (2) To not approve the Development Agreement with Real Estate Dynamics, Inc.

**FINANCIAL IMPACT:**

CDBG and HOME funds are provided by the United States of Housing and Urban Development to the City for affordable housing projects. HOME funds in the amount of \$350,000 were allocated for the infrastructure in this project and construction is underway. Other sources of funds RED is proposing to complete the project include acquiring a construction loan through First Interstate Bank. Homebuyers using City of Billings First Time Home Buyers program funds are eligible to use the MBOH 5.5% set-aside for their primary mortgage.

**RECOMMENDATION**

Staff recommends that Council approve a Housing Development Agreement with Real Estate Dynamics, Inc. for King's Green, Phase III. This agreement will be to build 14 houses of various bedroom sizes on City owned land in the King's Green Subdivision.

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

**ATTACHMENTS**

**A**      **Real Estate Dynamics, Inc.’s response to RFP**

## **INTRODUCTION**

The City of Billings conducted a Housing Needs Analysis in December 2004. The combination of household forecast and housing needs surveys were the basis for the housing needs assessment and the determination of the priorities to meet those needs. This report lists the critical concerns identified related to housing.

Affordable single family homes for purchase were perceived as the highest need, with 44.4% of respondents selecting this type of housing. The Housing Needs Analysis also has data on housing costs, which is collected from newspaper classified advertisements. The average sales price of a home in 2003 was \$147,959; the median price was \$130,020. The average sales price of a single family home in 2007 was \$201,513; the median price was \$179,900. These are well above the estimated sales price of the homes in this proposal.

In addition to mailing surveys, interviews were conducted with individuals in Billings who are knowledgeable about the housing market. These included builders, realtors, property managers, public housing authorities, human resource development councils, and social service agencies serving the elderly, disabled, special needs, low-income and other at-risk populations. Interviewees were first asked about the greatest unmet housing need in Billings related to homeownership. 80% indicated that affordable single-family homes for purchase were the greatest need, especially for low and middle income households. Many indicated that there were not any quality homes available for purchase under \$100,000, and few under \$120,000. Concern about income levels compared to housing costs was frequently mentioned.

The barriers to building new affordable housing were the increasing cost of construction and materials, and the increasing cost of infrastructure. Other barriers to homeownership were the lack of down payment assistance and a lack of knowledge regarding the home buying process and available assistance.

## **PROCEDURAL HISTORY**

- *February 1995* - Yellowstone County donated 14.5 acres of tax-deed property to the City of Billings. This land was donated by the County on the condition that it was used for the creation of affordable housing.
- *June 12, 1995* - A public hearing was held by the City Council on the proposed sale of the land. Many neighbors expressed concern over the development of the property. In response, the City Council placed four criteria on the development of the land to assure a quality development that would compliment the existing neighborhood. These criteria included:
  1. Property is to be used solely for affordable housing projects;
  2. Access must be provided to the adjacent park property;
  3. The development must mitigate negative impacts on the surrounding neighborhood; and
  4. All conditions will be enforced by a Development Agreement.

- *June 1995* - The City Council received a request for zone change. The project required a zone change from R5000 to R6000 which was opposed by the neighbors and the zone change was denied by the City Council.
- *August 1995* - City staff issued a Request for Proposals (RFP) for the use of the land from area developers, builders and non-profit organizations with proposals due on October 13, 1995.
- *October 1995* - Staff receives a proposal from Yellowstone Construction. Chuck Platt and Jerry Neumann were partners in Yellowstone Construction. The partnership is now dissolved and the new proposal was from Chuck Platt and Tim Hudson of Diamond Realtors and Laughlin Construction.
- *December 1995* - Public Hearing held on selection of developer. Yellowstone Construction's proposal accepted by City Council to build 68 homes.
- *May 1996* - The major plat was accepted by City Council.
- *August 1996* - Development agreement was approved and signed by Mayor Tooley.
- *January 1997* - City received preliminary contract for infrastructure cost of Phase I & II.
- *May 1997*- City quit-claimed first two lots to Yellowstone Construction to begin first phase.
- *June 1997 to June 2000* - City experienced flooding problems in the area causing the footings of the first two homes to flood halting project. City received letter from Chuck Platt and Jerry Neumann stating that project at present is not feasible as currently designed. They expressed interest in finding a solution stating that storm drain concerns must be addressed for the project and the existing neighbors for a successful project. The City hired an engineer to evaluate solutions to storm drain problems in the area. Yellowstone Construction quit-claimed the parcels back to City. City staff met with the developer and Southwest Corridor Task Force chairman to discuss preliminary storm drain report. Twenty-seven different alternatives were explored and narrowed down to two alternatives for final analysis by the engineer. City received a grant of \$300,000 to combine with other local resources to provide a storm water-retention facility for the area. Retention facility reviewed and closed out by State CDBG.
- *December 2001* - New RFP was issued with due date on January 18, 2002.
- *January 18, 2002* - One proposal was submitted by Diamond Realtors and Laughlin Construction.
- *March 2002* - Neighborhood meeting was held to discuss project and obtain feedback from people attending. Flood mitigation performed at site questioned as to its intended success.
- *March 2002* - Community Development Staff met with Public Works staff to discuss concerns.
- *April 2002* - Second neighborhood meeting held so that City Engineer could address storm drain concerns.

- *June 2002* - Third meeting was held to discuss housing plans and to obtain feedback. No concerns were expressed regarding housing but Task Force still concerned about storm drain issues.
- *August 2002* - Developer, City staff and Task Force Chairman meet at Kings Green site to discuss concerns and possible resolutions.
- *August 22, 2002* - Resolutions to further mitigate fears discussed and received support from task force to proceed.
- *September 3, 2002* - CD Board recommends approval of the project and entering into new development agreement.
- *October 2002* - Staff, developer and Engineering, Inc. staff worked on revising plat and submitting for approval.
- *December 2002* - Revised plat submitted.
- *December 2003* - Housing Development Agreement signed with Real Estate Dynamics, Inc.
- *December 2004* - Final home in King's Green, Phase I is purchased.
- *June 2005* - RFP Phase II King's Green.
- *August 2005* - Staff Recommendation to CD Board for Phase II King's Green.
- *November 2007* - Final home in King's Green, Phase II is purchased.
- *February 2008* - RFP for Phase III King's Green.
- *March 2008* - Staff Recommendation to CD Board for Phase III King's Green.

## **BACKGROUND**

This project shows a strong partnership and commitment in achieving affordable housing opportunities for the City of Billings. The developer has been involved with this project since inception and is very familiar with all of the history and challenges associated with the project. The Developer has also contributed a significant amount of time in working with staff and the Southwest Corridor Task Force to assure that the existing neighborhood has had an ample opportunity for input and participation in the proposed project.

Staff evaluation of the Selection Criteria of the RFP is presented below.

1. Quality of Response to the RFP and meeting the project goal: A total of 20 points was awarded to Real Estate Dynamics for these criteria:
  - a. Maximum quality for the most affordable price.  
*Quality and price are similar to Phase I and Phase II, 2 bedroom, 1bath, 3 and 4 bedrooms, 1.75 bath for estimated sales price of \$108,600 to \$139,800 (without the cost of land and infrastructure).*
  - b. Proposed site design/architectural design/landscape plan and other amenities.  
*Plans are to change the orientation of the houses, as well as offer differing garage choices in order to fit the lot size and create an illusion of differing houses.*

- c. Demonstration that the key parameters referenced in the RFP have been considered.

***All the items in the Proposal Content part of the RFP have been clearly answered in the response.***

- d. Compatibility with the surrounding neighborhood, including neighborhood acceptance and support for the proposed design.

***As the project concept is basically the same as Phase I and Phase II, and both phases have been accepted and supported by the neighborhood, this is adequate.***

2. Developer Experience: A total of 10 points was awarded RED:

- a. Previous successful experience with federally or state funded affordable housing projects.

***Real Estate Dynamics has experience with Phase I and Phase II, which included HOME Program funding for the infrastructure as well as First Time Home Buyers assistance through the City.***

- b. Success of comparable developments, as evidenced by the following: Economic success (success in attracting buyers or tenants, financing, etc.), and quality of past projects including architectural/site/ design/landscape/amenities.

***King's Green, Phase I and Phase II have been extremely successful. All houses were sold within 6 months of being built, and some of the last houses were sold before they were built. As was mentioned before, changing orientation of the houses on the lot gives the illusion of many differing floor plans.***

- c. Ability to deliver products as initially represented, on time and within budget.

***Phase I and Phase II were on time and within budget.***

- d. Clear lines of responsibility within the developer's organization, and between the developer's organization and any other joint venture participants, that the City can rely upon to be responsive and effective.

***The lines of responsibility between the three partners are clearly drawn and identified in the application. Past experience with this joint venture has been effective.***

- e. Overall architectural and landscape design quality of previous projects.

***The overall architectural and landscape design is similar to Phase I and Phase II, which is successful.***

2. Management/ Marketing Experience A total of 10 points was awarded RED

- a) Management success in comparable developments.

***Real Estate Dynamics, Inc managed and marketed Phase I and Phase II with great success.***

- b) Experience in developing and marketing mixed income housing.

***Phase I and Phase II were marketed and homes sold with great success.***

- c) Success in marketing and sales of developed units.

*Phase I and Phase II were marketed and homes sold with great success.*

- d) Evidence of commitment to outreach to low and moderate income buyers.

*RED is proposing 14 of the 14 homes be sold to low to moderate income buyers. 15 of 15 homes built in Phase II were sold to low to moderate income buyers and 9 of the 10 homes built in Phase I were sold to low to moderate income buyers; although the Development Agreement only specified 8 needed to be.*

- e) Affirmative marketing knowledge and experience.

*Two of the partners of Real Estate Dynamics are realtors who are familiar with and knowledgeable of affirmative marketing. Their plans are to continue to market on the MLS, highway and site signs and through the printed media. The project is also included for informational purposes only, in the Homebuyer Education class offered monthly by homeWORD, the City of Billings and Beartooth RC & D.*

### **HOME Requirements Review**

The HOME 25% match requirement will be met through the mortgages secured by the purchasers of the houses. HOME requires at least 51% of the units be target to 80% or less AMI;

### **RECOMMENDATION**

Staff recommends that Council approve a Housing Development Agreement with Real Estate Dynamics, Inc. for King's Green, Phase III. This agreement will be to build 14 houses of various bedroom sizes on City owned land in the King's Green Subdivision.

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

### **ATTACHMENTS**

- A.**     Real Estate Dynamics, Inc.'s response to RFP



**Request For Proposals**  
City of Billings  
Affordable Single Family Housing  
King's Green Subdivision, 2<sup>nd</sup> & 3<sup>rd</sup> Filing  
Phase III (14 lots)

RECEIVED  
MAR 14 2008  
COMM. DEV. DIV.

Submitted to:

Brenda Beckett, Director  
Community Development Division  
City of Billings  
510 North Broadway, 4<sup>th</sup> Floor  
Billings, MT 59101

Submitted by:

Real Estate Dynamics, Inc.  
145 Grand Avenue  
Billings, MT 59101

**Real Estate Dynamics, Inc.**  
145 Grand Avenue  
Billings, MT 59101  
(406) 256-0700

March 14, 2008

Brenda Beckett, Director  
Community Development Division  
City of Billings  
510 North Broadway, 4<sup>th</sup> Floor  
Billings, MT 59101

Re: Request for Proposals – Affordable Single Family Housing  
King's Green Subdivision, 2<sup>nd</sup> & 3<sup>rd</sup> Filing  
Phase III (14 Lots)

Dear Brenda:

Once again, we are excited to submit our proposal to continue our involvement with the City of Billings, Community Development Division on the successful, award winning, King's Green Subdivision project.

In Phase I & II, our successful marketing efforts included education of the public and the real estate community about the project and our product. The subdivision is designed and laid out in a way to maximize the curb appeal of the entire project and each home, by mixing the styles and the way each home is situated on the lots. Our homes are high quality, energy efficient, featuring in-floor radiant heat, maintenance free exterior, one level accessibility and universal design features. We found that by adding a 2-bedroom, 1,008 sq. ft. plan to the 3-bedroom 1,276 sq. ft. and 4-bedroom, 1,417 sq. ft. allowed us to meet the needs of six new buyers at a lower price point in phase II.

All of our homes are built to FHA compliance which gives buyers financing options including FHA, VA, Conventional, MBOH, City of Billings First Time Homebuyers Program and a combination of other programs available for this project. We are Equal Opportunity Employers, we follow the Fair Housing Act and we comply with all Federal Labor Standards under the HOME Program Regulations.

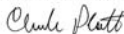
We feel very strongly about this project and the Public/Private Partnership approach to providing affordable housing to the public. The project is

working because of the combined efforts of everyone involved from planning, thru construction, qualifying, financing, closing and occupancy. The other reason this project works is because the buyers of these homes are responsible hard working people that qualify under the 80% guidelines of limited income and which includes having good credit and the ability to buy.

We are committed to the King's Green Project and we would like to continue our involvement in Phase III. This is a good project for the Homebuyers, Community Development Division, Real Estate Dynamics, Inc., for the City of Billings and for the use of Federal HOME funds.

Sincerely,

Real Estate Dynamics, Inc.



Chuck Platt, President

**Request for Proposals**  
**City of Billings (affordable single family housing)**  
**King's Green Subdivision**

March 14, 2008

**Question 1**

Real Estate Dynamics, LLC is pleased to provide the following proposal. We are a private, for profit Limited Liability Company, which employs Laughlin Construction, Inc. to build our homes and Diamond Realtors to market them. We are Equal Opportunity Employers and comply with all provisions of state and federal laws as do all of our subcontractors.

**Owners & Officers:**

Chuck Platt (Diamond Realtors), President, 610 30<sup>th</sup> Street West, Billings, MT 59102, 256-0700, Office, 861-8000 Mobile. Billings Realtor, Broker and Developer doing business in the community for the past 30 years.

Blake Laughlin (Laughlin Construction, Inc.), Vice President, 2530 Whittier Pl., Billings, MT 59102, 245-8268 Office, 855-8268 Mobile. General Contractor for 27 years, experienced with affordable housing, Energy Star, and Green building.

Tim Hudson (Diamond Realtors), Secretary Treasurer, 3780 Heritage Dr., Billings, MT 59102, 656-8896 Home Office, 690-0571 Mobile. Billings Realtor and Developer working with affordable housing for the past 30 years.

**Question 2**

Our concept for the King's Green Subdivision since the project started, has been to provide quality constructed, well designed, cost effective homes, on R-5000 lots, that are affordable to people in the 80% medium income level and below. By utilizing the assistance available with the lot credit and the various other first-time homebuyer programs, these homes will be affordable for families within this income range. In Phase I (10 homes) and Phase II (14 homes), the City's investment of HOME funds in the infrastructure was a key source of affordability for the buyers in the subdivision.

As in Phase I & II, we will continue to work with the City to protect and recover the investment of funding provided through the City's HOME program, in order to maintain sustainable affordable housing in the King's Green Subdivision. The assistance provided through the lot infrastructure credit was used in all but one of the first 24 homes sold.

The project addresses the specific needs outlined in the mail survey included in the January 2005 City of Billings – Community Development Division, Housing Needs Assessment. The needs included:

1. Lack of down payment funds which is addressed with the First Time Homebuyer Funds as well as the other programs available to buyers in the 80% median income and under.
2. Unable to afford the mortgage payment. Mortgage payments have been at rates in the 5% to 6% range in recent years which has helped to keep the rates low.
3. Cannot qualify for a mortgage because of past credit problems or other debts. This is an issue for all income levels. Good credit and low debts is essential for King's Green buyers and has been achieved by all the purchasers in Phase I & II.
4. Are unfamiliar or intimidated by the process of buying a home. The Homebuyers Education Workshops put on by homeWORD of Billings and in Laurel by Beartooth RC&D is a great educational resource and is part of the qualification process for King's Green buyers.

We offer three basic plans, 1,008 sq. ft. 2-bedroom - 1 bath, 1,276 sq. ft. 3-bedroom - 1.75 bath and 1,417 sq. ft. 4-bedroom - 1.75 bath.

See Exhibit A

**Floor Plans  
Amenity Package**

**Question 3**

Funding for the project has been arranged through 1<sup>st</sup> Interstate Bank of Billings. 1<sup>st</sup> Interstate Bank provided our construction lending for Phase I & II of the project and is quite familiar and comfortable with the project. We have another bank that has expressed interest in working on this project with us if we choose.

We have the capacity to build as many as five homes at one time. We will co-ordinate with Community Development Division of the City of Billings to assure our plan provides a smooth, controlled construction which matches the needs and funding sources for buyers. 1<sup>st</sup> Interstate is an active home lender who will provide permanent financing for our home buyers. Significant initial capital provided by the owners of Real Estate Dynamics, Inc., has been provided for project development, plan design, legal costs and insurance. Additional working capital has been provided by the owners to cover marketing, interest, material and labor costs to fund the project. Our financial plan

provides us with resources to construct, market and complete the 14 homes in Phase III prior to the end of December or 2009.

**Question 4**

This is a Fair Housing Opportunity for our target group which is the low to moderate income families. All of the 14 homes in Phase III will be sold to families in the 80% medium family income group or less, which is currently set at \$49,500 for a family of four. This will allow families to use a combination of lot assistance as well as First Time Homebuyer programs. In the Phase I & II, 23 of the 24 homes utilized some form of assistance.

Our marketing efforts are through a combination of sources. All of the homes will be fully exposed to the approximately 641 members of the Billings Association of Realtors Multiple Listing Service. We have worked to educate and assist low to moderate buyers with direct involvement with the Neighborhood Housing, homeWORD of Billings, Beartooth RC&D and the City of Billings Community Development Division. Proper disclosures, documentation and representation for real estate transactions has been maintained and provided in Phase I & II and will continue in Phase III.

Our marketing efforts combined with educating people on how the programs work for Phase I & II has proven highly successful. With the exposure through the Billings Realtors, printed media, highway and site signs we continue to receive many calls on the project and are accumulating a list of interested buyers for Phase III.

**Question 5**

All of the 14 homes in Phase III will be sold to families needing assistance. In Phase III, we anticipate 6 homes will be two-bedroom, 6 homes will be three-bedroom and 2 will be four-bedroom. Our open designs with "visit-ability" features are flexible enough to accommodate families with children, elderly, retired, or disabled couples or individuals, desiring one-level living with minimal or no steps. All of the homes feature quality kitchens with an abundance of cabinetry and appliances and counter space, wider hallways and doorways. The homes all feature maintenance free exteriors and efficient in-floor radiant hot water heat and extra off street parking.

**Question 6**

The homes in this project will be 2, 3 and 4 bedroom, 1.75 bath homes with a single car garage. In our design, we have the flexibility to provide, no garage, an attached garage, a detached garage and/or a larger garage. With the uniformity of home design, we project to provide homes with sales prices from \$108,600 to \$139,800. From the experience obtained in Phase I & II, we expect that the majority of the homes will be 3 bedrooms,

1.75 bath homes with a single garage and will sell for \$129,550. We are assuming that the infrastructure assistance for lots in Phase III will be similar to Phase I & II, which was \$25,600. All prices are subject to market changes and material price increases. We are comfortable that we can continue to control costs and assure a quality product which serves a broad customer base as described in the City's Housing Needs Study completed in January 2005.

**Question 7**

Our development schedule will be as follows:

1. Award of bid April 2008.
2. Begin construction on four homes in June 2008.
3. Construction time for the first two homes will be approximately 90 days.
4. Construction on the second two homes will be approximately 120 days.
5. Complete construction, sale and closing of 6 homes by December 2008.
6. Complete construction, sale and closing of the remaining 8 homes by December 2009.

**Question 8**

Based on the sales and demand we experienced in Phase II, we anticipate that as many as 6 or 7 of the homes will be 2-bedroom, 1-bath, and the remaining homes to be 3-bedroom, 1.75 baths, with the possibility of up to two 4-bedroom 1.75 baths. Our projected cost on a 2-bedroom design is as follows:

Lot site work	\$ 3,500
Architectural	650
Interest cost and loan fees	4,105
Taxes and closing costs	1,000
Selling fee	6,516
Marketing	500
Home construction	92,329
Total	\$108,600

**Question 9**

Construction phase of the project will be managed by Blake Laughlin, Laughlin Construction, Inc. Blake has managed the construction of Phase I & II of the projects using both his employees as well as sub-contractors through the completion of each home. At the same time, all three partners will continue to work closely with the Community Development Division, the South West Task Force, the Billings Association of Realtors, local lenders, homeWORD of Billings, Beartooth RC&D of Laurel and American Title & Escrow to insure smooth transactions from start to finish for buyers in the King's Green Subdivision.

**Question 11**

We will closely coordinate with the City on the infrastructure development of Phase III. Blake Laughlin of Laughlin Construction, Inc. will work closely with the engineers, contractors and the City to assure building sites are properly prepared and co-ordinated with Real Estate Dynamics, Inc. to maximize efficiency of building. The City will need to include the US Postal Service in the development plan along with other service providers in order to efficiently provide for future services. The Postal Service will require cluster boxes for mail delivery and should be included in the site development contract.

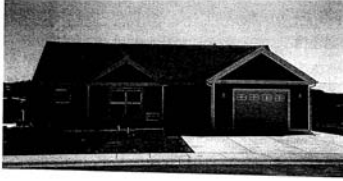
If Real Estate Dynamics, Inc. is selected for Phase III, we would once again propose to use the same contract that we are currently using for Phase I & II, after making the appropriate changes relating Phase III of the project.



Division of CLP, Inc.

145 Grand Avenue  
Billings, MT 59101  
Phone (406) 256-0700  
Fax (406) 256-0400  
e-mail: clp@tmt.net

**AFFORDABLE HOUSING PROJECT**

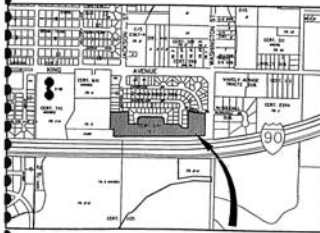


**King's Green Subdivision**  
2<sup>nd</sup> & 3<sup>rd</sup> Filing

**Chamberlain Drive**

**Quality One-Level Living**

- 1,276 sq. ft.
- 3 BR & 1.75 Baths
- Radiant In-Floor Heat
- Oversized Single Garage
- Qualifies for Buyer Assistance Programs



Marketed by:

**Chuck Platt**  
256-0700 Office  
861-8000 Mobile

**Tim Hudson**  
690-0571 Mobile  
656-8896 Office



**KING'S GREEN Subdivision 2<sup>nd</sup> & 3<sup>rd</sup> Filing**  
**Chamberlain Drive**

**3 Bedroom**  
**In-floor Radiant Heat**  
**All Kitchen Appliances**

**1.75 Baths**  
**Single Detached or**  
**Oversized Attached Garage**

**CONSTRUCTION FEATURES:**

**Exterior & Ease of Living Features:**

- Reinforced Concrete Monolithic Foundation
- In-Floor Hot-Water Radiant Heat with "No Wear" Stained Floor Surfaces
- R-15 Exterior Wall Insulation with Energy Wrap
- R-44 Fiberglass Ceiling Insulation
- Maintenance Free Vinyl Siding
- Maintenance Free Aluminum Fascia with Vinyl Soffit
- Steel Insulated Entry Door with Side Lite
- Oversized Single Garage w/Maintenance Free Metal Raised Panel Garage Door
- 30-Year Rated Shingles

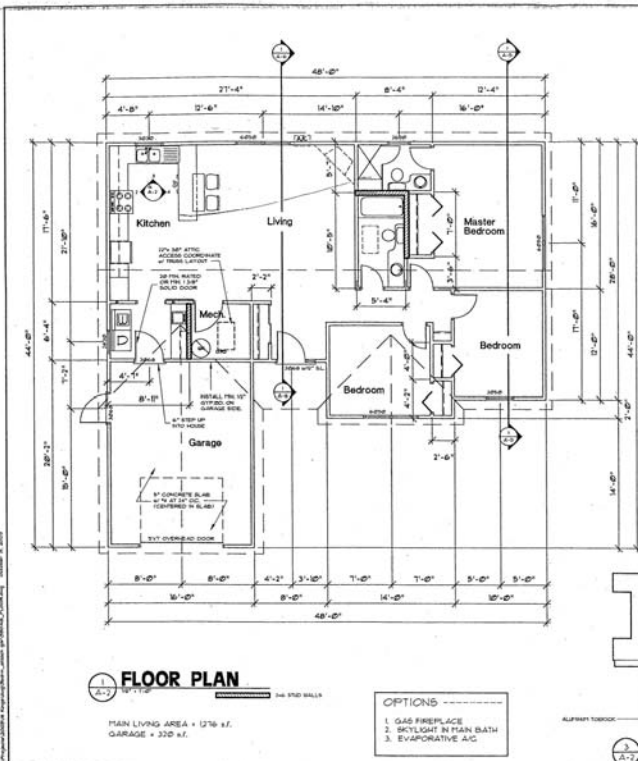
**Interior Features for Comfort & Pride:**

- All White Plumbing Fixtures
- Single Control "washerless" Chrome Faucets
- Main Bath with 60" One-Piece Tub
- Master Bath with 48" Walk-In Shower w/Seat
- Utility Room with Window, Sink, Folding Area and Washer/Dryer Hookups
- Large Kitchen with Stainless Steel Sink & Large Usable Counter Area
- Laminate Countertops with Bar Top
- Pendant Lighting above Breakfast Counter
- Maple Cabinets throughout with "New" Urban Features
- Hotpoint Range, Dishwasher, Refrigerator, Space-Saver Microwave & Disposal
- Drywall textured Walls with Two-Toned Paint Scheme
- White Painted Interior Doors, Casings & Trim

**VISIT-ability Design for Community Inclusiveness**

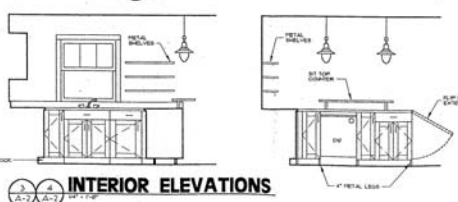
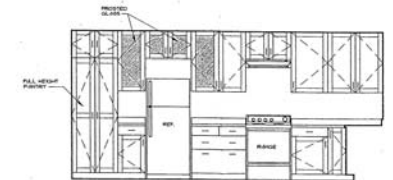
- No-Step Ease of Entry at the Front Door w/ADA Approved Interior Doors
- 1,276 Finished Sq. Ft. of Single Level Living
- Open, Spacious and Comfortable Home Design
- Two Off Street Parking Spaces
- Ease of Living with Low Maintenance Interior, Exterior and Yard Area
- Large Access to Attic Storage Space
- Bermed Parkway Corridor for Future Bike Path

2530 WHITTIER PLACE  
BILLINGS, MT 59102  
406.245.8268



**GENERAL CONSTRUCTION NOTES**

1. CONTRACTOR AND SUBCONTRACTORS ARE TO PROVIDE OWNER WITH LICENSE, EXPENSE AND INSURANCE COVERAGES AT THE TIME OF SUBMITTING PROPOSAL TO OWNER.
2. VERIFY FIELD DIMENSIONS & CONDITIONS BEFORE START OF CONSTRUCTION WORK. IN AFFECTED AREAS, IT IS TO BE RECOGNIZED THAT THESE DRAWINGS AND NOTES DO NOT ADDRESS EVERY DETAIL NECESSARY TO COMPLETE THE PROJECT.
3. BY BEGINNING CONSTRUCTION, THE CONTRACTOR AND SUBCONTRACTORS ACCEPT THAT THE INFORMATION AS PRESENTED IS ACCEPTABLE AND SUFFICIENT TO COMPLETE THE WORK.
4. PROVIDE BLOCKING IN WALL & PARTITIONS BEHIND ALL WALL MOUNTED ACCESSORIES, CABINETS & EQUIPMENT AS SHOWN ON DRAW. COORDINATE WITH OWNER ON LOCATIONS OF KITCHEN AND OTHER CABINETS.
5. CUTOUTS FOR MECHANICAL & ELECTRICAL ITEMS SHALL BE ACCOMPLISHED IN SUCH A MANNER THAT STANDARD REGISTRATION PLATES, COVERS, ETC. WILL ACCURATELY COVER ROUGH OPENINGS. OVERSIZED OPENINGS WILL BE NOTED TO MATCH ADJACENT FINISHED SURFACES.
6. ALL WALLS WILL BE 3 1/2" WOOD STUDS AT 16" O.C. UNLESS OTHERWISE NOTED. DIMENSIONS ARE TO THE CENTERLINE OR FACE OF STUD UNLESS A CLEAR DIMENSION IS NOTED.
7. SEE BY OWNER SPEC-OWNER FURNISHED CONTRACTOR INSTALLED (CFC)-CONTRACTOR FURNISHED, CONTRACTOR INSTALLED.
8. NOTE TO ALL SUPPLIERS: COLOR SAMPLES ARE TO BE PROVIDED THE OWNER FOR SELECTION PRIOR TO INSTALLATION. IF COLOR SELECTION AFFECTS FINISH, THE OWNER IS TO BE MADE AWARE OF THIS PRIOR TO SUBMITTING PROPOSAL.
9. CONTRACTOR IS RESPONSIBLE TO PROVIDE ROUGH-INS FOR PLUMBING AND ELECTRICAL FOR FIXTURES AS SHOWN ON THE PLANS. VERIFY CONNECTIONS, LOADS, TYPE OF SERVICE, ETC. WITH OWNER.
10. PROVIDE FLOOD PLAN CERTIFICATION PRIOR TO START.

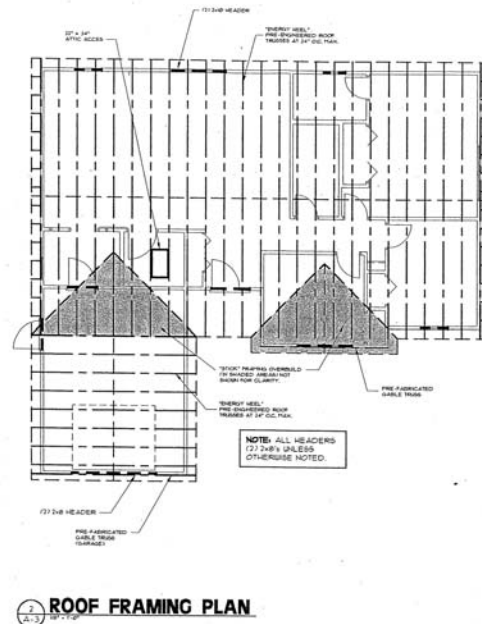
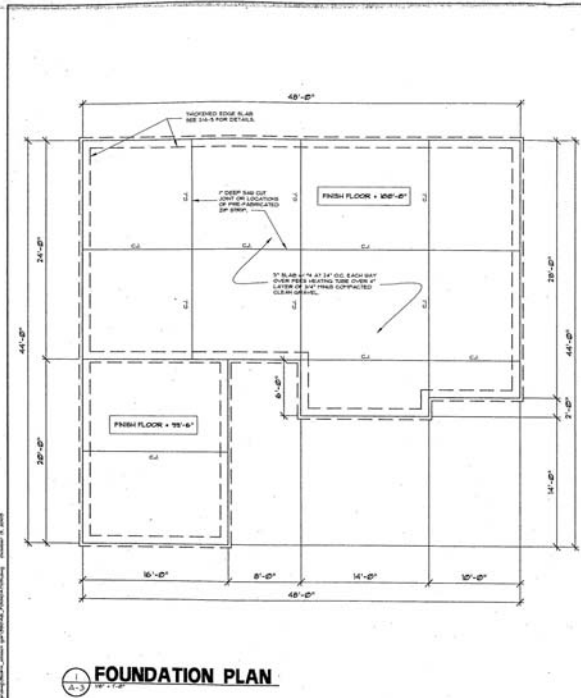


DESIGN BY: M&A  
 REVISION: 01/15/09  
 DATE: 05/05/09

THREE BEDROOM UNIT W/ ATTACHED GARAGE FOR:  
**AFFORDABLE HOUSING**  
 KING'S CREEK SUBDIVISION  
 BILLINGS, MONTANA

M&A  
 Myrte Atwood  
 ARCHITECTS AND DESIGNERS

PROJECT NO.: 09-001  
 SHEET NO.: A-2

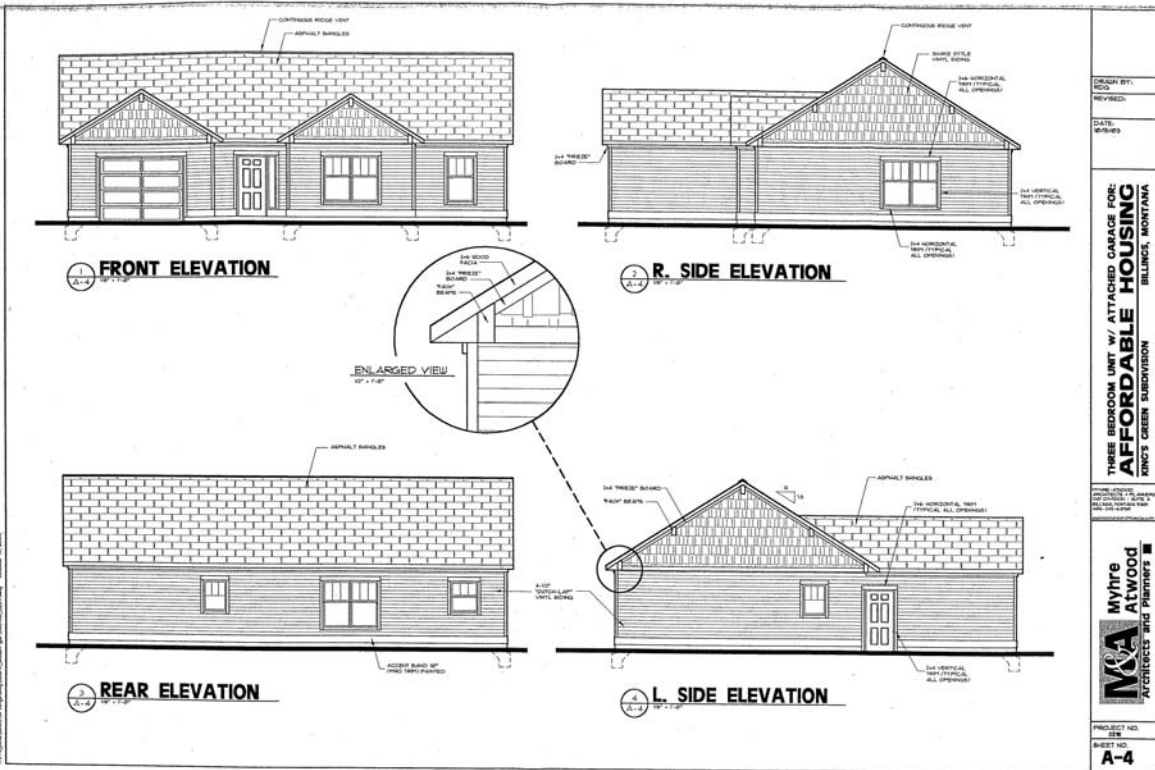


DESIGN BY: M&A  
 REVISION: 01/15/09  
 DATE: 05/05/09

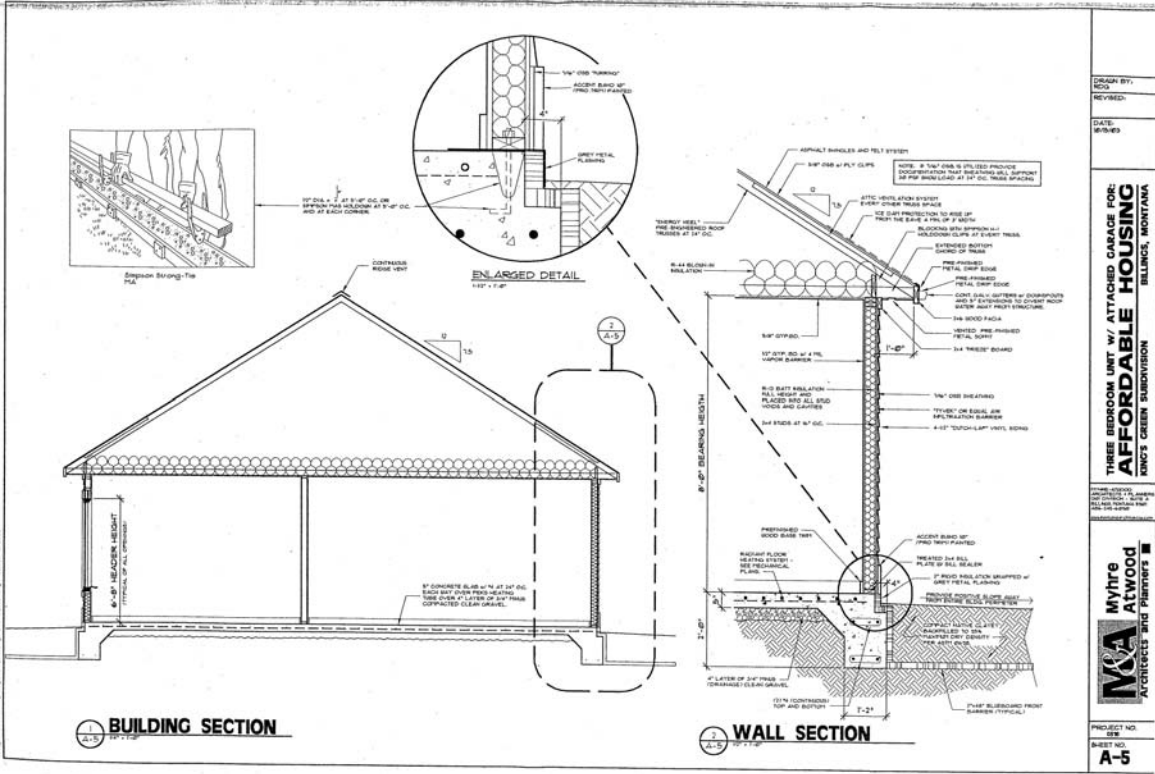
THREE BEDROOM UNIT W/ ATTACHED GARAGE FOR:  
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 BILLINGS, MONTANA

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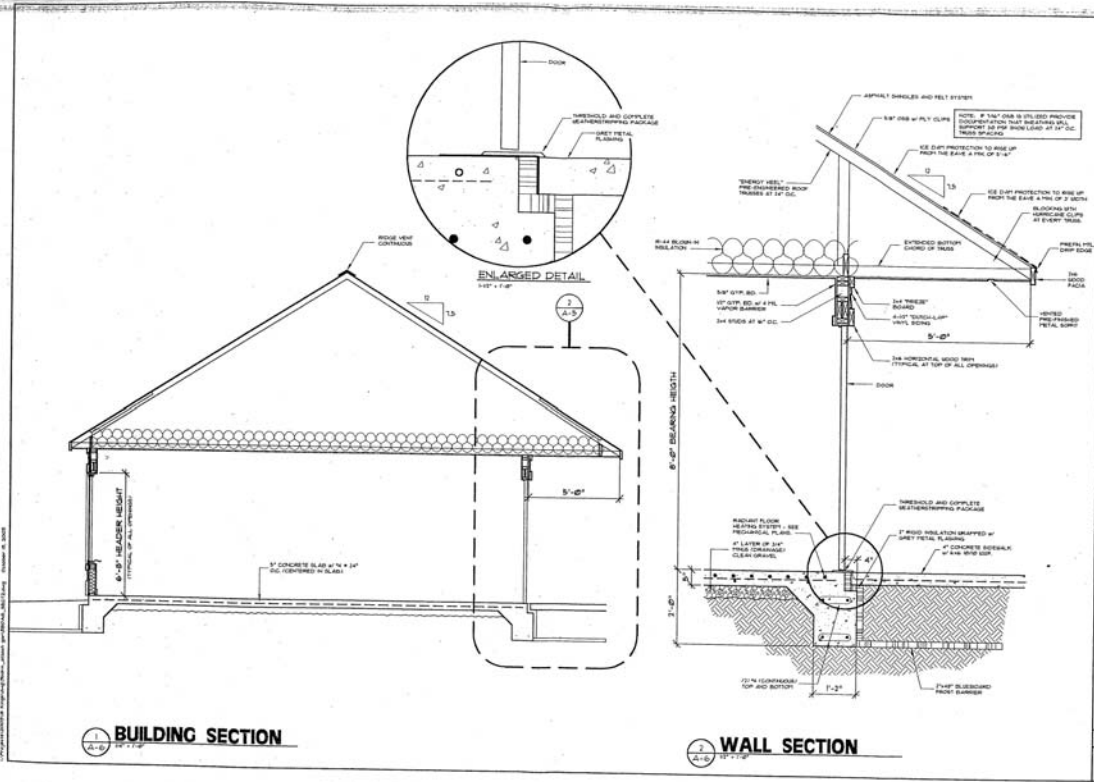
PROJECT NO.: 09-001  
 SHEET NO.: A-3



DRAWN BY: MCO  
 REVISIONS:  
 DATE: 05/18/12  
 THREE BEDROOM UNIT W/ ATTACHED GARAGE FOR AFFORDABLE HOUSING  
 BANC'S GREEN SUBDIVISION  
 M&A Myhre Atwood Architects and Planners  
 PROJECT NO. 038  
 SHEET NO. A-4



DRAWN BY: MCO  
 REVISIONS:  
 DATE: 05/18/12  
 THREE BEDROOM UNIT W/ ATTACHED GARAGE FOR AFFORDABLE HOUSING  
 BANC'S GREEN SUBDIVISION  
 M&A Myhre Atwood Architects and Planners  
 PROJECT NO. 038  
 SHEET NO. A-5



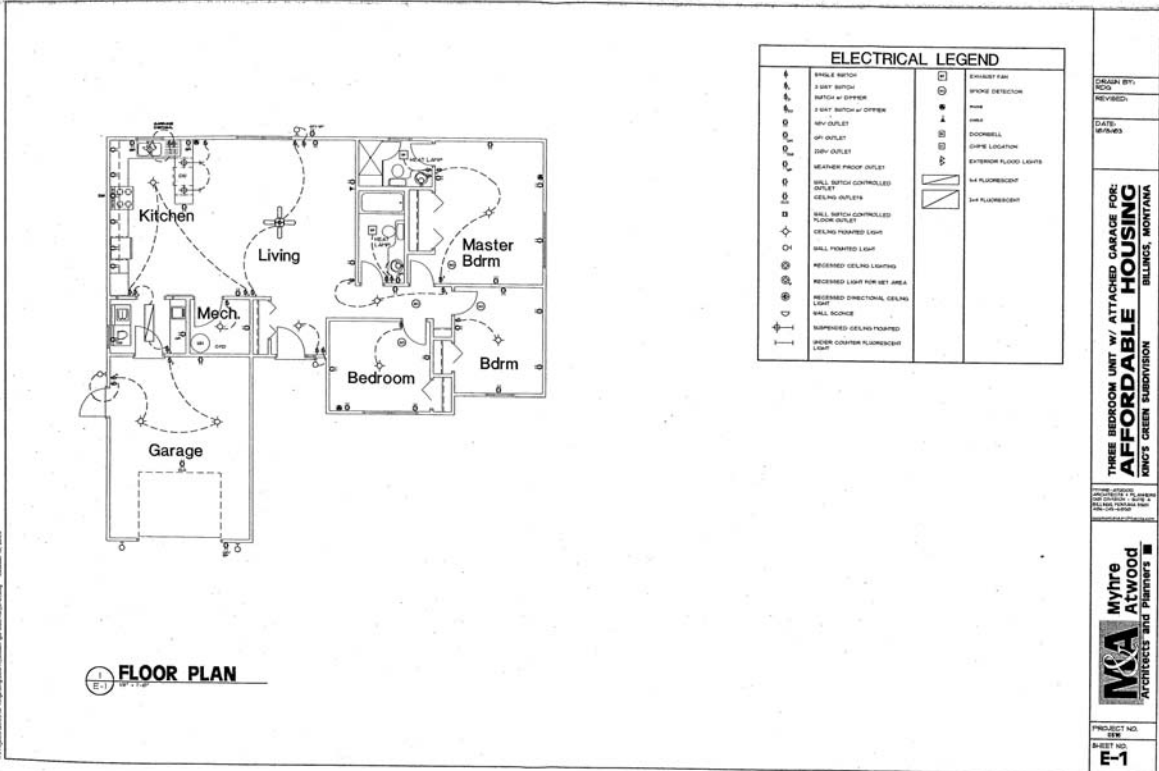
DRAWN BY: MCG  
 REVISIONS:  
 DATE: 05/05/03  
 PROJECT NO. 018  
 SHEET NO. A-6  
 THREE BEDROOM UNIT W/ ATTACHED GARAGE FOR AFFORDABLE HOUSING BILLINGS, MONTANA  
 Myhre Atwood ARCHITECTS AND PLANNERS

**STRUCTURAL NOTES**

- 1. GOVERNING CODES:**  
 INTERNATIONAL RESIDENTIAL CODE, 2000  
 AMERICAN INSTITUTE OF STEEL CONSTRUCTION, 9TH EDITION  
 AMERICAN CONCRETE INSTITUTE, 308-99
- 2. DESIGN CRITERIA:**  
 SNOW LOAD: 30 PSF +  
 WIND LOAD: RC - 50 MPH BASIC EXPOSURE "C" (WINDY CHECKED)  
 SEISMIC: ZONE 2  
 FOUNDATION: ASSUMED 1000 PSF ON NATIVE CLAYS (CONTRACTOR VERIFY)
- 3. MATERIALS:**  
 BOLTED CONNECTIONS: A571 A307 BOLTS  
 ANCHOR BOLTS: A571 A307 BOLTS  
 CONCRETE SLABS (INTERIOR): 3000 PSI AT 28 DAYS  
 CONCRETE SLABS (EXTERIOR): 4000 PSI AT 28 DAYS  
 ELSAHEM  
 REINFORCING STEEL BARS: A571 A63 - GRADE 60  
 #1 THRU #6 BARS: A571 A63 - GRADE 60  
 #7 #9 BARS: A571 A63 - GRADE 60  
 DIMENSIONAL FRAMING:  
 LUMBER - #2 SPRUCE-PINE-FIR: Fb = 875 PSI, Fv = 70 PSI, E = (4x10<sup>6</sup>) PSI  
 2x4 FRAMING - #2 SPRUCE-PINE-FIR: Fb = 925 PSI, Fv = 70 PSI, E = (4x10<sup>6</sup>) PSI (CONSTRUCTION GRADE)
- 4. FOUNDATION NOTES:**  
 1. PROVIDE 6" LAYER OF 1/2" CLEAN GRAVEL BELOW SLABS ON GRADE. COPPACTION OF FILL BENEATH SLABS ON GRADE SHALL SATISFY 35% MAXIMUM DRY DENSITY PER ASTM D698.  
 2. SOILS BENEATH FOUNDATIONS SHALL BE PROTECTED FROM FREEZING.  
 3. POSITIVE DRAINAGE AND/OR THE EXCAVATION SHALL BE PIPED TO PREVENT SURFACE WATER BUILD-UP DURING ALL PHASES OF CONSTRUCTION.  
 4. PRIOR TO FILL PLACEMENT, REMOVE ALL TOPSOILS, ORGANICS, DEBRIS AND OLD CONCRETE AND MASONRY. EXISTING SLABS IN EXCESS OF 48" BELOW BOTTOM OF EXISTING FOOTINGS MAY REMAIN.  
 5. ANY STRUCTURAL FILL REQUIRED BELOW FOOTINGS SHALL BE GRAVEL FILL COMPACTED IN 8" LIFTS TO 98% OF MINIMUM DENSITY PER ASTM D-1557 METHOD "D". THE STRUCTURAL FILL ZONE SHOULD EXTEND A DISTANCE OUT FROM THE EDGE OF FOOTINGS EQUAL TO THE DEPTH OF CUT.
- 5. CONCRETE:**  
 1. ALL CONCRETE SHALL BE READY MIXED AND SUPPLIED IN ACCORDANCE WITH SPECIFICATION REQUIREMENTS. NO WATER SHALL BE ADDED TO MIX AT JOB SITE.  
 2. MINIMUM COVER REQUIREMENTS:  
 CAST AGAINST EARTH + 3"  
 FORMED WALLS - 1 1/2"  
 TOP OF SLAB + 1"  
 3. CHAMFER ALL EXPOSED CORNERS 1/4" UNLESS NOTED
- 6. REINFORCING STEEL**  
 1. LAP REQUIREMENTS, 30 BAR DIAMETERS  
 2. CORNER BARS REQUIRED AT THICKENED SLAB LOCATIONS OF SIZE AND NUMBER OF HORIZONTAL STEEL AT ALL CORNERS AND INTERSECTIONS.
- 7. PREMANUFACTURED WOOD TRUSSES:**  
 1. DESIGN LOADS ARE 30 PSF SNOW + 8 PSF DEAD TOP CHORD + 1 PSF DEAD BOTTOM CHORD  
 2. TRUSS SUPPLIER TO FURNISH CONTRACTOR WITH SHOP DRAWINGS, INCLUDED IN THIS SUBMITTAL, ARE STRESS DIAGRAMS, CONNECTOR DESIGNATIONS AND BRACKING AND/OR BLOCKING REQUIREMENTS.  
 3. ADDITIONALLY, TRUSS MANUFACTURER IS TO PROVIDE INSTRUCTIONS TO CONTRACTOR FOR INSTALLATION OF PREMANUFACTURED TRUSS UNITS.  
 4. TRUSS DRAININGS ARE DIAGRAMMATICALLY SHOWN AND ARE THEREFORE INTENDED TO ESTABLISH OUTLINES OF TRUSS CONFIGURATIONS.
- 8. MISCELLANEOUS**  
 1. CONTRACTOR SHALL COORDINATE OPENINGS AND IMBEDDED ITEMS NOTED ON CONSTRUCTION DOCUMENTS WITH APPROPRIATE TRADE.  
 2. ALL SHOP DRAWINGS SHALL BE REVIEWED BY CONTRACTOR PRIOR TO FABRICATION.  
 3. STRUCTURAL COMPONENTS SHALL BE TEMPORARILY BRACED IN A MANNER TO RESIST EARTHQUAKE, WIND AND SNOW LOADS OR COMBINATION THEREOF UNTIL OSB ROOF DIAPHRAGM AND OSB SHEATHED SHEAR WALLS ARE IN PLACE AND SECURED PROPERLY.  
 4. SPECIAL INSPECTION OF BOLTED CONNECTIONS AND MASONRY WALLS WILL BE REQUIRED PER USC REQUIREMENTS.
- NAILING SCHEDULE**
- | CONNECTION  | ATTACHMENT   |
|---|--|
| 1. JOIST TO SILL OR GIRDERS, TOENAIL  | 3-16d  |
| 2. BRACKING TO JOIST, TOENAIL, EACH END   | 2-16d  |
| 3. SOLE PLATE TO JOIST OR BLOCKING, FACE NAIL   | 16d # 16" O.C.   |
| 4. TOP PLATE TO STUD, END NAIL  | 2-16d  |
| 5. STUD TO SOLE PLATE   | 4-16d TOENAIL OR 2-16d   |
| 6. DOUBLE STUDS, FACE NAIL  | 16d # 24" O.C.   |
| 7. DOUBLE TOP PLATES, FACE NAIL   | 16d # 16" O.C.   |
| 8. TOP PLATES, LAPS AND INTERSECTIONS, FACE NAIL  | 16d # 15" O.C.   |
| 9. CONTINUOUS HEADER, TWO PIECES  | 3-16d  |
| 10. ROOF JOISTS TO PLATE, TOENAIL   | 4-16d  |
| 11. CONTINUOUS HEADER TO STUD, TOENAIL  | 3-16d  |
| 12. ROOF JOISTS LAPS OVER PARTITIONS, FACE NAIL   | 3-16d  |
| 13. ROOF JOISTS TO PARALLEL PARTITION, FACE NAIL  | 3-16d  |
| 14. BUILT-UP CORNER STUDS   | 20d # 24" O.C.   |
| 15. BUILT-UP CORNER BEAMS   | 20d # 32" O.C.   |
| 16. 1/2" (40/20) OSB ROOF SHEATHING   | 16d # 16" O.C.   |
| 17. 1/2" OSB IN STAGGERED CONFIGURATIONS AT PANEL EDGE WITH 1" FLITCH UP BETWEEN EACH SUPPORT | # EDGES<br>16d # 12" O.C.<br># INTERMEDIATE FRAMING<br>8d # 6" O.C.<br># EDGES<br>8d # 2" O.C.<br># INTERMEDIATE FRAMING |
| 17. 1/2" (GRADE 2-11-0) OSB   |  |

DRAWN BY: MCG  
 REVISIONS:  
 DATE: 05/05/03  
 PROJECT NO. 018  
 SHEET NO. A-1  
 THREE BEDROOM UNIT W/ ATTACHED GARAGE FOR AFFORDABLE HOUSING BILLINGS, MONTANA  
 Myhre Atwood ARCHITECTS AND PLANNERS

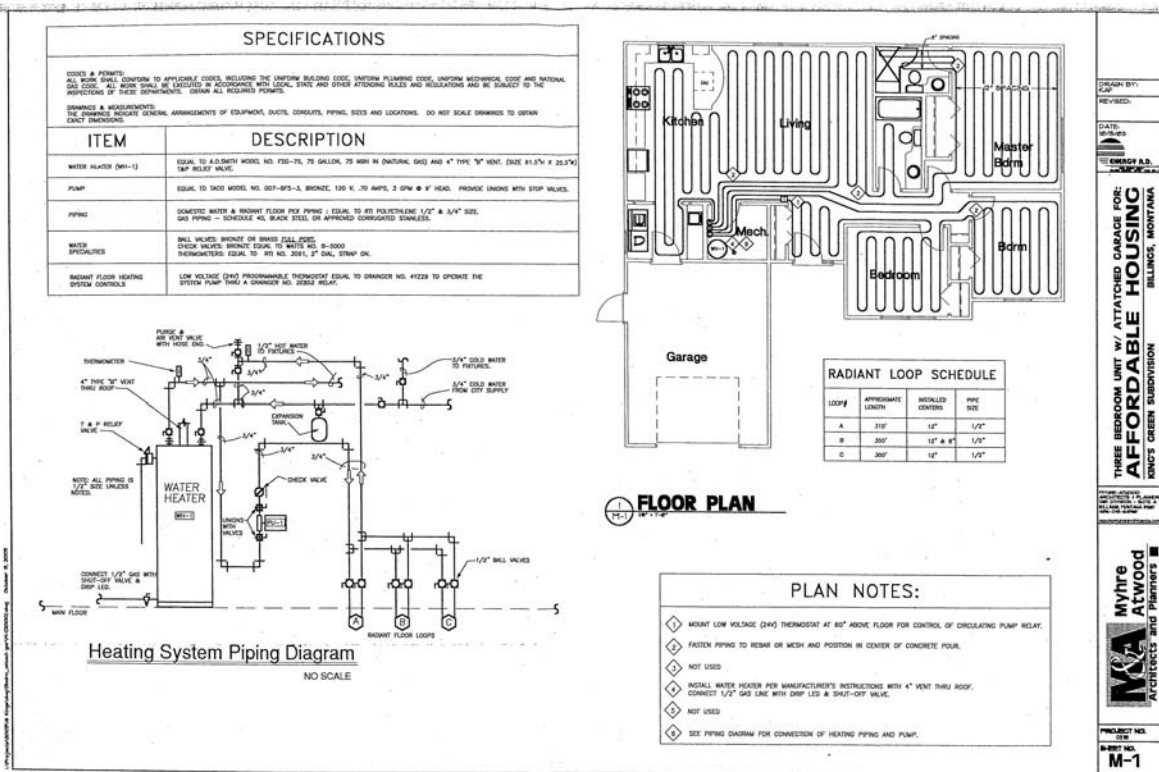




THREE BEDROOM UNIT W/ ATTACHED GARAGE FOR:  
**AFFORDABLE HOUSING**  
BILLINGS, MONTANA

Myhre Atwood Architects and Planners

PROJECT NO. 018  
SHEET NO. **F-1**



THREE BEDROOM UNIT W/ ATTACHED GARAGE FOR:  
**AFFORDABLE HOUSING**  
BILLINGS, MONTANA

Myhre Atwood Architects and Planners

PROJECT NO. 018  
SHEET NO. **M-1**

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Public Hearings for Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Programs and the FY2008-2009 Annual Action Plan

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Brenda Beckett, Community Development Manager  
 Candi Beaudry, Planning and Community Services Director

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**PROBLEM/ISSUE STATEMENT:** The City Council is scheduled to hold a public hearing on the allocation of the City of Billings FY2008-2009 CDBG and HOME funding and the fourth year Consolidated Plan Annual Action Plan for FY2008-2009 on Monday, April 28, 2008. Council action is scheduled on May 12, 2008.

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

**FINANCIAL IMPACT:** The public hearing will result in additional public input on the use of CDBG & HOME resources in Billings. In FY2008-2009, the City has \$701,191 in new CDBG funding and \$483,959 in HOME funding. Program income and funding remaining from completed projects brings the totals available for allocation for this fiscal year to \$853,771 for CDBG and \$629,205 for the HOME program. Federal revenues received for the CDBG and HOME programs are provided through the U.S. Department of Housing and Urban Development. The Community Development Board recommendations are attached and comply with funding limitations.

**RECOMMENDATION**

Staff recommends that the City Council hold a public hearing on April 28, 2008 to gather public input on the allocation of CDBG and HOME funds in the community for FY2008-2009 and the FY2008-2009 Annual Action Plan as the fourth year of the Consolidated Plan for FY2005-2009.

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

**ATTACHMENTS**

- A. FY2008-2009 Annual Action Plan (10)
- B. Community Development Board Recommendation (2)
- C. CDBG / HOME Programs FY2008-2009 Project Summaries (4)
- D. Task Force Priorities (4)
- E. FY2008-2009 Revenue (1)

## **INTRODUCTION**

The Community Development Board has made recommendations to City Council on the allocation of CDBG and HOME funding for FY2008-2009. On April 28, the City Council will hold a public hearing to provide public input on the recommendations and the allocation of CDBG and HOME resources in the community. Additional background on the Community Development Board's recommendation will be provided to the City Council prior to the public hearing during a work session on April 16, 2007.

Also for consideration is the FY2008-2009 Annual Action Plan representing the fourth year of planning for the FY2005-2009 Consolidated Plan. The purpose of the Consolidated Plan is to identify the housing and community development needs of low-income households in Billings and develop strategies for addressing those needs in a comprehensive, coordinated fashion utilizing available federal and non-federal resources. The Annual Action Plan for FY2008-2009 will serve as the planning tool for the City's CDBG and HOME Programs.

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

The City Council is asked to consider the input that is received and make a final decision on the FY2008-2009 CDBG and HOME budgets and FY2008-2009 Annual Action Plan on Monday, May 12, 2008.

## **PROCEDURAL HISTORY**

The City of Billings has been receiving CDBG funds since the mid-1970s and HOME funds since the early 1990s. These funds are provided by the federal government and are primarily targeted in Billings to address the affordable housing and neighborhood revitalization needs of the community. The FY2008-2009 budget represents the fourth year Action Plan to implement the City's 5-Year Consolidated Plan. The Consolidated Plan identifies strategies for the use of housing and community development resources in the community.

In allocating CDBG and HOME resources, the City of Billings goes through an extensive process to gather public input on the use of the funds. This year's applications were available at the beginning of December and due at the end of January. Task force input was requested in February and March. The Community Development Board held budget hearings on the use of

the CDBG and HOME resources on March 20 and 21 and prepared its recommendation on March 31. A copy of the priorities of the task forces, as received during this process, is included in Attachment D.

The City Council public hearing is required by the Federal government and is part of the 30-day public comment period on the program beginning April 4 and extending to May 9. The City Council is scheduled to act on the CDBG and HOME programs on May 12. An application will then be submitted to HUD for its review and the program year will begin July 1, 2008.

## **BACKGROUND**

The April 28 public hearing on the FY2008-2009 CDBG / HOME budget and the FY2008-2009 Annual Action Plan is part of the public input process for the use of these funds in the community. Each year the City of Billings requests application for the use of these funds for housing and community development activities. These applications are then forwarded to the Community Development Board, which prepares its recommendation for the City Council consideration.

The City is required to provide no more than 20% of its CDBG funding for administration, fair housing and planning type activities (\$156,950) and **must** provide 15% (\$72,594) of its annual HOME allocation for activities carried out by nonprofit housing development organizations or CHDOs (Community Housing Development Organizations). The City is required to provide no more than 10% of HOME funding for administration activities (\$62,921). The City can allocate up to 15% of CDBG resources (\$118,081) to nonprofit organizations or other projects classified as public service activities, ranging from daycare to crime prevention activities.

The City received 18 applications for housing and neighborhood activities and 18 applications for public service funding. Project summaries for activities proposed this year are included as Attachment C. CDBG and HOME resources represent the main federal commitment to communities to address the need to preserve the existing supply of affordable housing and promote the development of new affordable housing. Few other federal, state or local resources are available to address these housing needs.

Comments of the speakers at the public hearings may relate to the significant decrease in funding. Last year funding available for public services totaled \$136,111. This year's available funding is \$118,081. The total request for funding in public services was \$206,507 for FY2008-2009.

## **ALTERNATIVES ANALYZED**

The allocation of funding is restricted by the eligibility requirements for CDBG and HOME funding. Projects are focused on activities that promote new affordable housing or preserving the existing supply of affordable housing and those neighborhoods where the affordable housing stock is located. The applications for housing and neighborhood activities are consistent with this

focus. The Community Development Board reviewed the proposed projects and analyzed various alternatives for funding.

## **STAKEHOLDERS**

Stakeholders for the CDBG and HOME programs include:

1. Applicants for funding - The City receives applications from a variety of nonprofit organizations which apply for public service funding or for housing funding, such as, Living Independently for Today and Tomorrow and Yellowstone County Council on Aging. A summary of the applicants is included as Attachment C and the complete applicants are available online at <http://www.ci.billings.mt.us/Living/cdd/applications.php> .
2. Neighborhood Task Forces – The task forces communicate neighborhood needs and solutions to those needs utilizing both CDBG and HOME resources. Task forces are also asked to prioritize housing and neighborhood applications. These priorities have been provided in Attachment D for your review.
3. The Community Development Board, as an advisory body to the City Council, provides detailed oversight to both the CDBG and HOME programs throughout the year and facilitates an extensive process to prepare recommendations for the City Council consideration.

## **CONSISTENCY WITH ADOPTED POLICIES OR PLAN**

Projects proposed for consideration are consistent with the goals and objectives of the adopted FY2005-2009 Consolidated Plan for the use of CDBG & HOME resources in Billings. Five primary strategies are proposed in the FY2005-FY2009 Consolidated Plan to meet the diverse needs of Billings' lower-income households. These needs have been primarily identified through the 2005 Billings Housing Needs Assessment completed for the City of Billings by Montana State University-Billings Center for Applied Economic Research. This needs assessment was undertaken utilizing focus groups, individual interviews, a community survey, and an examination of census and housing market data.

The work and input from neighborhood groups and community partners resulted in the identification of the following four characteristics of the community that the City of Billings will attempt to address with housing and community development activities: (1) Increasing housing cost compared to income and its effect on low income renters and homeowners in achieving safe, decent & affordable housing; (2) An aging population and the associated increase in the percentage of the population with disabilities; (3) A slight decrease in the price of rental housing and short term concern over the number of multi-family units scheduled to be constructed; and (4) The age and condition of the community's affordable housing stock, particularly in the older neighborhoods surrounding the City's Central Business District.

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

### **Strategy #1**

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

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

### **Strategy #2**

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

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

### **Strategy #3**

Promote new affordable housing opportunities by:

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

### **Strategy #4**

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

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

### **Strategy #5**

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

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

Proposed goals and objectives for each of these strategies for FY2008-2009 are identified in the Annual Action Plan included as Attachment A. The complete Draft FY 2005-2009 Consolidated Plan including the 2005 MSU-B Housing Needs Assessment is available for review at <http://www.ci.billings.mt.us/Online/PDF/Living/cdd/reports/2005%20Housing%20Needs%20Analysis.pdf>

### **SUMMARY**

N/A

### **RECOMMENDATION**

Staff recommends that the City Council hold a public hearing on April 23 to gather public input on the allocation of CDBG and HOME funds in the community for FY2008-2009 and the FY2008-2009 Annual Action Plan as the fourth year of the Consolidated Plan for FY2005-2009.

\* The Draft 2008-2009 Annual Action Plan is available for review online at:

<http://www.ci.billings.mt.us/Living/cdd/reports.php>

\*\* Each application is available for review on line at:

<http://www.ci.billings.mt.us/Living/cdd/applications.php>



**ATTACHMENTS**

- A. FY2008-2009 Annual Action Plan (10)
- B. Community Development Board Recommendation (2)
- C. CDBG / HOME Programs FY2008-2009 Project Summaries (4)
- D. Task Force Priorities (4)
- E. FY2008-2009 Revenue (1)

## City of Billings, Montana

### ANNUAL ACTION PLAN FY 2008-2009 CDBG / HOME Programs

#### **EXECUTIVE SUMMARY**

This is the City of Billings' fourth year Action Plan of a 5-year strategic plan that identifies activities it will undertake in 2008-2009 to address priority needs in the community. The draft Annual Action Plan is open for public comment extending from April 4 through May 9, 2008. A public hearing will be held on April 28, 2008 during the Billings City Council meeting to accept public comments on the Annual Action Plan and Community Development Board recommendations for funding. The Action Plan for FY 2008-2009 serves as the budget for the City's FY 2008-2009 Community Development Block Grant (CDBG) Program and HOME Investment Partnerships Program (HOME). Projects proposed for this year are found in Appendix A and funded projects can be found in Appendix G.

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

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

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

3. To expand economic opportunities including creating jobs accessible to lower-income individuals, providing access to credit for community development activities which promote long-term economic and social viability and empowering lower-income persons in federally assisted and public housing to achieve self-sufficiency.

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

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

### ***Available Funding, Expenditure Limits and Match Requirements***

CDBG administration and planning activities are budgeted at \$156,950, which is 20% of our new CDBG allocation (\$701,191) and program income (\$83,561). Reprogrammed funding (cancelled or completed projects) includes \$69,019 that has also been added to this year's budget for allocation. One hundred percent of available funding will be used to benefit low to moderate-income households.

The amount of funding available for Public Service Activities is \$118,081. This amount represents 15% of prior year income (15% of \$86,018 is \$12,903) and the new CDBG allocation (15% of \$701,191 is \$105,179), and no additional reprogrammed funding from Public Services from prior years. Declining federal resources limit the City's ability to provide funding for Public Service activities (see Appendix A).

HOME administration activities are budgeted at \$62,921, which includes 10% of new HOME revenue (10% of \$483,959 is \$48,396) and program income (10% of \$145,246 is \$14,525).

The City of Billings meets HOME matching requirements through low-interest financing available for First Time Homebuyer Loans issued through the Montana Board of Housing (MBOH) and matching funds provided for other affordable housing projects undertaken with HOME funds, such as private contributions and other local bank financing. MBOH contributed \$5.3 million in set-aside financing during FY2007-2008.

### ***Past Performance***

The City of Billings received comments from the U.S. Department of Housing and Urban Development regarding Comprehensive Annual Performance Evaluation Report (CAPER) in

January. The overall evaluation concluded the City of Billings CDBG and HOME programs are making strides in providing affordable housing and addressing community needs.

### ***FFY2005-2009 CONSOLIDATED PLAN SUMMARY***

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

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

1. Increasing housing cost compared to income and its effect on low-income renters and homeowners in achieving safe, decent and affordable housing;
2. An aging population and the associated increase in the percentage of the population with disabilities;
3. A slight decrease in the price of rental housing and short-term concern over the number of multi-family units scheduled to be constructed in 2005; and
4. The age and condition of the community's affordable housing stock, particularly in the older neighborhoods surrounding the City's Central Business District.

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

### ***FFY 2005-2009 STRATEGIC PLAN***

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

#### ***Strategy #1***

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

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

### ***Strategy #2***

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

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

### ***Strategy #3***

Promote new affordable housing opportunities, by:

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

### ***Strategy #4***

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

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

### ***Strategy #5***

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

- Supporting efforts of community organizations to address the human service needs of lower income residents of the community in general and our lower income neighborhoods in particular; and

- Supporting the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.

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

<http://www.ci.billings.mt.us/Online/PDF/Living/cdd/reports/5%20Year%20Consolidated%20Plan%20FY2005-2009.pdf>

<b>FFY 2008-2009 ANNUAL PLAN</b>		
<b>Strategy #1 - Promote the preservation of the existing supply of affordable housing in the community.</b>		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2008-2009 Goals</i>
Provide affordable financing to lower income homeowners to perform needed repairs.	Complete substantial rehabilitation <sup>1</sup> work through the Housing Rehabilitation Loan Program.	12 homes
	Complete minor rehabilitation work through the Minor Home Repair Program.	15 homes
	Provide funding for single purpose rehabilitation projects targeted to elderly and special needs lower income homeowners. Providing funding to organizations increases the total leveraged funding available for repair programs.	Assist with repairs for the elderly and disabled by working with non-profit organizations such as: LIFTT (7 ramps), YCCOA (50 repairs), and Rebuilding Together (4 homes).
	Pursue grant and private funding to support activities that increase resources available for housing rehabilitation activities.	Staff support & coordination to Rebuilding Together and other organizations performing rehabilitation.
Provide affordable financing to rehabilitate rental units affordable to lower income residents.	Complete substantial rehabilitation work to rental units for occupancy by lower income, elderly and special needs households through the Rental Rehabilitation Program.	5 rental units
Reduce the loss of existing standard housing units affordable to lower income households due to redevelopment activities.	Continue to work with organizations involved with redevelopment activities to promote the preservation of the existing supply of affordable housing and to mitigate the effects of demolition or conversion when it does occur.	Continue working with the Affordable Housing Task Force to continue work on housing guidelines <sup>2</sup> .
<b>Strategy #2 - Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.</b>		
<i>Objective</i>	<i>Implementation Plan</i>	<i>2008-2009 Goals</i>

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

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

Preserve the housing stock in older lower income neighborhoods.	See also implementation plan for strategy #1.	-
	Support house painting program for lower income homeowners.	5 homes
	Support Tree Program to remove and replace diseased or dangerous trees for lower income homeowners.	12 trees through public service activities
	Support activities that help preserve historic properties.	Support annual YHPB work plan.
Provide incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods.	See also implementation plan for strategy #3.	-
Support activities that provide amenities and address the infrastructure needs of older lower income neighborhoods.	Support planned neighborhood improvements included in City's Capital Improvement Plan.	Implement City's FY2008-2009 CIP and projects funded through CDBG.
	Provide Special Assessment Grants for lower income households to help pay for SID's resulting from the City's public improvement projects.	30 homeowners
	Encourage the redevelopment of the South 27 <sup>th</sup> Street Corridor.	Complete 1 new redevelopment project.
	Encourage the implementation of the Heritage Trail Bike Plan in lower income areas in conjunction with the Healthy Communities "Built Environment" initiative.	Plan and seek funding for needed improvements in low-income neighborhoods.
	Promote historic preservation activities in a coordinated manner through Historic Preservation Organizations.	Support annual YHPB work plan.
Support efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities.	Support Neighborhood Planning efforts and provide on-going support for monthly task force meetings.	Complete Neighborhood Plans.
		Staff support for newsletter monthly mailings.
		Facilitate task force initiatives as requested.
<b>Strategy #3 - Promote new affordable housing opportunities.</b>		
<b><i>Objective</i></b>	<b><i>Implementation Plan</i></b>	<b><i>2008-2009 Goals</i></b>
Encourage the development of new affordable single family, and multi family, special needs housing in the community through	Provide funding through the CDBG / HOME, and other Affordable Housing Funds to encourage the development of new affordable housing in the community emphasizing new / converted:	20 units



private developers and non-profits.	<ul style="list-style-type: none"> <li>• Elderly and Disabled housing</li> <li>• Special needs housing</li> <li>• Housing in lower income neighborhoods (Strategy #2)</li> <li>• Housing for very low and extremely low-income renters</li> </ul>	
Promote homeownership.	Provide funding to Community Development Housing Development Organizations (CHDOs) to undertake activities to meet priority affordable housing needs.	10 units
	Complete Phase III of the Kings Green Affordable Housing Project.	15 units Begin Phase III of Kings Green, utilize the Affordable Housing Task Force to make recommendations regarding infrastructure development post Phase III.
	Work to address loss of mobile / manufactured housing affordable to lower income households.	Utilize the Affordable Housing Task Force to study & make recommendations for housing options.
	Work with Affordable Housing Task Force to identify and address barriers to affordable housing and to encourage infill development.	
	Support activities of the Housing Authority of Billings (HAB) and other assisted housing providers to meet the needs of very low-income households.	Support implementation of HAB's 5-Year Plan.
	Provide funding for support services to address the needs of the homeless, elderly, and special needs populations.	Provide staff support for the Mayor's Committee on Homelessness.
	Assist lower income households achieve home ownership through the City's First Time Homebuyer program in partnership with Montana Board of Housing (MBOH).	50 homebuyers & \$4 million in set aside financing.
	Participate with Montana Homeownership Network to increase First Time Homebuyer opportunities in the City leveraging resources available through Fannie Mae, MBOH etc.	20 homebuyers
Support homebuyer education in partnership with Montana Homeownership Network.	150 households	

	Support Billings Partners for American Indian Homeownership effort to increase homeownership rates for American Indians and other minorities in the community.	Implementation of partnership goals to increase the homeownership rate for American Indians in Billings.
	Support the Hispanic Development Outreach Committee to increase homeownership rates for Hispanic Americans and other minorities in the community.	Provide staff support, increase economic opportunities and homeownership for Hispanic Americans in Billings.
<b>Strategy #4 - Work as an active partner with non-profits, neighborhood groups, and others to address housing &amp; community development needs.</b>		
<b><i>Objective</i></b>	<b><i>Implementation Plan</i></b>	<b><i>2008-2009 Goals</i></b>
Encourage housing & community and development organizations to work together to build strong community structures to better address needs and respond to opportunities.	Sponsor the Affordable Housing Task Force, which brings together organizations such as the Housing Authority of Billings, Habitat for Humanity, HRDC, Big Sky EDA, homeWORD, realtors and lenders to address affordable housing issues of common concerns.	Complete work on the new strategic plan and implement the plan through subcommittees.
	Sponsor the Adjacent Neighborhood Committee, which brings together the City's neighborhood task forces and Downtown Billings Partnership.	Host bi-monthly meetings and provide staff support for task force initiatives.
	Support the activities of the Billings American Indian Homeownership Partnership which brings together approximately 20 organizations to increase the homeownership rate for American Indians.	Implementation of partnership goal to increase the homeownership rate for American Indians in Billings.
	Support Neighborhood Task Forces to identify and address neighborhood needs.	Complete neighborhood plans & support distribution of monthly newsletters.
Support activities and organizations promoting fair housing and increase awareness of the rights and responsibilities of protected classes.	Undertake fair housing activities in a coordinated manner with organizations with an interest in promoting fair housing.	Implement existing FY2003-2007 Fair Housing Plan through the FY 2008-2009 Fair Housing Action Plan. Apply for Fair Housing Initiatives Program (FHIP) funding through HUD in 2008 for calendar year 2009.

	Complete new Analysis of Impediments to Fair Housing Choice for the Billings community in 2007 and develop new Fair Housing Plan for FY2008-2012 <sup>3</sup> .	Develop new fair housing plan in 2008 based on results of the Analysis of Impediments to Fair Housing Choice.
<b>Strategy #5 - Improve the economic conditions of lower income households in the community.</b>		
<i><b>Objective</b></i>	<i><b>Implementation Plan</b></i>	<i><b>2008-2009 Goals</b></i>
Support efforts of community organizations to address the human service needs of lower income residents of the community in general and lower income neighborhoods.	Utilize up to 15% of CDBG funding for public service activities to improve the economic conditions of lower income households.	Continue to implement performance measures to determine impact of assisted activities.
Support the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.	Provide technical assistance to lower income households interested in starting or expanding an existing business.	Provide technical assistance to 100 lower income households.
		Implement performance measures to determine impact of assisted activities.

<sup>3</sup> The City of Billings follows a separate five-year cycle for fair housing planning. The last Analysis of Impediments to Fair Housing Choice was completed in 2002, resulting in the 2003-2007 Fair Housing Plan and a new Analysis of Impediments was completed in December 2008.

**CD BOARD RECOMMENDATIONS**

**FY 2008-2009**

<i>CDBG/HOME GRANT HISTORY</i>		<i>2007-2008 Award</i>	<i>2008-2009</i>	<i>Staff Recommendations</i>		<i>CD B</i>	
			<i>Requested</i>	<i>CDBG</i>	<i>HOME</i>	<i>Recomm</i>	
Admin / Planning	<b>HN-1</b>	CDBG Administration	\$168,592	\$175,000	<b>\$156,950</b>	-	<b>\$156,950</b>
	<b>HN-2</b>	HOME Administration	\$67,489	\$60,000	-	<b>\$62,921</b>	-
Affordable Housing Activities	<b>HN-3</b>	Housing Rehabilitation Loan Program	\$287,207	\$300,000	\$300,000	-	<b>\$300,000</b>
	<b>HN-4</b>	Minor Home Repair Program	\$60,000	\$60,000	\$60,000	-	<b>\$60,000</b>
	<b>HN-5</b>	HOME/CDBG Affordable Housing Support	\$300,000	\$400,000	\$0	\$200,000	
	<b>HN-6</b>	First Time Home Buyer Program	\$341,329	\$350,000	\$0	\$238,690	
	<b>HN-7</b>	Set-Aside for CHDOs - must be 15% of HOME funds	\$75,126	\$75,000	-	<b>\$72,594</b>	-
	<b>HN-8</b>	Living Independently for Today & Tomorrow	\$12,500	\$12,500	\$12,500	-	<b>\$12,500</b>
	<b>HN-9</b>	Yellowstone County Council on Aging - MHR Program	\$5,000	\$5,000	\$5,000	-	<b>\$5,000</b>
	<b>HN-10</b>	Rebuilding Together	\$10,000	\$10,000	\$10,000	-	<b>\$10,000</b>
	<b>HN-12</b>	Housing Authority - Lake Elmo Infrastructure Phase I	\$0	\$200,000	\$83,944	-	<b>\$83,944</b>
	<b>HN-13</b>	Housing Authority - Section 8 Deposit Assistance	\$0	\$5,000	-	\$5,000	-
	<b>HN-14</b>	HRDC - Affordable Housing Project	\$0	\$75,000	-	\$50,000	-
	Neighborhood Activities	<b>HN-15</b>	Property Management	\$8,000	\$5,000	\$5,000	-
<b>HN-16</b>		Special Assessment Grants	\$47,500	\$50,000	\$44,796	-	<b>\$44,796</b>
<b>HN-17</b>		Young Families Early Head Start - Building Addition	\$50,000	\$75,000	\$50,000	-	<b>\$52,500</b>
Econ Dev	<b>HN-18</b>	Big Sky Economic Development Authority	\$7,500	\$10,000	\$7,500	-	<b>\$5,000</b>
			<b>\$1,470,243</b>	<b>\$1,867,500</b>	<b>\$735,690</b>	<b>\$629,205</b>	<b>\$735,690</b>

*Available CDBG funding for Affordable Housing Projects:*

<b>HN-12</b>	Housing Authority - Lake Elmo Infrastructure Phase I	<b>07-08 Funding:</b>	<b>\$116,056</b>	<b>\$116,056</b>
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**PUBLIC SERVICE ACTIVITIES**

**FY 2008-2009**

<i>CDBG GRANT HISTORY</i>		<i>2007-2008 Award</i>	<i>Amount Requested</i>	<i>Recommendation</i>	
PUBLIC SERVICE ACTIVITIES	<b>PS-1</b>	Big Sky Prevention of Elder Abuse	\$7,425	\$12,000	<b>\$10,890</b>
	<b>PS-2</b>	Big Sky Senior Helping Hands Program	\$15,675	\$20,000	<b>\$13,613</b>
	<b>PS-3</b>	Community Housing Resource Board	\$6,600	\$13,630	<b>\$5,990</b>
	<b>PS-4</b>	Easter Seals - Play & Language for Autistic Youngsters	\$0	\$8,750	<b>\$4,538</b>

<b>PS-5</b>	Friendship House - Summer Enrichment	\$8,250	\$15,000	<b>\$10,890</b>
<b>PS-6</b>	homeWORD - Homebuyer Education	\$2,063 <i>Fin.Fitness</i>	\$9,000	<b>\$5,445</b>
<b>PS-7</b>	HRDC - Growth Thru Art	\$6,600	\$15,000	<b>\$5,990</b>
<b>PS-8</b>	HRDC - Harmony House	\$4,125 <i>IDAs</i>	\$15,000	<b>\$7,260</b>
<b>PS-9</b>	Scottish Rite Clinic - Scholarship Program	\$0	\$12,000	<b>\$4,538</b>
<b>PS-10</b>	Southgate Cop Shop	\$4,125	\$6,000	<b>\$1,815</b>
<b>PS-11</b>	Task Force Enhancement Fund	\$4,125	\$5,000	<b>\$1,815</b>
<b>PS-12</b>	Tree Trimming, Planting & Removal	\$3,300	\$15,000	<b>\$4,538</b>
<b>PS-13</b>	Tumbleweed - Street Outreach Program	\$0	\$10,000	<b>\$4,538</b>
<b>PS-14</b>	Yellowstone County Council on Aging - Resource Center	\$1,650	\$2,000	<b>\$1,815</b>
<b>PS-15</b>	Yellowstone Health Partnership - Med Assistance Program	\$7,425	\$9,000	<b>\$8,168</b>
<b>PS-16</b>	Young Families Early Head Start	\$7,425	\$27,077	<b>\$18,360</b>
<b>PS-17</b>	YWCA of Billings Children's Services	\$2,050	\$2,050	<b>\$1,860</b>
<b>PS-18</b>	YWCA Gateway House	\$6,600	\$10,000	<b>\$5,990</b>
			<b>\$206,507</b>	<b>\$118,049</b>

**COMMUNITY DEVELOPMENT APPLICANTS**  
**PUBLIC SERVICE ACTIVITIES - PROJECT SUMMARIES**  
**FY 2008-2009**

PS - 1	<b><i>Big Sky Prevention of Elder Abuse – Social Work</i></b>	
	Funds are requested to help pay the salary of the Elder Support Social Worker who works with elders and disabled adults to prevent abuse and remediate effects of abuse by resorting economic stability to clients and helping them continue to live safely and independently at home.	\$12,000
PS - 2	<b><i>Big Sky Senior Helping Hands Program</i></b>	
	Funds are requested for in-home staff salaries providing in-home services to very low-income, vulnerable elders in the Billings community. Services include homemaking, shopping, transportation, socialization, assistance with personal care and hygiene, medication management, health monitoring and health care.	\$20,000
PS - 3	<b><i>Community Housing Resource Board</i></b>	
	Funds are requested to support the project director position, printing of brochures and fact sheets, office supplies, telephone, and internet/website support.	\$13,630
PS - 4	<b><i>Easter Seals – Play and Language for Autistic Youngsters</i></b>	
	Funds are requested for scholarship dollars to offer fee relief to low-income families. The program currently serves 9 children and charges \$3,500 annually for treatment per child, which helps with operating costs.	\$8,750
PS - 5	<b><i>Friendship House - Summer Enrichment Program</i></b>	
	Funds are requested for personnel and administrative costs associated with the Summer Enrichment Program (SEP). SEP is a comprehensive program that addresses the multi-needs of youth ages 4 - 12 and provides basic human service needs.	\$15,000
PS - 6	<b><i>homeWORD – Homebuyer Education</i></b>	
	Funds will support the salary of the homebuyer education instructor and the direct expenses involved with providing the classes.	\$9,000
PS - 7	<b><i>HRDC - Growth Thru Art</i></b>	
	Funds are requested to fund personnel and art supplies allowing the organization to continue to provide ongoing studio experiences, workshops, presentations and exhibitions, and opportunities to celebrate artists' personal growth through artistic expression for adults with disabilities.	\$15,000
PS - 8	<b><i>HRDC – Harmony House</i></b>	
	Funds are requested for personnel, travel (local), supplies (household and cleaning supplies, food, etc.) and administrative costs to support the transitional living program for homeless pregnant or parenting young women and empowering them to be the best parents possible to their babies.	\$15,000
PS - 9	<b><i>Scottish Rite Clinic – Scholarship Program</i></b>	
	Funds are requested to pay for therapeutic service expenses and operating expenses needed to provide direct service and child specific therapeutic equipment expenses.	\$12,000

	<b><i>Southgate Cop Shop</i></b>	
PS - 10	Funding is requested to assist with rent, utilities and insurance for this neighborhood cop shop.	\$6,000
	<b><i>Task Force Enhancement Fund</i></b>	
PS - 11	Funding is requested to provide support to neighborhood task forces for their newsletter mailings, officer insurance, leadership training, and organizational development.	\$5,000
	<b><i>Tree Trimming, Planting, &amp; Removal Program</i></b>	
PS - 12	Funding is requested to remove diseased or dangerous trees and to plant new trees for low-income households throughout the City of Billings.	\$15,000
	<b><i>Tumbleweed – Street Outreach Program</i></b>	
PS - 13	Funds are requested for direct cost for van expenses and food costs equally while providing food, clothing, hygiene products, Tumbleweed information and community resources to runaway, homeless, at-risk and street youth between the ages of 10 to 21 years of age.	\$10,000
	<b><i>Yellowstone County Council on Aging – Resource Center</i></b>	
PS - 14	Funds are requested for staff salaries to manage the Resource Center. This program assists the elderly, adults with physical disabilities in identification of needs, accessing services, completing program assistance applications, and advocacy.	\$2,000
	<b><i>Yellowstone Health Partnership - Medication Assistance Program</i></b>	
PS - 15	Funds are requested for salaries of staff for the Medication Assistance Program (MAP) at the Deering Clinic site.	\$9,000
	<b><i>Young Families Early Head Start - Child Care for High School Parents</i></b>	
PS - 16	Funding is requested to support salaries and benefits for staff who provide comprehensive child care and development services to infants and toddlers whose parents are teenagers, completing their high school education.	\$27,077
	<b><i>YWCA - Children’s Services</i></b>	
PS - 17	Funding is requested to provide partial scholarships to low and moderate income families accessing YWCA Children’s Services programs for affordable and quality care / educational experiences. The programs include preschool, child care, and after-school care.	\$2,050
	<b><i>YWCA - Gateway House Domestic Violence &amp; Sexual Assault Services</i></b>	
PS - 18	Funding is requested to support general operating expenses of the program, which includes utilities, phones, taxes, supplies, security, building repairs, and accountant contracted services. Gateway services include housing, support, education, and advocacy for victims of domestic violence and sexual assault.	\$10,000

**COMMUNITY DEVELOPMENT APPLICANTS**

**HOUSING & NEIGHBORHOOD ACTIVITIES**

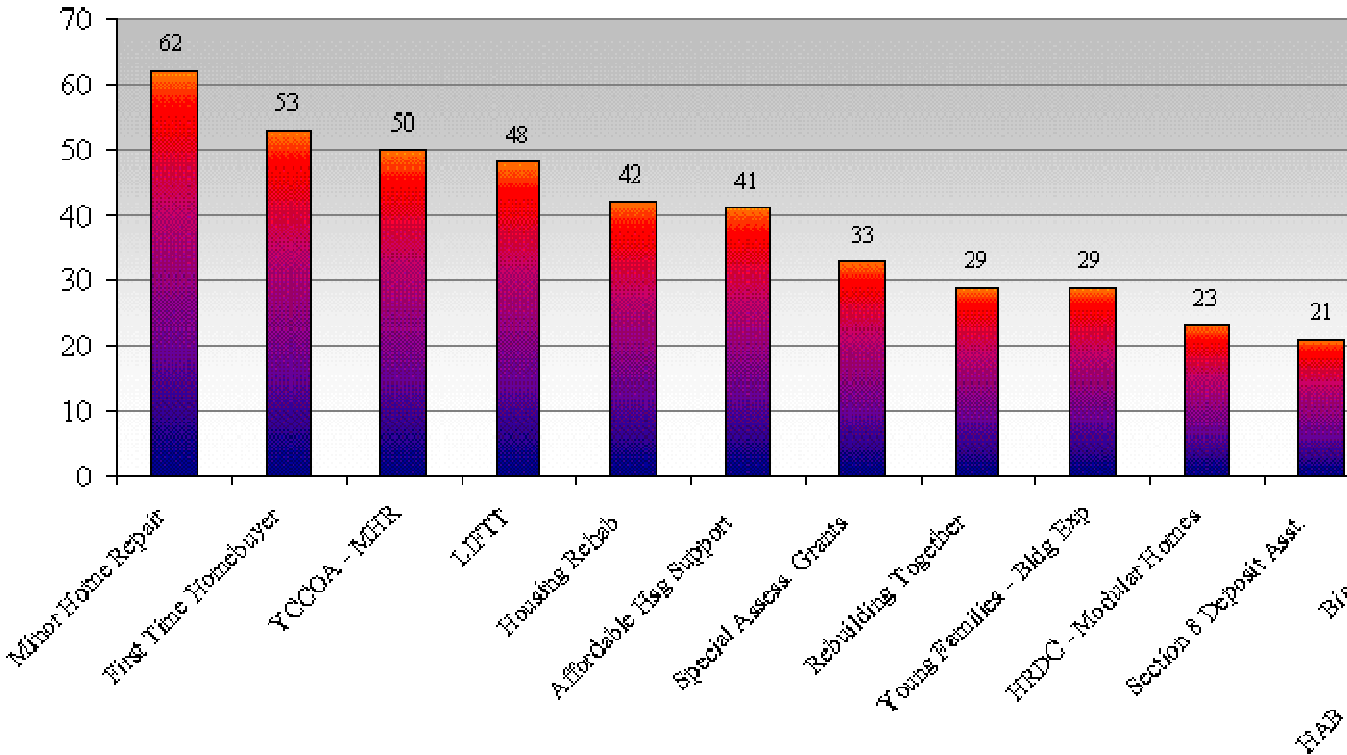
FY 2008-2009

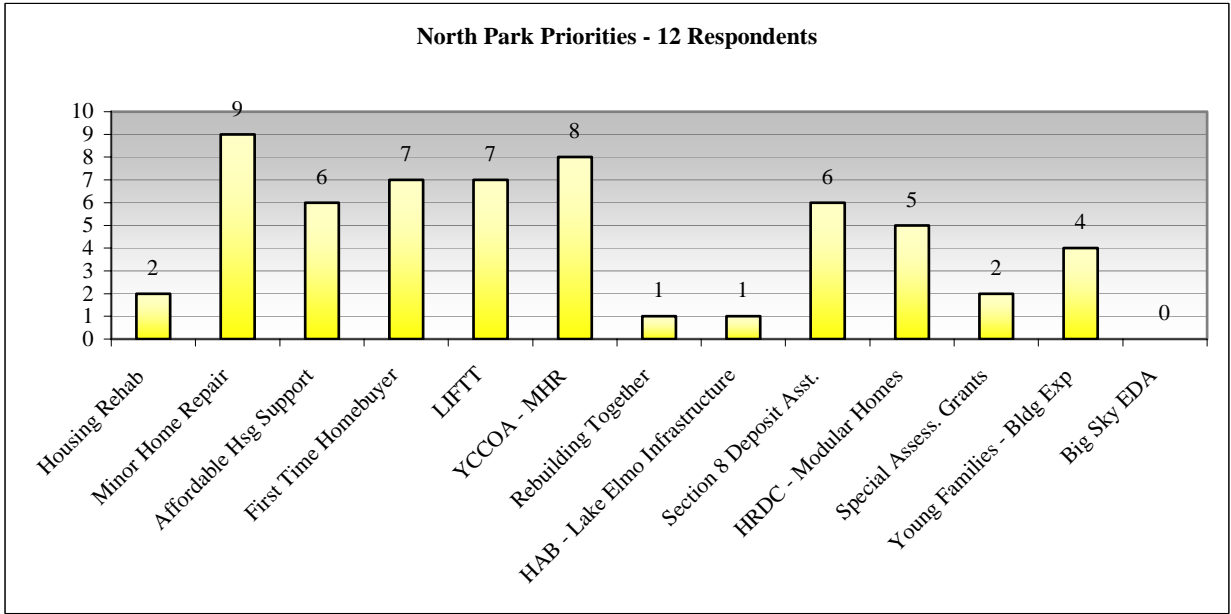
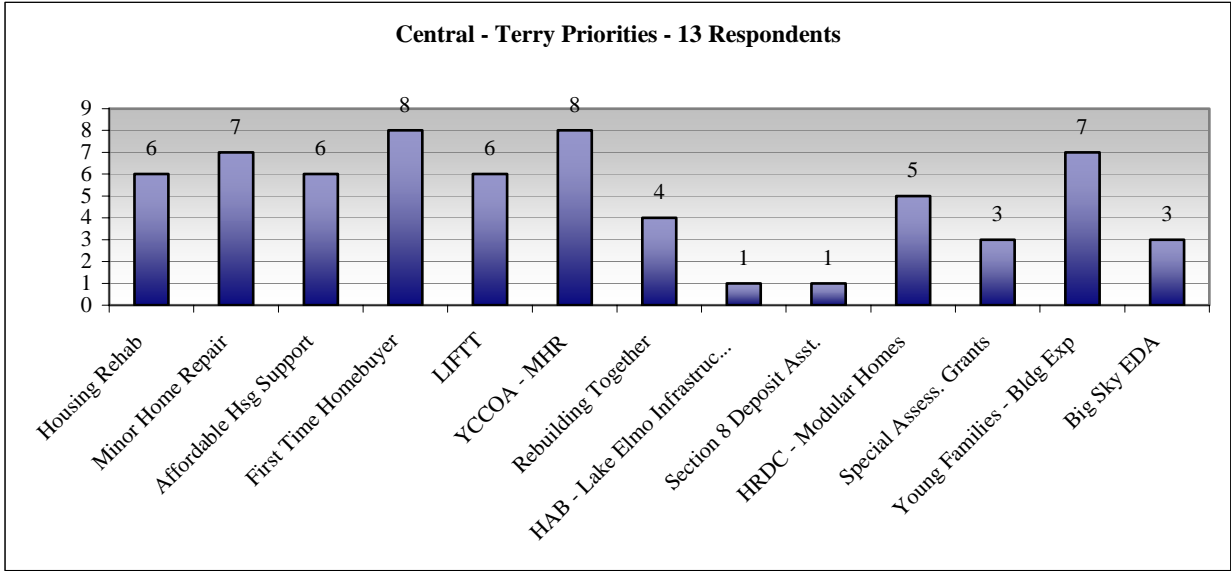
<i>ADMINISTRATION / PLANNING / FAIR HOUSING ACTIVITIES</i>		
HN - 1	<b><i>CDBG Administration</i></b>	\$175,000
	Funds are requested for general administration expenditures for CDBG Program including office space, salaries and benefits for various staff positions. CDBG also provides the resources for administration for other grant programs related to Community Development received by the City.	
HN - 2	<b><i>HOME Administration</i></b>	\$60,000
	Funds are requested for general HOME administration expenditures for HOME Program.	
<i>AFFORDABLE HOUSING ACTIVITIES</i>		
HN - 3	<b><i>Housing Rehabilitation Loan Program</i></b>	\$300,000
	Funds are requested to rehabilitate up to 15 homes throughout the City of Billings. The program is intended to provide affordable financing to low / moderate income applicants to provide substantial improvements that help preserve the City's affordable housing stock and revitalize older neighborhoods. Funds will be used to partially fund the CD Grants Coordinator position.	
HN - 4	<b><i>Minor Home Repair Program</i></b>	\$60,000
	Funds are requested to assist approximately 15 low-income homeowners with emergency repairs related to basic systems or accessibility for a physically disabled occupant. The program is available for mobile / manufactured mobile homes and for owner / occupied homes that are not appropriate for the Housing Rehabilitation Loan Program.	
HN - 5	<b><i>HOME / CDBG Affordable Housing Support Program</i></b>	\$400,000
	Funds are requested to encourage the development of affordable housing for lower-income households in the City of Billings. Applicants for this program can be for-profit developers or non-profit agencies.	
HN - 6	<b><i>HOME First Time Home Buyer Program</i></b>	\$350,000
	Funds are requested to assist approximately 40 low-income families in the purchase of their first home. The program is designed to provide financial assistance to help qualify for traditional housing financial programs to purchase a home. Funds will be used to provide down payment assistance, closing costs, and minor repairs and for related project administration expense.	
HN - 7	<b><i>HOME Set-Aside Community Development Organizations (CHDO)</i></b>	\$75,000
	As a recipient of HOME funds, the City of Billings must provide at least 15% of its funding for CHDO activities. This funding is requested for CHDOs to develop affordable housing in the community.	

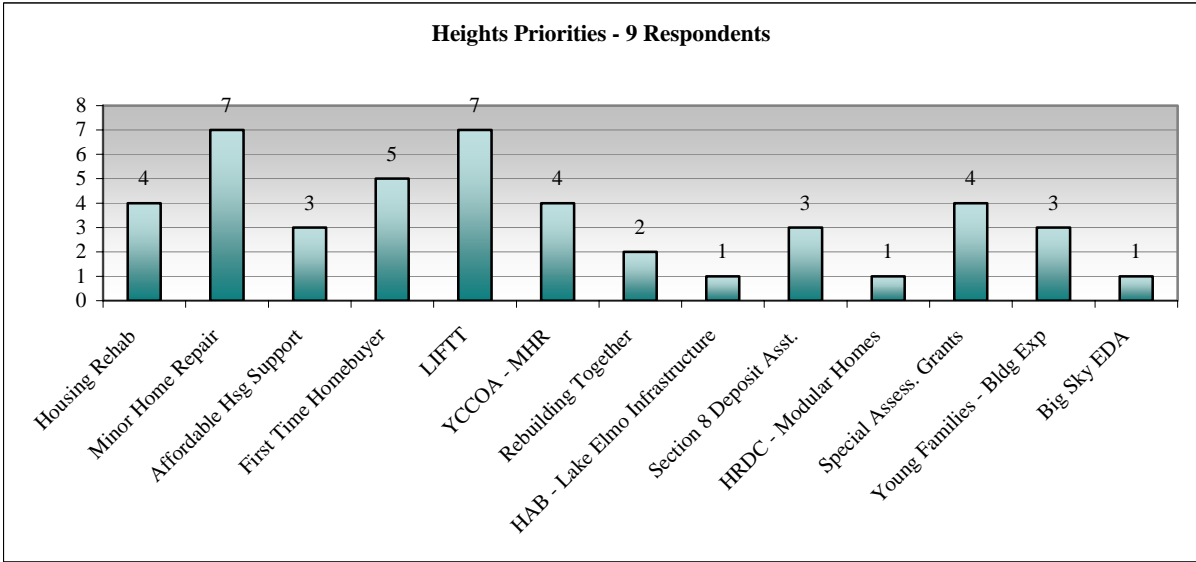
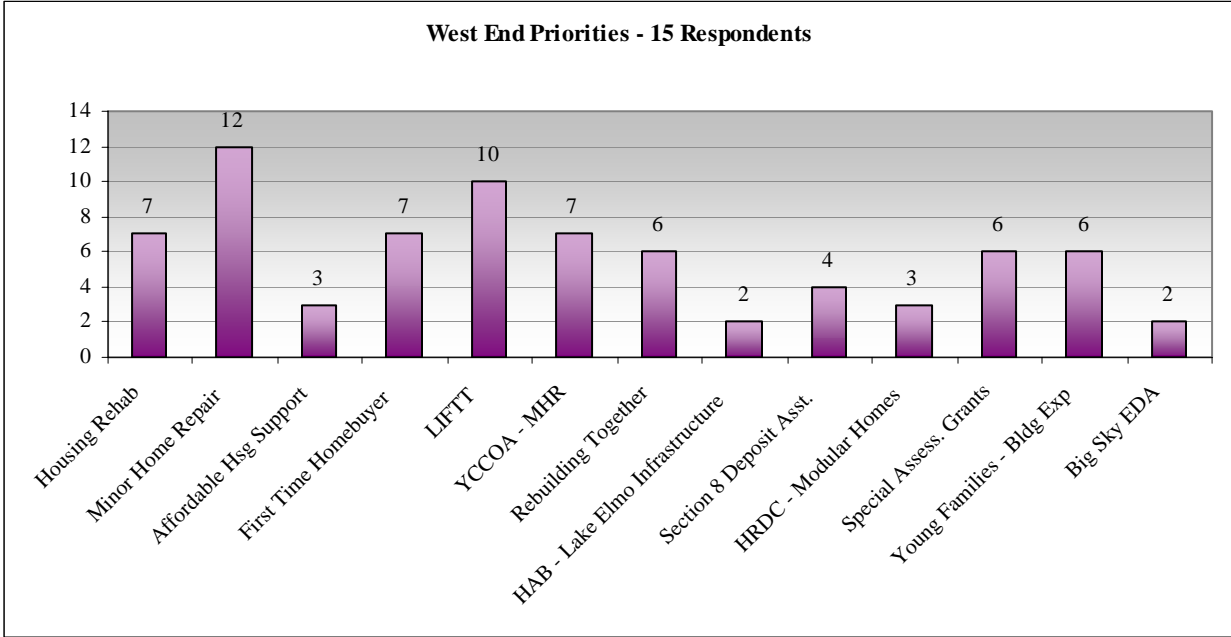


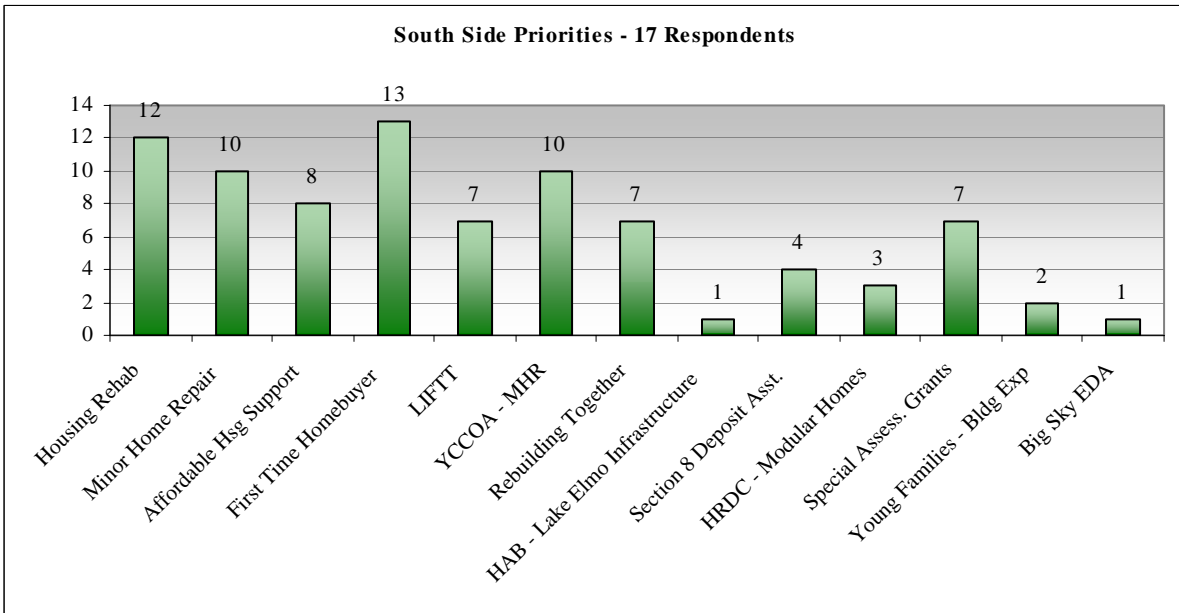
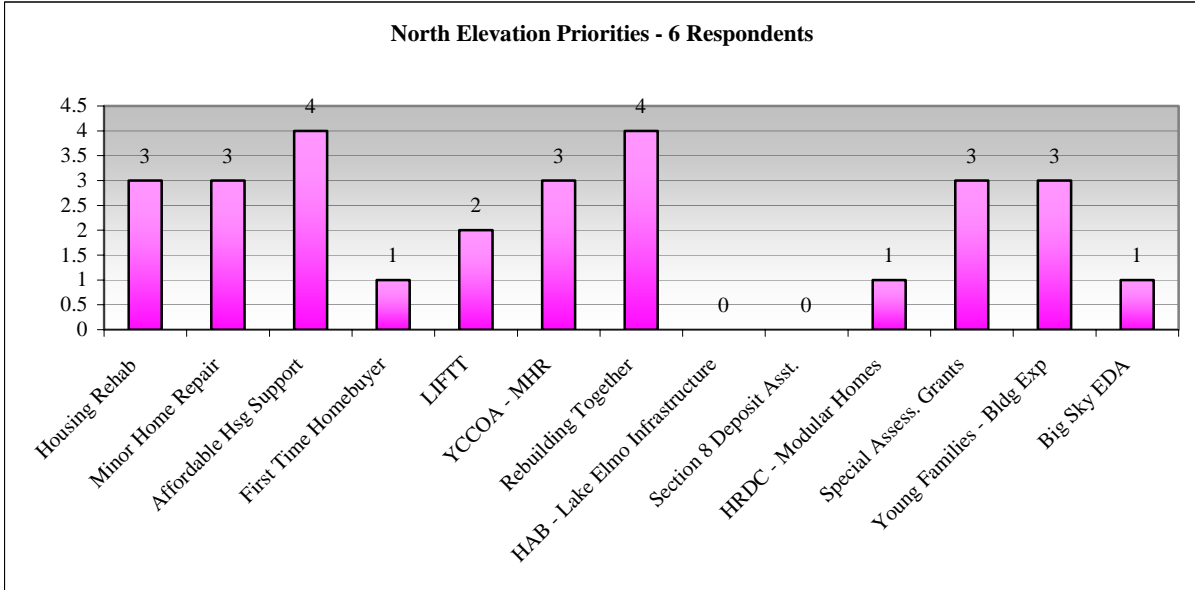
HN - 8	<b><i>Living Independently for Today and Tomorrow (LIFTT)</i></b>	\$12,500
	Funds are requested to construct or provide maintenance work on ramps for low-income persons with disabilities to access their homes. Approximately six households will be assisted.	
HN - 9	<b><i>Yellowstone County Council on Aging – Minor Home Repair Program</i></b>	\$5,000
	Funds are requested for this Minor Home Repair program which assists low-income persons over the age of 60 with safety-related repairs. Approximately 30 homes will be assisted.	
HN - 10	<b><i>Rebuilding Together – Home Rehabilitation</i></b>	\$10,000
	Funds are requested for building materials and construction costs to assist up to five low-income households. Volunteers paint, clean, weatherize, and do carpentry, plumbing, roofing, and electrical work.	
HN - 12	<b><i>Housing Authority – Lake Elmo Infrastructure Phase I</i></b>	\$200,000
	Funding is requested to assist the Housing Authority in infrastructure development for an affordable housing project. All residents in the project will be either very low or low income. The site is located along Lake Elmo road and will be developed with multi-family and single family units.	
HN - 13	<b><i>Housing Authority – Section 8 Deposit Assistance</i></b>	\$5,000
	Funding is requested for tenant-based rental assistance for security deposits for Section 8 participants. The program is anticipated to assist 50 very low income families secure housing in Billings.	
HN - 14	<b><i>HRDC – Affordable Housing Project</i></b>	\$75,000
	Funds are requested to assist HRDC in an affordable housing project which includes buying two land parcels in the City of Billings limits and maintaining a 99-year lease on the land. This will allow a homeowner to purchase a modular unit to be placed on the land and only incur costs for the housing unit, thus lowering the purchase price and mortgage payments for homeownership.	
<b><i>NEIGHBORHOOD PROJECTS</i></b>		
HN - 15	<b><i>Property Management</i></b>	\$5,000
	Funds are requested to pay existing SIDs and maintain weeds and snow on property previously acquired through the CDBG program. These properties are primarily located along South 27 <sup>th</sup> Street which were purchased specifically for re-development.	
HN - 16	<b><i>Special Assessment Grants</i></b>	\$50,000
	Funds are requested to provide grant funds to lower-income households impacted by Special Improvement District assessments for public improvements such as curb, gutter, and sidewalk projects in lower income areas.	
HN - 17	<b><i>Young Families Early Head Start – Building Addition</i></b>	\$75,000
	Funds are requested to pay for necessary expansion in a facility which will be used for day care services for teenagers attending high school with children.	
<b><i>ECONOMIC DEVELOPMENT</i></b>		
HN - 18	<b><i>Big Sky Economic Development Authority (BSEDA) – Small Business Development Center</i></b>	\$10,000
	Funds would be used to supplement the operational expense of the program and provide training materials free of charge to clients attending pre-business workshops.	

All Task Forces - Combined (91 Respondents)









*COMMUNITY DEVELOPMENT DIVISION*

**Final Revenue FY 2008-2009**

24-Mar-08

*CDBG REVENUE*

HUD CDBG Grant	\$701,191	Annual Allocation
Loan Principal	\$13,241	Parkview Convalescent
Loan Interest	\$8,289	Parkview Convalescent
CDBG Reprogrammed* Funds	\$69,019	See detail below
Transportation Grants		
<b>Housing Rehab Loans Repayment</b>	<b>\$22,932</b>	<b>At 75% year lapsed</b>
Prior Year Program Income - Rehab	\$38,878	Program income over est. (Rehab Loans & Interest)
Rental Rehab Loan Repayment	\$0	At 50% year lapsed
Rehab Interest	\$221	At 50% year lapsed

**CDBG Revenue Total: \$853,771**

**20% Cap on CDBG Administration: \$156,950** Includes only new revenue, not reprogrammed\*

*PUBLIC SERVICE FUNDING*

15% of CDBG Allocation (\$701,191)	\$105,179
15% of previous year program income (\$86,018)	\$12,903

**PUBLIC SERVICE TOTAL: \$118,081**

**CDBG Revenue Total: \$853,771**

**Reduced by Public Services Total: \$118,081**

**Total Available for Housing & Neighborhood: \$735,690**

*HOME REVENUE*

HUD HOME Grant	\$483,959	
<b>FTHB Loans Repayment</b>	<b>\$86,152</b>	<b>At 75% year lapsed</b>
Prior Year Program Income - FTHB	\$59,094	Program income over estimate (FTHB)
<i>HOME Reprogrammed*</i>		

**HOME Revenue Total: \$629,205**

**10% Cap on HOME Administration: \$62,921** Includes only new revenue, not reprogrammed\*

**15% Mandatory CHDO Allocation: \$72,594** Includes 15% of new allocation, not reprogrammed\*

**Total Available for HOME Activities: \$556,611**

**HN / Admin Reprogrammed Total: \$69,019** Cancelled or completed projects

**Total Available in CDBG & HOME: \$1,482,976**

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Public Hearing and First Reading Ordinance that Repeals Ordinance 07-5441 and Creates the South Billings Boulevard Urban Renewal District Area

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Lora Mattox, AICP, Neighborhood Planner

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**PROBLEM/ISSUE STATEMENT:** The Council will consider adopting an ordinance creating the South Billings Boulevard Urban Renewal District Area. On April 14, 2008, Council adopted a resolution of intent to create the district, which includes tax increment authority, a description of the property involved and the blighted conditions. The next step is to create the district by Ordinance and establish the boundary for the new district. The Ordinance, if adopted on final reading, repeals Ordinance 07-5441 that was approved on second reading on December 10, 2007. This action will correct the public hearing notice error from the approval process in 2007.

**ALTERNATIVES ANALYZED:** Creating this district is discretionary. The City Council may:

- reject the ordinance
- modify the proposed boundary
- adopt the ordinance with the proposed boundary

**FINANCIAL IMPACT:** The financial impact is unknown. However, the current taxable value in the proposed TIFD is approximately \$6,444,737 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 City Council adopt the Ordinance that repeals Ordinance 07-5441 and create the South Billings Boulevard Urban Renewal District Area.

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

**ATTACHMENTS**

A.     Ordinance



## **INTRODUCTION**

The City Council will hold a public hearing and consider the ordinance that adopts the Urban Renewal Plan and allows the City to use tax increment financing for public improvements.

## **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 heard a presentation and discussion on the South Billings Boulevard Urban Renewal Plan and District.
- On November 13, 2007, City Council considered and passed 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 conducted a public hearing and first reading of an ordinance to create the district.
- On December 10, 2007, City Council adopted on the ordinance on second and final reading. The ordinance became effective after 30 days.
- On March 10, 2008, City Council adopted a resolution that corrected the legal description of the South Billings Boulevard Urban Renewal District Area. This resolution amended Resolution 07-18627.
- On or around March 20, 2008, the Planning Division realized the error in the public notification process.
- On March 25, 2008, the Yellowstone County Planning Board on a 7-0 vote reaffirmed its recommendation of approval of the South Billings Boulevard Urban Renewal Plan to the Billings City Council.
- On April 14, 2008, City Council considered and passed a Resolution on the South Billings Boulevard Urban Renewal District Area, Declaring Blight, Intent to Create the District and Setting a Public Hearing.
- On April 22, 2008, the Yellowstone County Planning Board reaffirmed its recommendation of approval of the South Billings Boulevard Urban Renewal Plan to the Billings City Council.

- On April 28, 2008, City Council will conduct a public hearing and first reading of an ordinance to create the district.
- On May 12, 2008, City Council will consider the ordinance on second and final reading. If approved, the ordinance will become effective in 30 days and repeals Ordinance 07-5441.

## **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 established.

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 Council must adopt a resolution of necessity that describes the area, identifies the conditions that create blight, state its intention to create a new district and set a public hearing on the plan. Following the passage of the resolution and holding the public hearing, the Council must, by ordinance, also approve the Urban Renewal Plan.

The process required to create a Tax Increment Finance District Area began with the completion of the South Billings Boulevard Urban Renewal Plan in September, 2007. The Plan was sent to the Planning Board at its October 23, 2007 meeting for its review and recommendation regarding the Plan's conformity to the 2003 Growth Policy. The Planning Board recommended approval with corrections to the City Council. The City Council originally approved a resolution of necessity on November 13, 2007, and held a public hearing and approved the first reading of the Ordinance creating the South Billings Boulevard Tax Increment Finance District Area on November 26, 2007. The Ordinance was approved on second reading on December 10, 2007, and became effective on January 10, 2008. A resolution correcting the legal description to the Area was approved on March 10, 2008. In late March, while compiling documentation for the creation of the District Area, an error in the public hearing notification process was detected. State law requires that the notice be advertised twice but the original notice was advertised only once. To correct the error, the process is being repeated beginning with the City Council approving the resolution of necessity on April 14, 2008, and setting the public hearing date on the Urban Renewal Plan for April 28, 2008. The Planning Board reaffirmed its determination on the Urban Renewal Plan and forwarded its recommendation to the City Council on April 22, 2008. No changes have been made to the Urban Renewal Plan originally adopted by City Council on first reading on December 10, 2007. On April 28, 2008, the Council will hold the public hearing, consider an ordinance repealing the original Ordinance 07-5441, adopting the Plan and creating the South Billings Boulevard Urban Renewal Area. Notice of the public

hearing was advertised twice in the Billings Times; once on April 10, and again on April 24, 2008.

### **ALTERNATIVES ANALYSIS**

Creating this district is discretionary. The City Council may:

- reject the ordinance
- modify the proposed boundary
- adopt the ordinance with the proposed boundary

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

The Yellowstone County Planning Board voted to recommend approval of the South Billings Boulevard Urban Renewal Plan with corrections on October 23, 2007. The Board reaffirmed its determination that the Plan was consistent with the 2003 Growth Policy on March 25, 2008 on a 7-0 vote. The Board reviewed the Plan for the third time on April 22, 2008, and forwarded its recommendation of approval to the City Council.

### **RECOMMENDATION**

Staff recommends that Council adopt the ordinance repealing Ordinance 07-5441 and create the South Billings Boulevard Urban Renewal District Area.

### **ATTACHMENTS**

- A. Ordinance

ORDINANCE NO. 08 \_\_\_\_\_

AN ORDINANCE REPEALING ORDINANCE 07-5441 AND RELATING TO THE CREATION OF THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL AREA; AND ADOPTING AN URBAN RENEWAL PLAN, INCLUDING A TAX INCREMENT PROVISION.

Recitals:

WHEREAS, this City Council held a public hearing and approved Ordinance 07-5441 creating The South Billings Boulevard Urban Renewal District Area on first reading on November 26, 2007, and on second reading on December 10, 2007.

WHEREAS, at the March 10, 2008, City Council meeting, the council adopted Resolution 08-18687 that corrected the legal description included in Resolution 07-18627 that declared blight, stated the intent to create an urban renewal area and set a date of a public hearing;

WHEREAS, it was determined that the notice advertising the public hearing held on November 26, 2007, was published only once in a newspaper of general circulation and pursuant to 7-1-4127, MCA, required two publications;

WHEREAS, this City Council repealed Resolution 07-18627 and adopted Resolution 08-18697 on April 14, 2008, declaring blight, stating the intent to create an urban renewal area and setting a date of a public hearing for April 28, 2008;

WHEREAS, a notice advertising the public hearing to be held on April 28, 2008 was published in the Billings Times on April 10 and April 24, 2008 pursuant to 7-1-4127, MCA;

WHEREAS, the South Billings Boulevard Urban Renewal Plan was reviewed and approved by the Yellowstone County Planning Board, as evidenced by the Board meeting minutes of October 23, 2007, and on March 25, 2008 and April 22, 2008, reaffirmed the approval and submitted a letter of affirmation to the City Council;

WHEREAS, this City Council on April 28, 2008, conducted a public hearing on a proposal to establish a new urban renewal area on specified property (as hereinafter defined, the "Property") to be designated "The South Billings Boulevard Urban Renewal Area", and to adopt an urban renewal plan, as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act");

WHEREAS, the Property is depicted on the attached Exhibit A and legally described on the attached Exhibit B (each of which is hereby incorporated herein and made a part hereof);

WHEREAS, opportunities have been presented to the City that make it desirable for the City to consider an urban renewal project within the District consisting of the acquisition of certain vacant or blighted properties, and making the properties so improved available for private redevelopment, as well as constructing and rehabilitating public infrastructure, including but not limited to water and wastewater lines, curbs, gutters, sidewalks and streets in accordance with the Act;

WHEREAS, an urban renewal plan entitled the South Billings Boulevard Urban Renewal Plan is

attached hereto as Exhibit C (which is hereby incorporated herein and made a part hereof) (the "Plan"). The Plan contains a tax increment provision and will govern the operation and administration of the District;

WHEREAS, this Ordinance repeals Ordinance 07-5441, adopted on first reading on November 26, 2007 and on second reading on December 10, 2007;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Billings, Montana, as follows:

1. Findings. This Council hereby finds, determines and declares, based on the comments received at the public hearing and other studies and information available to this Council, that:

- a. A workable and feasible plan exists for making available adequate housing for persons who may be displaced by the urban renewal project;
- b. The urban renewal plan conforms to the 2003 City-County Growth Policy or parts thereof of the City for the municipality as a whole;
- c. The urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and
- d. A sound and adequate financial program exists for the financing of said project.

2. Plan Adoption. The Plan is hereby adopted and approved in all respects, including without limitation, the segregation and application of tax increments as provided in Sections 7-15-4282 through 7-15-4293 of the Act as provided therein.

3. Effective Date. This Ordinance shall be in full force and effect from and after the date that is 30 calendar days after the date set forth below.

4. Accrued Costs. This Ordinance allows for reimbursement of any cost accrued relating to projects identified in the South Billings Boulevard Urban Renewal Plan prior to the final adoption of the Ordinance establishing the South Billings Boulevard Urban Renewal District with Tax Increment Financing funds generated by the district.

PASSED by the City Council on first reading April 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading May 12, 2008.

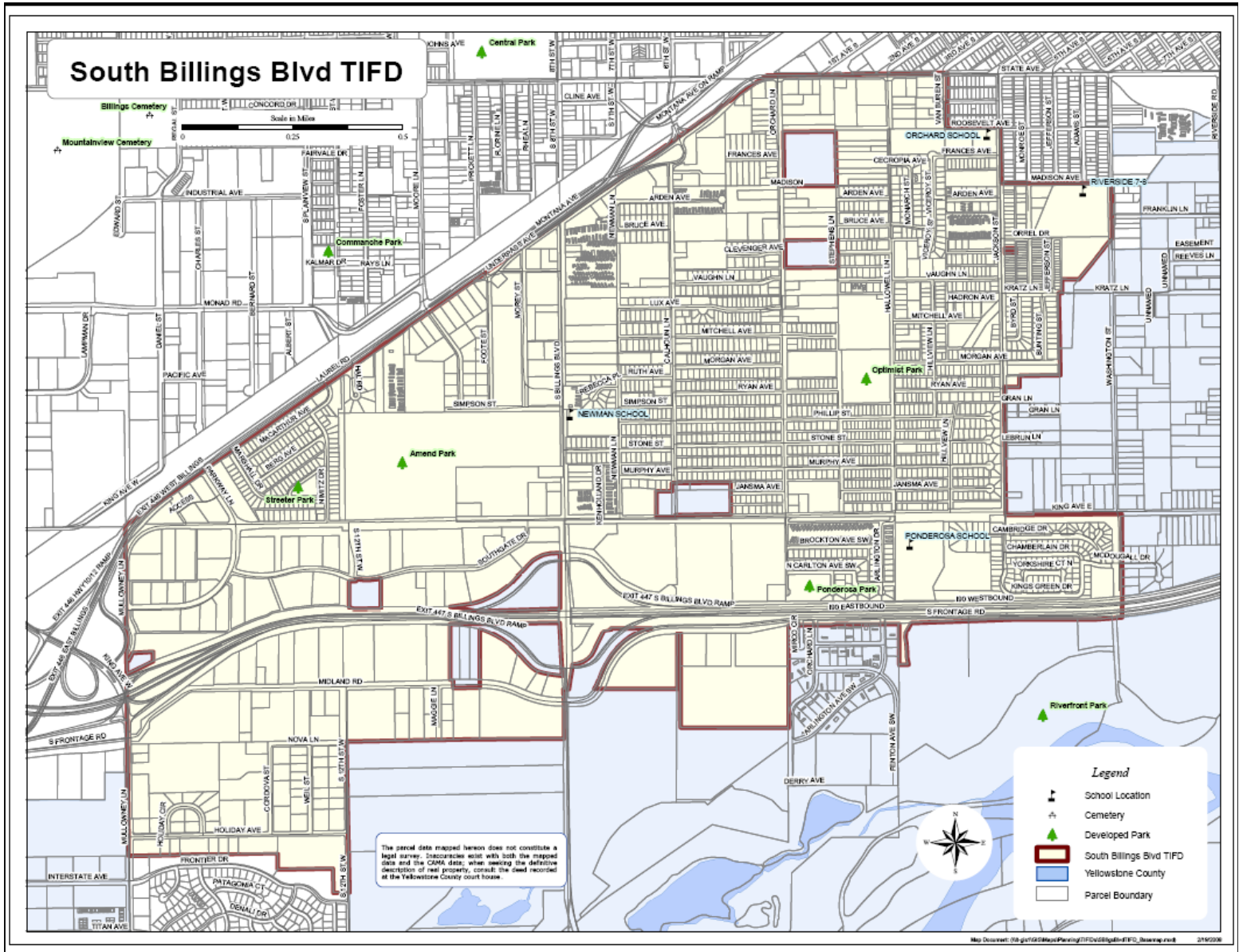
CITY OF BILLINGS:

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

ATTEST:

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

# EXHIBIT A MAP OF URBAN RENEWAL AREA



**EXHIBIT B**  
**LEGAL DESCRIPTION OF URBAN RENEWAL AREA**

***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 the intersection of the centerline of Washington Street and the existing City of Billings city limit boundary, 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 and its projection across the Interstate 90 right-of-way, to a point intersecting the said existing city limits, thence in a westerly and southerly direction following along the said existing city limit boundary to a point which intersects with the extension of the southern boundary of Tract 1, C/S 2834, then west along said southern boundary of Tract 1, C/S 2834 and southern boundary of, Block 4 of Weil Subdivision to the intersection with the centerline of Mallowney Lane, extending north along the centerline of Mallowney Lane and its projection to the centerline of Laurel Road, extending northeast along the centerline of Laurel Road to the intersection with the centerline of Underpass Avenue, extending northeast along said centerline to its intersection with 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 and Tract 2A of C/S 741.***

**EXHIBIT C**  
**SOUTH BILLINGS BOULEVARD URBAN RENEWAL PLAN**  
**(Available upon request)**

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward III: Annexation #08-01

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** On April 14, 2008, the City Council approved the annexation of an approximate 114-acre parcel legally described as Tracts 1A through 5A of Certificate of Survey 2063 Amended. The request for annexation was submitted by Lenhardt Property, LP; Lenhardt Farm, LLC; and Lenhardt Enterprises, LLC, property owners. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward III will be conducted at this meeting. The second reading of the ordinance will be conducted on May 12, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

- A. Ward Ordinance and Exhibit A

**ATTACHMENT A**

**ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

Tracts of land situated in the S1/2 of Section 10, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tracts 1A, 2A, 3A, 4A, & 5A, Certificate of Survey 2063, Amended, Recorded April 7, 2008, under Document No. 3460596, Records of Yellowstone County.  
Including all adjacent right-of-way of King Avenue West.

Containing 114.669 gross acres, and 114.298 net acres.

(# 08-01) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 28th day of April, 2008.

PASSED by the City Council on the second reading this 12th day of May, 2008.

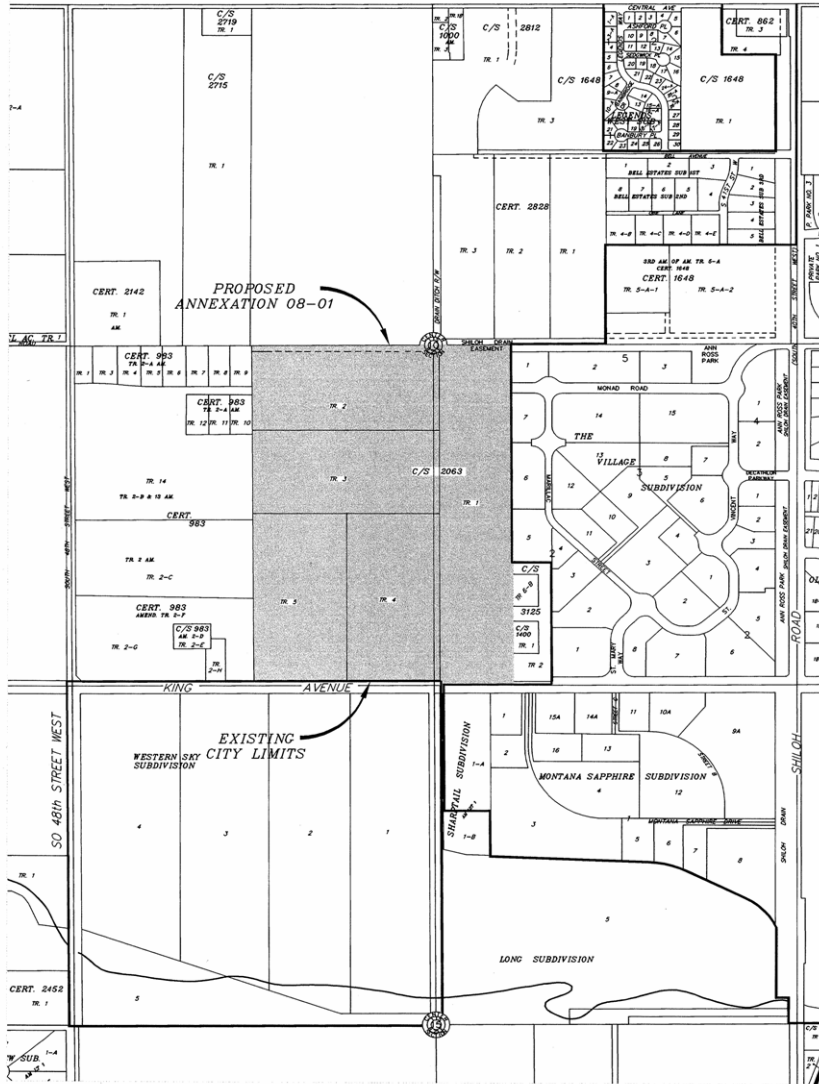
THE CITY OF BILLINGS:

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

ATTEST:

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

EXHIBIT A



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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Zone Change #836, Northeast corner of South 32<sup>nd</sup> Street West and Rosebud Drive, Public Hearing and 1<sup>st</sup> Reading of Ordinance

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** The applicant is requesting to rezone Lots 4, 5 and 6, Block 19, of Lampman Subdivision from Residential 8000 (R-80) to Residential Professional (RP). The subject property is generally located on the northeast corner of South 32<sup>nd</sup> Street West and Rosebud Drive and is currently vacant land. The applicant is proposing the zone change in order to build a professional office on property that has frontage on South 32<sup>nd</sup> Street West. Lais Development Inc. is the applicant and agent. The Zoning Commission conducted a public hearing on April 1, 2008, and forwarded a recommendation of approval on 4-0 vote.

Zoning Commission member Barbara Hawkins recused herself from this application because she has a direct interest.

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

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

**FINANCIAL IMPACT:** Upon development, the proposed zone change should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #836 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

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

**ATTACHMENTS:**

A: Surrounding Zoning

B: Ordinance

## **INTRODUCTION**

The applicant is requesting a zone change from R-80 to RP on a 37,500 square foot parcel of land that is currently undeveloped. The subject property is legally described as Lots 4, 5, and 6, Block 19, Lampman Subdivision, and is located on the northeast corner of the intersection of South 32<sup>nd</sup> Street West and Rosebud Drive. The applicant is proposing the zone change in order to build a professional office on the vacant land.

## **PROCEDURAL HISTORY**

- On December 27, 2007, the neighborhood meeting for the proposed zoning application was conducted at LaQuinta Inn located at 3045 Cell Avenue.
- On February 4, 2008, the rezone application was submitted to the Planning Division.
- On February 26, 2008, the applicant was notified that the application was deficient, specifically the required material to be sent to surrounding property owners for neighborhood meeting, and that they would need to conduct a second neighborhood meeting. The application would go before the City Zoning Commission on April 1, 2008, not March 4, 2008.
- On March 4, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and left the public hearing open until April 1, 2008.
- On March 12, 2008, an additional neighborhood meeting was conducted at LaQuinta Inn located at 3045 Cell Avenue.
- On April 1, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 4-0 vote.
- On April 28, 2008, the City Council will conduct the public hearing for the the zone change.
- On May 12, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

## **BACKGROUND**

The applicant, Mr. Hawkins, is requesting to rezone Lots 4, 5 and 6, Block 19, of Lampman Subdivision. The proposed zoning would enable the applicant to built professional offices on the site. RP zoning allows smaller professional offices or medical offices to serve the neighborhood that surrounds it. R-80 zoning allows for single family and duplex residential. RP zoning has similar requirements to residential construction. RP zoning requires a 20 foot front setback, a 10 side setback and a 0 foot setback on the rear. The 10 foot side setback is greater than what is required for R-80 zoning but residential rear setback is a minimum of 20 feet. The development on an RP zoned site will have to have a fence or wall on the rear property line to separate it from the residential neighbors.

The site of the zone change is on the northeast corner of South 32<sup>nd</sup> Street West and Rosebud Drive. On the northwest corner of this intersection is a Daycare Center, on the southwest corner is a Holiday Service station with a car wash, and on the southeast corner there are duplexes.

The applicant, Mr. Hawkins, conducted a neighborhood meeting on December 18, 2007, at La Quinta Inn Located at 3045 Cell Avenue, behind Johnny Carinos on King Avenue West. The surrounding property owners were notified about the meeting. Approximately 25 people attended the meeting, 16 people signed the sign in sheet at the meeting. At this meeting, Mr. Hawkins presented what he is planning to build on the site. Mr. Hawkins stated at the meeting, "We plan to provide the neighborhood with a nice office complex to house a Chiropractic office and potential spa or salon. This could provide the neighborhood with a great neighbor, i.e. a nice looking complex that is open Monday through Friday closed at 5 or 6 pm and not open on weekends."

There were several concerns raised at the neighborhood meeting. Some in attendance did not want to see town homes built on this corner like what has been built on the property directly to the west across South 32<sup>nd</sup> Street West. Others felt that this zone change is proposing commercial zoning and they do not want commercial businesses right in between residential properties. The issue of light overspill on to surrounding residential lots was brought up as a concern. One citizen felt that the area should be developed as a park.

Others that attended the meeting believed that the best use for the property would be commercial because having a home on S 32<sup>nd</sup> St W is not a desirable location. One citizen mentioned that there is currently a commercial tree cutting business being operated on Myrtle Street and no one is complaining about that.

In the information provided by the applicant, it is stated that they addressed each concern raised by the surrounding neighbors. They are not planning to build town homes and they are not an allowed use in RP Zoning. RP zoning only allows single family residential construction. RP zoning is commercial but is intended for professional offices. RP zoning does not allow retail sales only professional office use.

This application was originally scheduled to be heard by the zoning commission on March 4, 2008. Prior to that public hearing it was brought to the attention of the Planning Division that the applicant had not fully followed the requirements of the mailing to the surrounding neighbors for the neighborhood meeting held on December 18, 2007. At that time the applicant was informed that the letter sent out to the neighbors was deficient, it did not contain all the required information for their proposed zone change.

The applicant held a second neighborhood meeting on March 12, 2008 again at La Quinta Inn located at 3045 Cell Avenue, behind Johnny Carinos on King Avenue West. At this meeting there were 26 people in attendance, 23 people signed the sign up sheet. After a brief introduction by David Hawkins the people present discussed the zone change and their concerns. Again the topic of increased traffic was brought up. There was also concern that if these lots are rezoned that Mr. Hawkins will try to rezone the rest of the vacant lots so there will be an island of residential condos surrounded by commercial.



Mr. Hawkins addressed the concerns over traffic pointing out that at this time there is construction at the intersection of King Avenue West and 32<sup>nd</sup> Street West saying that after the construction is over the traffic patterns will be better because people can get through the intersection better. He also said there would be no reason to rezone the other vacant lots they own because there is no main street traffic and you wouldn't want a business so far from a major street. He also stated single family residential homes along a main arterial street are not a good situation and not desirable.

Mr. Hawkins showed pictures of office buildings that he has done in other areas to let those present see what type of building he is considering. He will be building a single story building because in his experience businesses want to be on the ground level for ease of access.

Several present also spoke in favor of the zone change and felt that this was the best use of the land next to 32<sup>nd</sup> Street West.

Planning staff forwarded a recommendation of approval to the Zoning Commission for this application. The Zoning Commission concurred with this recommendation. Staff based this recommendation on the 12 criteria for zone changes discussed below.

### **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The following are the Zoning Commission's determinations.

1. Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed zone change is generally consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)*

This property is in an area of Billings that is a mix of uses near a major arterial intersection, King Avenue West and South 32<sup>nd</sup> Street West. RP zoning will allow for professional office buildings or single family only. This zoning will provide a buffer between the heavy commercial use farther to the south and the residential to the north.

- *New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

RP zoning will provide a buffer between the existing commercial uses to the south and the residential uses north of this property. This area of Billings currently has a mix of uses.

- *Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, page 6)*

This property is vacant land between single family dwellings to the north and condominiums and commercial uses to the south. Zoning requires specific building setbacks and landscaping to provide separation. This zone change and proposed building by the applicant could be viewed as infill development.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The proposed zoning will permit the development of professional offices or single family housing which will provide more choices within the surrounding neighborhood for a more mixed-use neighborhood.

The proposed zone change is generally inconsistent with the following goals of the Growth Policy:

- *Affordable housing for all income levels dispersed throughout the City and County. (Land Use Element Goal, page 6)*

The proposed zone change and what the applicant is proposing for the site will not provide housing choices.

- *Reduced traffic congestion in Billings. (Transportation Goal, page 10)*

The proposed zone change will increase traffic in an area of Billings that is already experiencing high volumes of traffic.

2. *Is the new zoning designed to lessen congestion in the streets?*

The new zoning will not decrease the congestion on the streets of this neighborhood. This area of Billings is experiencing high volumes of traffic. The current road construction on King Avenue West is causing more traffic to travel through the residential neighborhood that would normally travel on King Avenue West and South 32<sup>nd</sup> Street West. This is a temporary situation.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

With the proposed zoning, there are requirements that help to insure safety from fire, panic and other dangers. Also, when the developer submits a proposed site plan, the Engineering Division, Planning Division and the Fire Department review what the developer is proposing to build and have input to insure that it is designed to meet safety requirements.

4. *Will the new zoning promote health and general welfare?*

The proposed zoning will permit professional office or single family residential uses only. The Unified Zoning Regulations specify minimum setbacks, lot coverage requirements and height restrictions. RP zoning is restricted to requirements very similar to residential zoning so it will better fit into residential neighborhoods.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning is for RP uses which will not cause a concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

*Transportation:* This area of Billings currently has high volumes of traffic on the streets. South 32<sup>nd</sup> Street West is a principle arterial street and so is King Avenue West. The intersection of these two principle arterial streets is two blocks south of this property. Any development on this property will increase traffic in the area.

*Water and Sewer:* The City will provide water and sewer to the entire property through existing lines.

*Schools and Parks:* The proposed zoning will have no effect on the school system or parks unless it is developed as single family residential.

*Fire and Police:* The subject property is currently served by the City of Billings fire and police departments.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will allow smaller office buildings to be built on the lots with required setbacks, separations and heights. These restrictions will help ensure that the buildings blend in with surrounding residential structures.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning. It is on a Principle Arterial street that currently handles high volumes of traffic where a single family residence may not be appropriate or desirable. The RP zoning will provide a service to the surrounding residential neighborhood.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The new zoning will conserve the value of the surrounding buildings because the use restrictions do not allow intense commercial uses on the site.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning will encourage office space on a busy street where a single family residence may not be appropriate or desirable.

**CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

**STAKEHOLDERS**

The Zoning Commission conducted a public hearing on April 1, 2008.

Nicole Cromwell, Zoning Coordinator, told the Zoning Commission members that the surrounding neighbors were working on getting a valid protest together but there was some legal question about who signs the petition in a condominium development. Planning staff and the City attorney's office were researching the issue when this report was sent to the City Council. Staff will provide more information on the petition to the Council at the April 28<sup>th</sup> Council meeting.

After the staff presentation David Hawkins, the applicant and agent, provided testimony to the Zoning Commission. Mr. Hawkins explained the proposed zone change to the Commission and provided pictures of professional office buildings he has built in the past that are surrounded by residential development. Mr. Hawkins mentioned several locations in Billings where there

currently are professional offices in residential neighborhoods. Mr. Hawkins also went through a brief explanation of the history of this subdivision. When it was first subdivided all of it was residential out to King Avenue West and South 32<sup>nd</sup> Street West. King Avenue West is now commercial and South 32<sup>nd</sup> Street West has become a major arterial that connects Interstate 90 (I-90) with Highway 3. Traffic on South 32<sup>nd</sup> Street West is now high enough volume that the lots on this street are no longer desirable for residential construction.

Mr. Hawkins also stated that at the neighborhood meetings there were several issues of concern that were discussed. One concern was the increase in traffic, and traffic is also worse during construction. Mr. Hawkins pointed out that this area was already experiencing the effects of traffic issues related to construction and he believes that when the road construction is completed traffic will move more smoothly and people will stay on the main roads. There was a concern that Mr. Hawkins would build a 2 story building. Mr. Hawkins stated that while a 2 story building is allowed with RP zoning it is also allowed with current R-80 zoning. He said he has no intention of building a 2 story building, a 2 story commercial building is difficult to lease, and people want a ground floor for access reasons. Another concern was people did not want rentals in the site. Mr. Hawkins stated he had no intention of building rentals. There was also concern that if this zone change were to be granted Mr. Hawkins could request the rest of his R-80 lots in the neighborhood to be re-zoned. Mr. Hawkins stated that was not his intention and if he did apply for another zone change the neighborhood would have a good argument against such a change because businesses should not be back in residential off of main arterial roads.

Mr. Hawkins also stated that with this professional office it would keep business hours and not be open on weekends. This would mean the major traffic to it would be during the day when others are at work and when they are home there would be no traffic.

Jack Payne speaking in opposition to the zone change stated that all along South 32<sup>nd</sup> Street West there are currently single family homes. He stated that he has talked with realtors and they have told him that RP zoning will devalue surrounding property. He also stated that when these lots were developed the realtors and agents promised the area will always be residential. He was concerned with the increase in traffic and the noise. He also stated he lives in one of the condominiums that back South 32<sup>nd</sup> Street West and he doesn't notice traffic noise anymore. His building may actually act as a buffer to the noise for others in the development. Mr. Payne stated he believed they already had a valid protest. He argued that the Rosebud Townhouses were town homes not condominiums as stated in the Declaration of Unit Ownership for Rosebud Townhouses document that he had provided to the Planning Division.

Doline Schlepp spoke in opposition of zone change #836 asking two questions. When Mr. Hawkins bought the property did he know it was zoned residential and could he make more money selling it as a business property than residential property?

Mr. Hawkins spoke in rebuttal to address comments made by the public. Again the traffic from the proposed office building would be during regular business hours. He also pointed out that any development on the lots would increase traffic. Mr. Hawkins stated that the condominiums were built after the commercial developments were built on the south and west of them so they

were purchased knowing there was commercial next door. He is proposing to build a professional office building with very different traffic patterns. Mr. Hawkins stated that he has checked into what other things could be built on the lots with R-80 zoning and a few of them were group homes, rehab centers, condominiums, multi family buildings for rent. He said that he had actually been contacted by a company interested in his property to build group homes. Mr. Hawkins responding to devaluing of property said he would argue there would be no effect on the property because he knows of several examples with the same situation and they have not been affected. Mr. Hawkins stated that the building he is proposing will blend in with the neighborhood and will be a positive addition to the area.

The public hearing was closed and a motion made to approve zone change # 836. Zoning Commission member Ed Workman pointed out that he felt a well built professional office on this busy road would be a positive addition compared to more rentals like what is across the street. Commission member Michael Larson stated he believed the staff recommendation for approval was correct and he also stated he works in an office that is surrounded by residential and it is a very good environment.

The Zoning Commission then voted to forward a recommendation of approval to the City Council on a 4-0 vote.

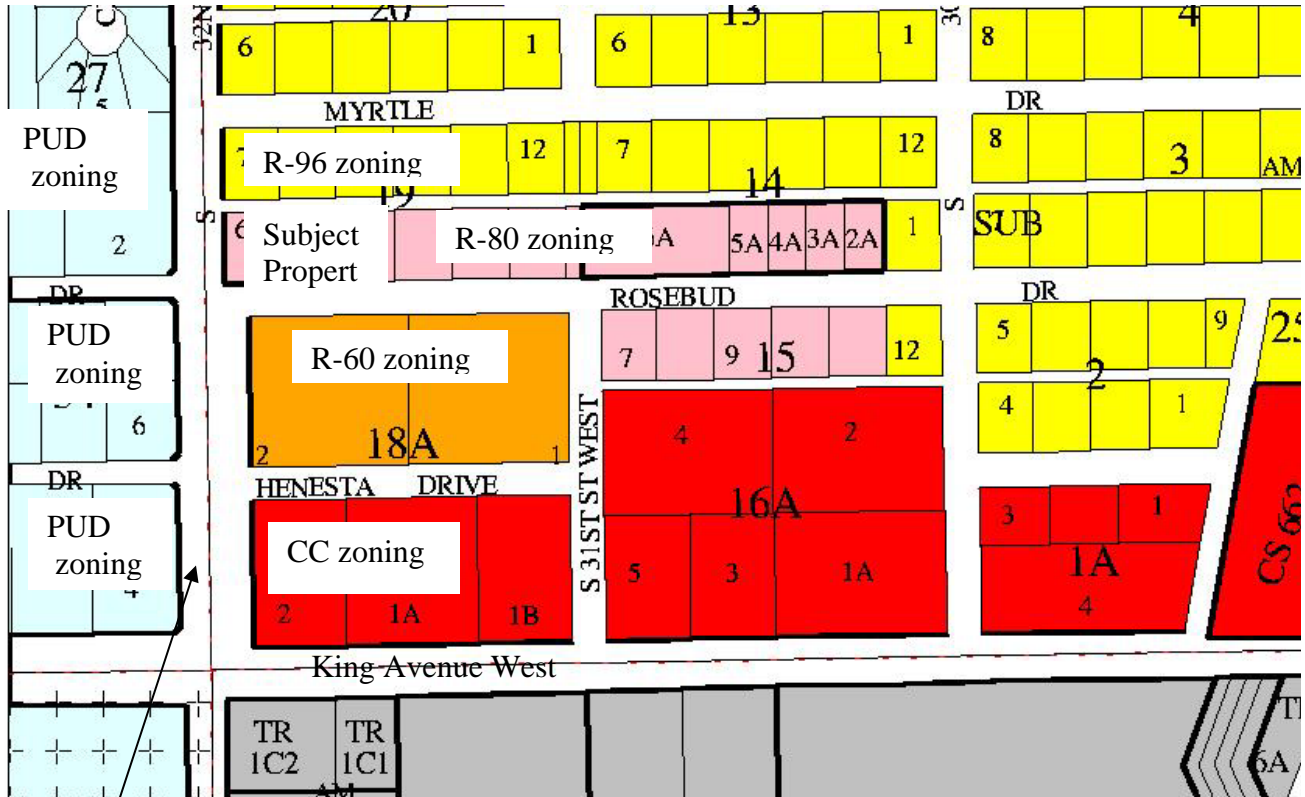
### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #836 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

### **ATTACHMENTS:**

- A: Surrounding Zoning
- B: Ordinance

**Attachment A**  
Surrounding Zoning



S 32<sup>nd</sup>  
Street  
West

**Attachment C**  
**ORDINANCE NO. 08-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Lots 4, 5 and 6, Block 19, Lampman Subdivision, containing approximately 37,500 square feet

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

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

2. **DESCRIPTION.** A tract of land known as Lots 4, 5 and 6, Block 19, Lampman Subdivision, containing approximately 37,500 square feet and is presently zoned Residential 8000 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 8000** to **Residential Professional** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Professional** as set out in the Billings, Montana City Code.

4. **REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. **EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading April 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading May 12, 2008.

CITY OF BILLINGS:

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

ATTEST:

BY:



Cari Martin, City Clerk

ZC #836

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Public Hearing and Resolution for Annexation #08-06  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** James Pickens of Best Development Corp., is requesting annexation of a property legally described as Tracts 1A, 1B, and 1C of Certificate of Survey 2055, Amended, located in Section 28, Township 1N, Range 26E into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The 20.6-acre subject property is located north of Alkali Creek Road, where the new extension of Aronson Avenue is under construction in the Heights. The petitioner is requesting annexation in order to obtain city water and sewer services for development of the property for residential uses. The subject property is currently vacant with Residential-9600 zoning. At its April 14, 2008, meeting, the Council acknowledged receipt of the petition and set a public hearing date for this meeting.

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

**FINANCIAL IMPACT:** The City can provide municipal services to the subject property. If the proposed annexation is approved, the property could further develop with residential uses, thereby increasing the tax revenue for the City.

**RECOMMENDATION**

Staff recommends that the City Council approve the Resolution annexing Tracts 1A, 1B, and 1C of Certificate of Survey 2055, Amended, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

- b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

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

**ATTACHMENT**

A. Resolution

## **INTRODUCTION**

James Pickens of Best Development Corp., is requesting annexation of a 20.6-acre property legally described as Tracts 1A, 1B, and 1C of Certificate of Survey 2055, Amended. The subject property is located north of Alkali Creek Road, where the new extension of Aronson Avenue is under construction in the Heights. The petitioner is requesting annexation in order to obtain city water and sewer services for development of the property for residential uses. The property is currently vacant with Residential-9600 zoning.

## **PROCEDURAL HISTORY**

- On January 25, 2008, the annexation petition was submitted to the Planning & Community Services Department.
- On March 13, 2008, Amended Tract 1, Certificate of Survey 2055 was recorded with the Yellowstone County Clerk and Recorder, creating the parcels to be annexed.
- On April 14, 2008, the City Council acknowledged receipt of the annexation petition and set a public hearing date for April 28, 2008.
- On April 28, 2008, the City Council will conduct the public hearing for the annexation and may take action on the request.
- On May 12, 2008, if the resolution to annex is approved by the City Council, a public hearing and first reading of an ordinance to expand the Ward II City Council boundary will be conducted.
- On May 27, 2008, the City Council will conduct the second and final reading for the ordinance expanding the ward boundary.

## **BACKGROUND**

The 20.632-acre subject property is located north of Alkali Creek Road, and includes parcels on both sides of the new extension of Aronson Avenue, currently under construction in the Heights. It is entirely surrounded by properties within the City limits and is within the red boundary of the limits of annexation as specified by the Annexation Map adopted by the City Council on March 10, 2008. Annexing the property would allow it to be developed most efficiently for residential uses, and therefore increase the taxable value of the property. No change in zoning is anticipated at this time.

## **ALTERNATIVES ANALYSIS**

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

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements will be required to meet City standards.

4. As part of the Development Agreement, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.
5. The proposed land use will conform to the goals of the City of Billings and Yellowstone County Growth Policy.

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

**Departmental Response:** City and County Departments, and the Heights Neighborhood Task Force were given the opportunity to comment on this annexation. All City departments responded favorably. Of the County Departments that were informed, only the County Emergency and General Services Director, Jim Kraft, responded, indicating that the property is not located within the Alkali Creek floodplain.

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

- **Water:** The City can provide needed water services to the subject property. The 20-inch water main on the east side of the subject property can be tapped and looped through the new development to the 12-inch main on Aronson Avenue. The developer will be responsible for construction of the interior mains within the subdivision.
- **Sewer:** The City can provide sewer service to the property using the 8-inch sanitary sewer main located on Aronson Avenue north of the BBWA canal. The Public Works Department indicates that the sewer main is approximately 9.5 feet deep. The developer will be responsible for construction of the interior mains within the subdivision.
- **Stormwater:** All storm water improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Public Works Department. Initial storm water management plans call for directing storm water into a detention pond, and then releasing it at a controlled amount through an existing pipe under the BBWA canal. According to Public Works-Engineering Division, the water eventually flows into Alkali Creek.
- **Transportation:** The subject property encompasses approximately 1,500 feet of Aronson Avenue right-of-way, which is a minor arterial street. The section that crosses the subject property is currently under construction; this project will complete a valuable transportation link from Hilltop Road to Airport Road. Preliminary subdivision plans for the subject property have shown that direct access to the proposed lots will be from internal local streets and not from Aronson Avenue itself. All new street improvements

will be completed in accordance with City standards. Furthermore, driveway locations and additional traffic impacts for the property will be reviewed during the subdivision or site development review process.

The Street and Traffic Division expressed concerns over the ability to adequately service any additional areas due to budget cuts within the division for fiscal year 2008 and beyond.

- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. Fire Station #6 at 1601 St. Andrew's Drive is the closest station to the subject property and the only station in the Heights. It is approximately 1.5 miles from the subject property.
- **Parks:** Parkland dedication requirements will be reviewed for the property at the time of development. Sahara Park, which is an undeveloped natural park, is immediately west of the subject property. There is also parkland along the Alkali Creek corridor and MetraPark in the vicinity, all which provide recreational opportunities to the citizens in this area.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. A multi-use trail is being constructed along the south side Aronson Avenue in conjunction with the on-going improvements. Furthermore, sidewalks will be required on both sides of the internal local streets when the subject property is further developed.

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

- **Transit:** MET transit system operators have no objections with the annexation request. The nearest bus route to the subject property is along Alkali Creek Road.
- **Fire:** The Fire Department currently provides wildland fire protection to the vacant parcel as it is within the BUFSA. Upon annexation and development, the required services would be increased. The Department indicates that staffing has been reduced, and any increase in response area or population will be difficult to serve.
- **Police:** The Police Department states that the subject property is located in a well established patrol area, and therefore had no concerns with the annexation proposal.
- **Public Utilities:** The Public Works--Collection and Distribution Division had no objection with the annexation request.

- **Public Works -Street and Traffic Division:** The Street and Traffic Division expressed concerns over the ability to adequately service this property due to budget reductions.
- **Public Works-Solid Waste:** There is currently no trash collection service to the vacant property, and the Solid Waste Division indicates that it can serve the area when developed after annexation.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance have indicated that they will not be negatively impacted.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

### **STAKEHOLDERS**

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on April 9, 2008, and published in the Billings Times on April 10, 2008. The Planning Division has received no public comments regarding the proposed annexation.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Annexation of this property would adhere to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy*:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5).
- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6).
- More housing and business choices within each neighborhood (Land Use Element Goal, page 6).
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, page 10).

Annexation of the subject property is also consistent with the following goals and objectives of the 2006 Heights Neighborhood Plan:

- Efficient, free-flowing arterial streets to improve mobility in the Heights (Transportation Goal, page 17).
- Improve continuity of arterial routes within the Heights and between the Heights and other areas of the City (Transportation Goal, page 17).
- Encourage the annexation of County islands into the City of Billings (Land Use Goal, page 20).
- Develop housing patterns that are compatible with existing neighborhoods (Land Use Goal, page 19).
- Encourage infill development to access existing infrastructure (Infrastructure Goal, page 33).

### **RECOMMENDATION**

Staff recommends that the City Council approve the Resolution annexing Tracts 1A, 1B, and 1C of Certificate of Survey 2055, Amended, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

### **ATTACHMENT**

- A. Resolution



**RESOLUTION NO. 08-**

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

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

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

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

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

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

A tract of land situated in the E1/2 of Section 28, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:  
Tracts 1A, 1B, and 1C, Amended Tract 1, Certificate of Survey No 2055, Recorded March 13, 2008, under Document No. 3457577, Records of Yellowstone County.  
Including all adjacent right-of-way of Aronson Avenue.  
Containing 20.632 gross and net acres.  
(# 08-06) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved, subject to the following conditions:
  - a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
  - b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 28th day of April, 2008.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_

CITY CLERK

(AN 08-06)

# EXHIBIT A



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




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, APRIL 28, 2008**

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**TITLE:** Public Hearing for Special Review #858- 4125 and 4135 Grand Avenue,  
King of Glory Lutheran Church

**DEPARTMENT:** Planning & Community Services

**PRESENTED BY:** David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** This is a request for a special review for an expansion of a church facility on a 5.939 acre parcel of land in a Residential 9,600 (R-96) zone. The subject property is legally described as Tracts 2A-1 and 3A-1 of Certificate of Survey (COS) 1876. The property is addressed as 4125 and 4135 Grand Avenue. The lot is on the northwest corner at the intersection of Grand Avenue and 41st Street West. King of Glory Lutheran Church, Inc. is the applicant, Engineering Inc, is the agent.

The Zoning Commission conducted a public hearing on April 1, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a special review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, will have minimum effect on the City's tax base.

**RECOMMENDATION**

The Zoning Commission on a 5-0 vote is forwarding a recommendation of conditional approval of Special Review #858 to the City Council.

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

**ATTACHMENTS**

- A: Zoning Map
- B: Site Plan
- C: Applicant Letter

## **INTRODUCTION**

This is a request for a special review to allow the expansion of an existing church, King of Glory Lutheran Church, at 4125 and 4135 Grand Avenue. The property is zoned R- 96 and is generally located on the northwest corner of Grand Avenue and 41<sup>st</sup> Street West. The property on the east is zoned Community Commercial (CC), Goodman Subdivision, 2<sup>nd</sup> Filing; the land to the south is in the county and is agricultural land. The lands to the north and west are both residentially zoned properties.

## **PROCEDURAL HISTORY**

- On March 3, 2008, the special review application was submitted to the Planning Division.
- On April 1, 2008, the Zoning Commission conducted a public hearing on this request and forwarded a recommendation of Conditional Approval to the City Council on a 5-0 vote.
- On April 28, 2008, the City Council will vote to approve, conditionally approve, or deny the special review.

## **BACKGROUND**

This is a request for a special review to allow the expansion of an existing church, King of Glory Lutheran Church, at 4125 and 4135 Grand Avenue. The property is zoned R-96 and is generally located on the northwest corner of Grand Avenue and 41<sup>st</sup> Street West. The property on the east is zoned CC, Goodman Subdivision, 2<sup>nd</sup> Filing; the lands to the south is in the county and is agricultural land. The land to the north and west are both residentially zoned properties.

On February 13, 2008, the Planning Division received building plans for review of the expansion of King of Glory Lutheran Church. Upon reviewing the plans it was determined that the proposed building addition would increase the occupancy by more than 10%, the gross floor area of the addition would be an increase of greater than 10% and additional parking stalls would also be greater than a 10% increase over existing parking. Section 27-613, BMCC, requires churches to go through a special review if the building addition is more than a 10% increase, if the occupancy increases by more than 10%, or the parking lot increases by more than 10%. The proposed expansion is larger than 10% in all three categories. Upon further review and research, the Planning Division could not find a record of a special review for the initial building construction. A letter was sent on February 20, 2008, informing King of Glory Lutheran Church and its agents that before a building permit could be issued, it would have to go through the special review process.

The existing church is 5,722 square feet on the main level; the proposed addition is 9,873 square feet on the main level with a future addition of 4,980 square feet on the main level. With the building additions, the future parking lot will add more than twice what currently exists, see Attachment C. These two parcels owned by the King of Glory Lutheran Church were annexed into the City of Billings on January 26, 2004.

### **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all special reviews shall comply with the following three (3) criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria, in so far, that it meets required setbacks and does not exceed maximum lot coverage. Also churches are an allowed use in R-96 zoning provided the organization has gone through the special review process and obtained approval for the use.

The application also conforms to the second and third criteria. The submitted drawing with this application appears to meet all zoning requirements for setbacks, lot coverage and landscaping. This is the current location of the King of Glory Lutheran Church and it is proposing to stay in the neighborhood, add on to its existing building and include site improvements that will enhance the appearance of the area. The property has been in use as a church in the neighborhood and does not pose a change in use that would be detrimental to the neighborhood. The proposed expansion of the King of Glory Lutheran Church building is consistent with goals of the 2003 Growth Policy specifically the goal of “Visually appealing communities”.

The Zoning Commission is recommending conditions for this special review based on the approval criteria for special review uses. The Zoning Commission has recommended conditions below to address light, safety, traffic flows and the aesthetics of the property.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

### **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Tracts 2A-1 and 3A-1, COS 1876 addressed at 4125 and 4135 Grand Avenue, 5.939 acres on the northwest corner of the intersection of Grand Avenue and 41<sup>st</sup> Street West.
2. Any expansion of the proposed building, building occupancy or parking lot greater than 10 percent of what is shown on attachment C of this report will require an additional special review approval as per BMCC 27-613(c).

3. The development of Tracts 2A-1 and 3A-1, COS 1876 shall be in complete accordance with all provisions of Section 27-1100 Landscaping and all provisions of Section 27-308 building height and setbacks.
4. Dumpsters shall be enclosed in a three sided sight obscuring enclosure with sight obscuring gates, Section 27-1107 BMCC.
5. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
6. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.
8. The King of Glory Lutheran Church shall install a solid 6 foot site obscuring fence, chain link is not acceptable, along the property line between them and the neighboring property, Lot 3 Block 7, Goodman Subdivision, 1st Filing, that extends from the north property line of Lot 3, Block 7, Goodman Subdivision, 1st Filing, to the north property line of Tract 3A-1 Certificate of Survey 1876 Amended, when they construct Phase I of this project as shown on drawings provide to the Planning Division and dated 2-27-08.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

### **STAKEHOLDERS**

The City Zoning Commission conducted a public hearing on April 1, 2008 for this application.

Michael Sanderson from Engineering Inc., the representing agent, stood and spoke in favor of the special review. He had conceptual pictures that were passed to the commission members to show them what the proposed addition to the church would look like. Mr. Sanderson said there would be some additional enhancement to the site; they included fewer accesses off of 41<sup>st</sup> Street West, better architecture and landscaping. Also since the church was annexed on January 26, 2004 they will be connecting to city water and sewer. He also stated that the church felt the conditions of approval were reasonable and had no issue with them.

Tom Schlotterback, the pastor for King of Glory Lutheran Church, stood and spoke in favor of the special review. He stated that the church congregation is growing and that they need more space to accommodate that growth. Commission member Leonard Daly asked how long the church had been at this site. Mr. Schlotterback stated that the church had been at this site for 24 years.



Marsha Welborn the taskforce chair for the church stood and spoke in favor of the special review. Ms. Welborn stated that there are many neighborhood activities at the church and that they wish to continue to be a vital part of the neighborhood and the expansion will enable them to accommodate more people. She stated they have been planning this expansion for 2 years. Commission member Leonard Daly asked her when they would begin the project. Ms. Well states as soon as this special review gets final approval.

Mike Heffner a neighbor to the west stood and spoke in favor of the special review. Mr. Heffner stated that they are good neighbors and felt that the conditions with the special review addressed all of his concerns.

Jerry Goodman spoke in favor of the special review. He stated that the church is a good neighbor and that they provide good activities for people in the community. He also stated that he personally had been in the neighborhood since 1942. Mr. Goodman owns the property directly north of the church and plans to build condominiums or townhouses but will not allow apartments.

### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the following goal of the 2003 City of Billings/Yellowstone County Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, page 6)
- Visually appealing communities. (Aesthetics Goal, page 7)

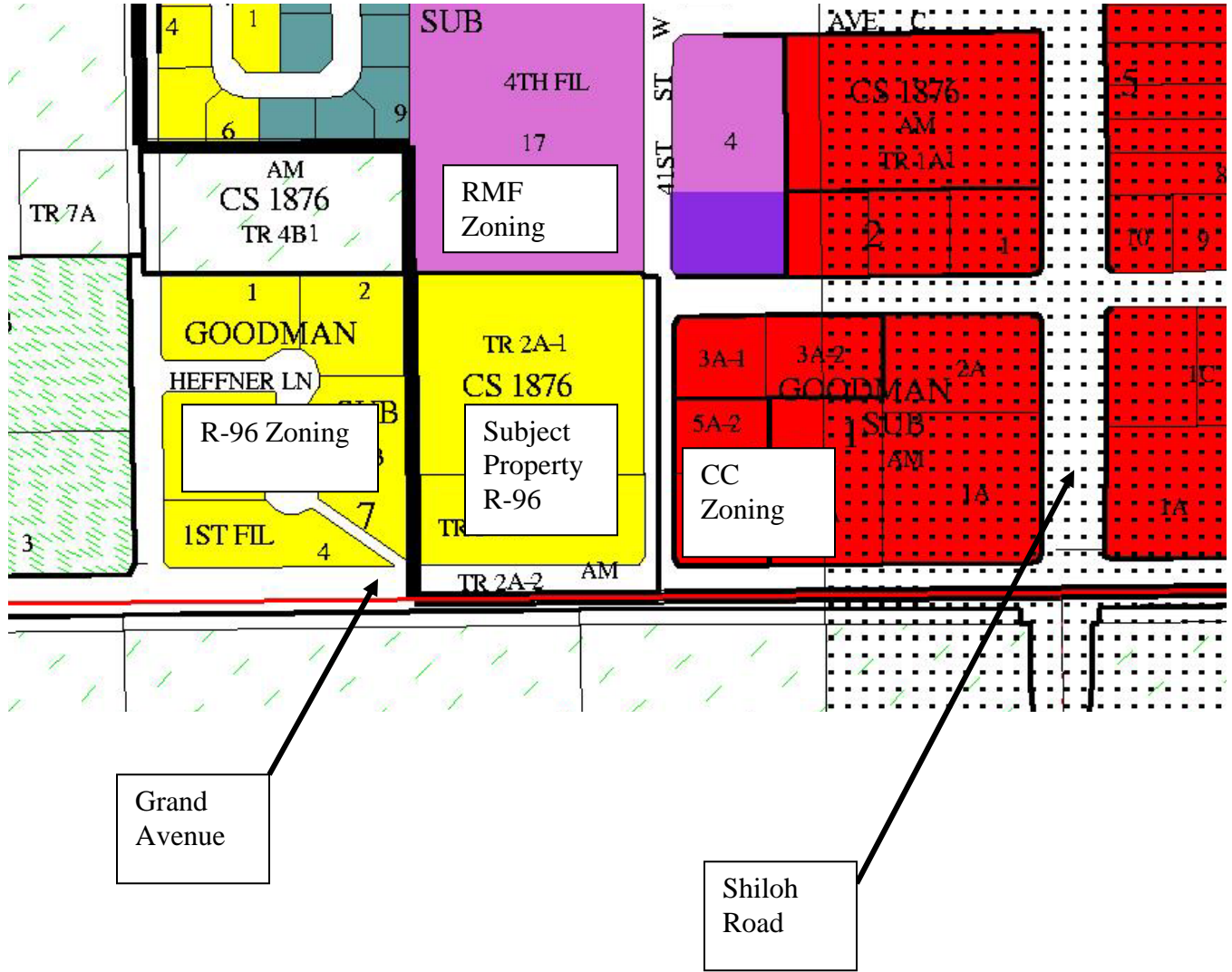
### **RECOMMENDATION**

The Zoning Commission on a 5-0 vote is forwarding a recommendation of conditional approval of Special Review #858 to the City Council.

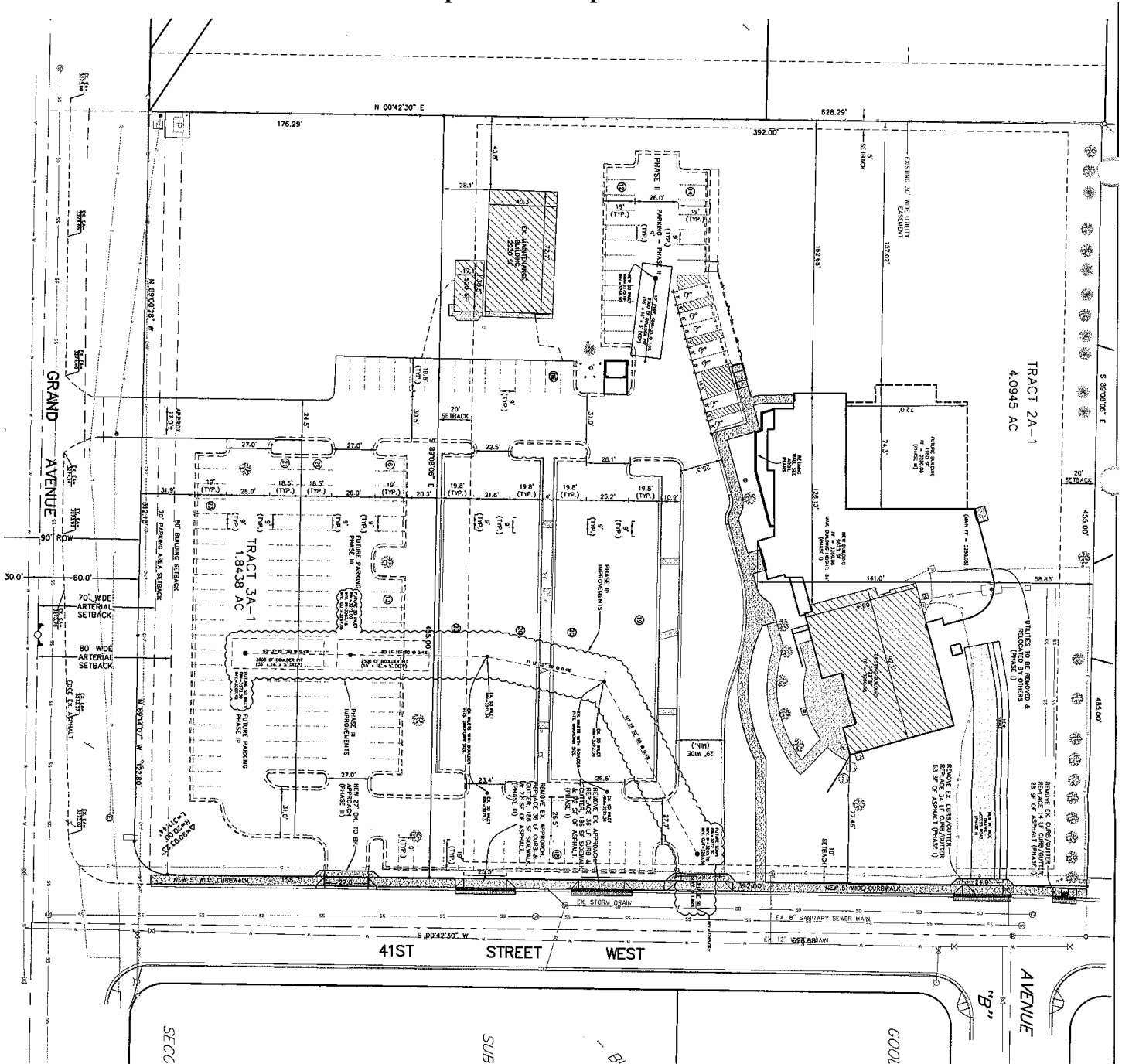
### **ATTACHMENTS**

- A: Zoning Map
- B: Site Plan
- C: Applicant Letter

**Attachment A**  
Zoning Map - Special Review #858



**Attachment B**  
**Proposed Site – Special Review #858**



**Tracts 2A-1 and 3A-1 of Certificate of Survey 1876  
Amended Tracts 2A and 3A  
Special Review**

**Responses to Application Questions**

1.A. *In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?*

***Land Use Element:***

ISSUE: *Existing neighborhood plans lack sufficient detail to address neighborhood character and preferred land use patterns.*

GOAL: *Predictable land use decisions that are consistent with neighborhood character and land use patterns.*

OBJECTIVES: *Preserve neighborhood integrity and empower neighborhood groups.*

**The proposed development of the site includes expansion of the existing church facility, which includes building and parking lot improvements. The development is consistent with the development in the area, which is Community Commercial to the east, Residential Multi-family to the north, and Residential 9600 to the west.**

ISSUE: *The current zoning ordinances and subdivision regulations do not meet the goal of preventing incompatible uses in and adjacent to existing city neighborhoods and county town sites.*

GOAL: *New developments that are sensitive to and compatible with the character of adjacent city neighborhoods and county town sites.*

OBJECTIVES: *Maintain a high quality of life for new and existing residents, reduce conflicts between neighbors, and improve the appearance of land uses.*

**The proposed church expansion should not significantly affect adjacent properties, as most of the adjacent lots are vacant. Many residents of nearby neighborhoods are members of the King of Glory Lutheran Church congregation. Therefore, it has become, and will continue to be, a gathering place where neighbors have the opportunity to interact with one another. The initial construction phases proposed are not expected to increase traffic significantly. The site improvements include reducing the number of accesses to 41st Street West to reduce conflicts between neighboring properties. The future construction of a new worship space, which is not part of the current application, will trigger the addition of parking improvements**

to Tract 3A-1. The development includes landscaping improvements to improve the appearance of the land uses.

1.B. *Why is there a need for the intended use of the property at this location?*

The proposed plans for expansion of existing church facilities would not constitute a change in land use of this property. The need for the expansion of the existing facility is being driven by the desire of the congregation to expand the common and gathering areas of the church and master plan for the expected future growth of the King of Glory Lutheran Church congregation.

1.C. *How will the public interest be served if this application is approved?*

The public interest would be served by providing improvements to the existing church facilities as desired by the church congregation, as well as improving the existing site conditions. In order to continue to serve this community well into the future, expansion of the existing facility is necessary. The improvements include providing public water and sewer connections, which is in the public interest for providing a safe water supply and reducing the withdrawal of water and discharge of effluent into the ground water aquifer.

1.D. *Prepare a written statement addressing what is intended to be done with the property, including new construction or change in the use of the property, and why the special review is being sought?*

The King of Glory Lutheran Church facility improvements will be broken down into three phases. The architectural plan for the site includes a base bid and Alternates 1 through 6. For the purposes of this review, the three phases will be described as: Phase 1 - unfinished 9,873 square feet (1st floor) building expansion, which will provide area for additional commons and gathering area, offices, classrooms, etc. (base bid); Phase 2 - includes Alternates 1 through 5, to finish the interior of the building expansion, remodel the existing worship space, and associated site improvements; and Phase 3 - includes Alternate 6, which is the future addition of a new worship space and associated site improvements, which is not part of the current application.

The special review is being sought, as it is a requirement of the City of Billings Code, Sections 27-305 and 27-613, that any church expansion in a residential zone be reviewed as a special review. The church expansion does not meet all the exemptions to this requirement, as the expansion consists of more than 10 percent of the gross floor area originally occupied by the facility (BMCC section 27-613(1)(b)). Therefore, a special review of the King of Glory Lutheran Church expansion and remodel is being sought.

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Public Hearing for Special Review #859, 401 North 27<sup>th</sup> Street  
Yellowstone Art Museum

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Dave Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** This is a special review request to allow an all beverage license without gaming on a property legally described as Lots 7-12 and 14-24, Block 9, Billings Original Townsite and Lot 13A, Block 58, Fosters Addition Amended less 642 square feet. The property is zoned Central Business District (CBD) and is addressed as 401 North 27<sup>th</sup> Street. Yellowstone Art Center Foundation is the owner and James Healow is the agent. The Zoning Commission held a public hearing on this request on April 1, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, will have no impact on the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #859 on a 5-0 vote.

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

**ATTACHMENTS**

Attachment A: Zoning/Location Map.

Attachment C: Site Plan

## **INTRODUCTION**

The special review is for the location of an all-beverage license at 401 North 27<sup>th</sup> Street, the Yellowstone Art Center. The property is located in CBD zoning on Lots 7-12 and 14-24, Block 9, Billings Original Townsite and Lot 13A, Block 58, Fosters Addition Amended less 642 square feet and is owned by Yellowstone Art Center Foundation. The property is zoned CBD. The site is the current site of the Yellowstone Art Museum.

## **PROCEDURAL HISTORY**

- A special review application for an all beverage license for the sale of alcoholic beverages without gaming was submitted on March 3, 2008.
- The City Zoning Commission held a public hearing on April 1, 2008, and is forwarding a recommendation of conditional approval.
- The City Council will conduct a public hearing and consider this application on April 28, 2008.

## **BACKGROUND**

The special review is for the location of an all-beverage license at 401 North 27<sup>th</sup> Street, the Yellowstone Art Center. The property is located in CBD zoning on Lots 7-12 and 14-24, Block 9, Billings Original Townsite and Lot 13A, Block 58, Fosters Addition Amended less 642 square feet and is owned by Yellowstone Art Center Foundation.

The Yellowstone Art Center during the year has special events and fund raising activities where alcoholic beverages are available. They currently hire an off-premise liquor caterer to host events. With this all beverage license, the Yellowstone Art Center will be able to host special events and fund raising activities and not have to coordinate with off-premise caterers. This will enable them more freedom when scheduling events. It will also afford the Yellowstone Art Center the opportunity to offer full beverage service to it's patrons at all times when it is open. According to the applicant, the café inside the Yellowstone Art Center, Art Beyond the Palette, will become more economically viable with the all beverage license.

In special reviews for all-beverage licenses one of the main criteria is that the establishment needs to be 600 feet from churches, schools, or public parks with a playground. The Yellowstone Art Center is located in CBD zoning and the zoning around them is CBD. In Section 27-612 (a)(1)(a) BMCC, establishments which are located in the CBD are exempt from the 600 foot separation requirement from churches, schools, or public parks with a playground.

## **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria, in so far, that it meets required setbacks and does not exceed



maximum lot coverage. Also the sale of alcoholic beverages is an allowed activity in CBD zoning provided the organization has gone through the special review process and obtained approval for the use.

The application also conforms to the second and third criteria. The use meets requirements set out by the BMCC for location of an all beverage license without gaming. The property is the site of the Yellowstone Art Center they are adding a use inside the building that is allowed in the CBD zoning. The proposed additional use in this building is consistent with goals of the 2003 Growth Policy specifically the goal of “Economic Development”.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #859 on a 5-0 vote.

#### **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Lots 7-12 and 14-24, Block 9, Billings Original Townsite and Lot 13A, Block 58, Fosters Addition Amended less 642 square feet as shown on the site plans submitted with this application. The all beverage liquor license without gaming shall be limited to the interior space and existing outdoor central patio of the existing building.
2. Any future increases of floor area for the all beverage liquor license without gaming beyond current interior space and existing outdoor central patio or the addition of a new outdoor patio will require another Special Review application (BMCC 27-613).

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

## **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on April 1, 2008, and forwarded a recommendation of approval to the City Council on a 5-0 vote.

The applicants' agent James Healow was present at the Zoning Commission meeting. He stood and spoke in favor of the special review. Mr. Healow also stated there was a license available for purchase and that the process to get it should be completed before the public hearing at the city council meeting. He also stated that they have received a letter from the Congregational Church stating their support of the special review, but did not have a copy of it with him at the time. The café Art Beyond the Palette inside the museum will be where the license is issued. The café is open for approximately 25 hours a week.

There was no public comment beyond Mr. Healow at the meeting and no discussion by the Zoning Commission.

## **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- The project does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

## **RECOMMENDATION**

The Zoning Commission on a 5-0 vote is forwarding a recommendation of conditional approval of Special Review #859 to the City Council.

## **ATTACHMENTS**

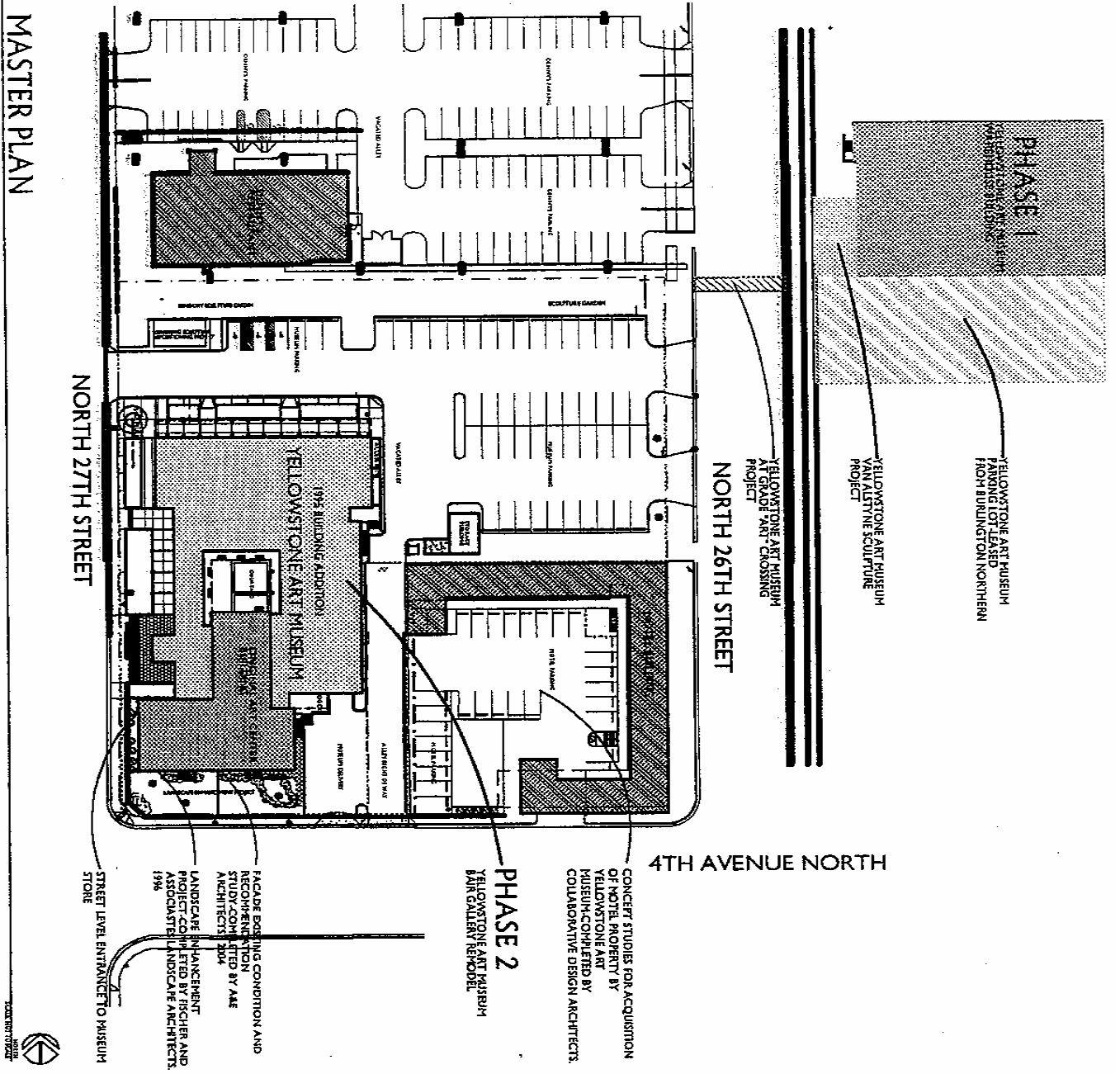
A: Zoning/Location Map.

B: Site Plan

**ATTACHMENT A**  
**Zoning Map – Special Review #859**



**Subject Property**



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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
CITY OF BILLINGS, MONTANA  
Monday, April 28, 2008

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TITLE: New Model Cable TV Franchise Ordinance  
DEPARTMENT: City Attorney/City Administrator  
PRESENTED BY: Brent Brooks, City Attorney and Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** With substantial advances in telecommunications law and technology, City staff is proposing that a new, model cable system franchise ordinance be enacted in addition to specific individual cable TV franchise agreements with cable TV providers. This new, general ordinance would establish policies of the Mayor and City Council for granting specific cable TV franchises together with procedures, terms and conditions for granting, modifying, renewing, transferring and regulating where law authorizes such, cable TV franchises. This is a new ordinance and does not repeal an existing ordinance.

**ALTERNATIVES ANALYZED:** Staff has analyzed alternatives available to the Mayor and City Council concerning this proposed general cable TV franchise ordinance applicable to current and future cable system providers wishing to enter the City of Billings cable TV market. Those alternatives are as follows:

1. Consider and approve on first and second reading the attached, proposed model Cable System Franchise.
2. Disapprove the model Cable System Franchise and rely upon case by case, specific negotiation with cable system TV providers wishing to enter the Billings market.

**FINANCIAL IMPACT:** There is no direct financial impact to the City by approving or disapproving this Cable System Franchise Ordinance. However, enacting the standards, policies and procedures contained within the proposed attached ordinance would facilitate a more orderly and consistent negotiation, renegotiation or transfer of cable system franchises to existing or new competitors entering such a market.

**RECOMMENDATION**

Staff recommends that Council consider and adopt the attached Cable System Franchise Ordinance establishing general policies and procedures applicable to all Cable TV System operators providing Cable TV service to City of Billings.

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

**INTRODUCTION** Numerous advances in the telecommunications law and technology have caused City staff to more closely analyze the need for a general ordinance concerning cable TV system operation standards. With the assistance of the Miller & Van Eaton Law Firm in Washington, D.C., staff has identified several areas as noted in the attached proposed ordinance which would more specifically identify, define and quantify cable TV system operational standards for all providers entering the City of Billings market.

**PROCEDURAL HISTORY** In the past, the Mayor and City Council have individually negotiated and contracted with cable TV system providers in order to bring cable TV service to the City of Billings. Currently one company, Bresnan Communications, provides cable TV service to the City. The franchise under which Bresnan Communications has been operating is now expiring and an individual franchise agreement by way of an ordinance has been submitted to the Mayor and Council for approval, separate from this ordinance.

During the negotiation process with Bresnan Communications to renew its franchise agreement ordinance with the City, it also became apparent that certain general standards for operating any cable TV system within the City of Billings were appropriate and needed. Until now, no such general cable system regulations on the local level have been considered or adopted by the City Council.

### **ALTERNATIVES ANALYSIS**

**Advantages of New Ordinance** The proposed ordinance more specifically defines the terms and policies upon which the Mayor and City Council may grant an individual franchise to one or more competing cable TV system operators. This serves as a general blueprint for individual cable system TV operators to negotiate with the City and enter the Billings city market and provides useful information to potential cable TV system operators as to the important issues for the Mayor and City Council when considering any cable TV system franchise.

The proposed ordinance is much more specific and comprehensive as to standards for new, renewed or transferred cable TV system franchises, makes updated references to federal telecommunications laws, provides certain minimum standards for cable TV system construction, location of cable TV system equipment, repairs of such and coordination of construction with the City.

The proposed ordinance also concerns providing service to City building in the franchise area as well as establishing minimum customer service standards, technical standards and general oversight as to the City's right to inspect books and records of any cable TV system operator and the authority to require cable TV system operators to repair reports as the City reasonably deems necessary to monitor or enforce compliance with the terms of the proposed ordinance.

The proposed ordinance also contains updated and revised provisions concerning insurance and indemnification from the cable TV system franchise operator, performance bonds and revocation of the franchise under certain conditions.

**Disadvantage to Enacting Ordinance** There is no disadvantage to enacting the proposed general ordinance applicable to all cable TV system operators providing service within the City of Billings. There would be some additional work created on the part of City staff to ensure the standards and policies of the new ordinance were met by all cable TV system operators, however, most of these standards are able to be monitored without significant additional effort.

**STAKEHOLDERS** The citizens of the City are stakeholders in that providing this new model ordinance would ultimately give the City authority to provide the highest level of customer service to all subscribers. An additional stakeholder would be any cable TV system operator currently or in the future contemplating operations within the City. This proposed ordinance would more clearly identify the expectations and uniform standards applicable to all competing system operators.

### **RECOMMENDATION**

Staff recommends that Council adopt the attached model Cable System Franchise Ordinance upon first and second readings.

### **ATTACHMENT:**

- A. Ordinance (currently not available)

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



## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 28, 2008**

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**TITLE:** Public Hearing and First Reading Ordinance Repealing Existing Cable TV Franchise Ordinance and Enactment of New Franchise Ordinance with Bresnan Communications

**DEPARTMENT:** City Attorney/City Administrator

**PRESENTED BY:** Brent Brooks, City Attorney

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**PROBLEM/ISSUE STATEMENT:** The existing 1988 cable TV franchise agreement and ordinance at BMCC Sections 7-901 through 909 has expired and is also based upon outdated federal communications law. The City and Bresnan Communications have negotiated a new, non-exclusive franchise agreement that is scheduled for First reading on April 28, 2008, and Second reading for May 12, 2008. New federal communications law and regulations are incorporated as applicable in the new proposed franchise ordinance. Currently Bresnan Communications operates a cable TV franchise in Billings which it assumed from a previous cable tv franchise operator. Because this new ordinance extensively modifies the existing ordinance version, staff recommends that the existing ordinance be repealed in its entirety and the attached draft be considered and approved as a replacement.

Bresnan Communication and the City have been operating on an extension agreement since December , 2007, when the current franchise agreement/ordinance expired and the extension previously approved by the City Council is now expiring.

**ALTERNATIVES ANALYZED:**

- The Council may approve the proposed new cable TV franchise ordinance and repeal the existing outdated ordinance.
- The Council may disapprove the proposed draft franchise ordinance and retain the existing franchise ordinance.

**FINANCIAL IMPACT:** Currently the City charges an annual franchise fee of 5% of the annual gross revenues of the local cable TV operator, the maximum allowed by federal law. This

is a planned revenue maintained in the City's General Fund. For FY 2007 the City received approximately \$890,569 in franchise revenue from Bresnan Communications as a result of the cable TV franchise fee assessed through the franchise ordinance. Whether or not the existing franchise ordinance is repealed and replaced with the proposed new, updated franchise ordinance, these fees will continue to be assessed and collected by the City.

**RECOMMENDATION**

Staff recommends that Council approve the proposed new franchise ordinance and repeal the existing ordinance.

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

**ATTACHMENT:**

A: Cable TV Franchise Ordinance (currently not available)

## **INTRODUCTION**

The City and Bresnan Communications have negotiated a new, five (5) year, non-exclusive cable TV franchise agreement that is required to be approved and memorialized by enacting an ordinance. Bresnan currently operates a cable TV system under the existing but now expired and outdated franchise ordinance. Bresnan was previously approved as the successor to AT&T by the City Council. The current franchise expired in December, 2007, and was extended twice by agreement of the City Council and Bresnan to allow the existing franchise ordinance to be updated and renegotiated to reflect changes in technology and federal communications law and regulations.

## **PROCEDURAL HISTORY AND BACKGROUND**

Bresnan is the successor to AT&T and purchased the cable TV system assets from AT&T in 2003. The City Council approved a Transfer Agreement in 2004 allowing Bresnan to assume AT&T's franchise agreement obligations until the franchise expired in December, 2007. Since December, 2007, the City Council and Bresnan have twice agreed to temporarily extend the franchise agreement expiration to allow a negotiation and revision of the current franchise to reflect current technology and federal communications law and regulations. The latest extension is expiring and the new proposed ordinance is ready for Council consideration and approval or disapproval.

The proposed new franchise ordinance grants a non-exclusive cable TV franchise to Bresnan and is a binding, contractual agreement between Bresnan and the City. Because the new ordinance extensively modifies and revises the existing ordinance, staff recommends that the existing ordinance be repealed in its entirety and replaced by the attached draft franchise ordinance. The new franchise includes the current best practices from across the country and more clearly defines and describes the obligations of both Bresnan and the City.

## **ALTERNATIVES ANALYSIS**

If the Council approves the proposed new franchise ordinance with Bresnan it will update the existing and expiring agreement to reflect current federal telecommunications laws and regulations and will more clearly describe the obligations of Bresnan and the City.

If the Council rejects the proposed new franchise ordinance, continued negotiations with Bresnan will be required and an additional extension of the current franchise ordinance will be necessary while further negotiations are conducted between Bresnan and City staff. The current assessment and collection of five (5) % gross revenues will continue.

## **STAKEHOLDERS**

All City residents who presently subscribe or may subscribe in the future to Bresnan cable TV are interested stakeholders in and beneficiaries of the revised franchise ordinance.

Also, educational and institutional entities such as School District # 2, Community Channel 7 and similar organizations also benefit from the programming required to be carried by Bresnan in the new franchise ordinance.

The City itself will realize continued revenue and greater input into the cable TV programming if the new franchise ordinance is approved.

**RECOMMENDATION**

Staff recommends that the Council approve the new draft franchise ordinance and repeal the current franchise ordinance in BMCC sections 7-901 through 909.

**ATTACHMENT:**

A: Cable TV Franchise Ordinance (currently not available)

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