

RESOLUTION NO. 07-18529

A RESOLUTION RELATING TO W.O. 05-02, 2005 MISCELLANEOUS/DEVELOPER-RELATED IMPROVEMENTS; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND.

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

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

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

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

1. **INTENTION TO ORDER IN.** It is the intention of the Council to order the installation, construction, reconstruction, or replacements of certain curbs, gutters, sidewalks, drive approaches, alley approaches and appurtenant improvements in certain locations, which improvements and locations are more fully described in Exhibits "A" and "B" attached hereto.
2. **AFFECTED PROPERTIES.** All properties, which will be required to pay any portion of the costs of the improvements identified herein, are listed and the owners of those properties are identified on Exhibit "B" attached hereto.
3. **ESTIMATED COSTS.** The estimated assessed costs of the proposed improvements, including construction costs, incidental expenses, engineering fees, legal fees, administrative fees and bond issuance costs, but exclusive of interest charges, will be \$343,000 as described below:

Construction Costs	\$262,622.92
Engineering & Administration	\$ 42,875.00
Bond Revolving Fund (5%)	\$ 17,150.00
Bond Discount Costs (2%)	\$ 6,860.00
Legal Fees (1.7%)	\$ 10,290.00
Bank Fees	\$ 3,350.00
Roundoff	\$ (147.92)
TOTAL ASSESSED COSTS	\$343,000.00

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

<u>Removal and Replacement of:</u>	<u>Unit Price:</u>
Remove and Replace Sidewalk	\$ 7.25/sq. ft.
Remove and Replace Curb Gutter	\$31.85/lin. ft.
Remove and Replace Drive Approach	\$ 8.00/sq. ft.
Remove and Replace Alley Approach	\$ 8.00/sq. ft.
Street Reconstruction	\$42.00/sq. yd.

New Construction:

New Sidewalk	\$ 6.00/sq. ft.
New Curb and Gutter	\$23.10/lin. ft.
New Drive Approach	\$ 6.60/sq. ft.
New Alley Approach	\$ 6.60/sq. ft.
Street Reconstruction	\$42.00/sq. 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 197 separate lots, parcels, or tracts.

Location of Work
Work Order 05-02
Miscellaneous and Developer Related

Exhibit "A"

- A) **Sidewalk:** 2308 thru 2328 Pine Street * North side of City Hall Hand-l-cap parking space * 543 Lewis Avenue * 503 Avenue F * 44 Nimitz Drive * 2528 Poly Drive * 623 Park Lane * 2322 Wyoming Avenue * 2413 Montana Avenue * 1745 Deep Powder Drive * East side of Veterans Park (parks dept.) * Muirwood Drive (Parkland West sub R-O-W) * 2532 Broadwater Avenue * 721 to 733 Avenue F * 730 to 746 Avenue F * 501 Avenue C * 2235 Fox Drive * 1624 Avenue D * 175 North 27th Street (wells fargo bldg) * 741 Avenue C *
- B) **Sidewalk, Curb and Gutter:** South side of Avenue F between 6th Street West and 7th Street West * 4229 Clevenger Avenue * 1432 Crawford Drive * 1229 to 1243 Poly Drive * 1227 Avenue D * 140 Wyoming Avenue * 1621 6th Street West * 2326 Hewitt Drive * 2104 Hewitt Drive * Both sides of 19th Street West from Colton Drive to the BBWA canal * 1748 4th Avenue North * 114 Adams Street * 108 Adams Street * 1706 St. Andrews Drive *
- C) **Sidewalk, Drive Aprons:** 1400 Kootenai Avenue * 1870 High Sierra Boulevard * 452 Katherine Ann Boulevard * 2790 Gabel Road * 1911 King Avenue West *
- D) **Sidewalk, curb & Gutter, Drive Aprons:** 2270 George Street * 4603 to 4615 Phillip Street * Intersection of Lexington Drive & Santa Fe Drive all directions 150' +/- * 1911 & 1915 Belvedere Drive * #1 South Broadway * 829 to 845 Yellowstone Avenue * 1510 & 1520 Virginia Lane * South side of Avenue D between Virginia Lane and 6th Street West * 2116 Fox Drive * 426 Nelson Drive * 2714 & 2718 Hoover Drive * 3695 Rimrock Road (Lot 16 Blk 2 Reimers Park sub) * West side of South 31st Street between 3rd Avenue South and 4th Avenue South (blk #197) * East side of South 32nd Street between 3rd Avenue South and 4th Avenue South (blk #197) *
- E) **Sidewalk, curb & gutter Drive Aprons & Alley Aprons:** Both side of 2nd Avenue South between South 36th Street and South 37th Street * South side of 5th Avenue South between South 37th Street and State Avenue (R/R R-O-W) * South side of 3rd Avenue South between S 31st Street and S 32nd Street * North side of 4th Avenue South between South 31st Street and South 42nd Street *
- F) **Curb & Gutter:** 2115 11th Street West * 524 Clark Avenue * 331 Burlington Avenue * Intersection of Greenbriar Road and Lake Heights Drive * 1306 Avenue F *
- G) **Curb, Gutter, Drive Aprons:** 631 Custer Avenue *
- H) **Drive Aprons:** 2033 Main Street * 4310 North Carlton Avenue * 4207 North Carlton Avenue * 3195 Mac Masters Road *
- I) **Alley Aprons:** East side of Lexington Drive between Dallas Drive and Beloit Drive * North side of Beloit Drive between Lexington Drive and South Santa Fe Drive * West side of 7th Street West (400 block) * East side of 6th Street West between Avenue C and Avenue D * South side of Avenue D between Virginia Lane and 6th Street West. * North side of Avenue C between Virginia Lane and 6th Street West. * West side of Woody Drive between Cohagen Drive and Solomon Drive * East side of 24th Street West between Cohagen Drive and Solomon Drive *
- J) **ADA Ramps only :** S/W corner of South 26th Street & 3rd Avenue North * 3145 Avenue F * 1902 32nd Street West *
- K) **Asphalt Restoration:** 400 & 402 Sharon Lane * 401 & 403 Sharon Lane *

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 \$1,741.18, with a high of \$14,139.49, low of \$0.00, and a median of \$681.47.

5. **PERIOD OF ASSESSMENT.** The assessments for all improvements and costs shall be paid in not more than twelve (12) annual installments, plus interest, provided however, that payment of one-half of each annual installment, plus interest, may be deferred to May 31 of the year following the assessment.
6. **PROPERTY OWNER OPTION TO CONSTRUCT IMPROVEMENTS.** In the event that the City Council orders in the above-described improvements following the public hearing, then the owners of all properties to be assessed for the costs of said improvements will be notified of such action in writing. Said owners will have thirty (30) days from the date of said notice in which to install the required improvements at their own expense. In the event the owners do not install these improvements, the City will do so and will assess the costs against the benefited properties as described herein.

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

The City will issue **Sidewalk, Curb, and Gutter Improvement Bonds** in an aggregate principal amount not to exceed \$343,000 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 \$27,876,901.00. The average market value is \$141,507.11, with a high of \$5,370,603.00, a low of \$13,560.00, and median value of \$65,866.00. 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 197 Tax codes in this project, there are 193 separate owners. One owner, Marleen Golden owns (3) parcels, with (9) lots and 12 units on these 3 lots. Kent & Shelly Messmer owns 2 large parcels with (6) lots. Builders Management & investment co. Inc. owns (2) large separate parcels with apartments on one, and townhomes on the other south of Colton Blvd. & East side of 24th Street West. One (1) parcel listed, is owned by School District #2, which is (A04905) Central Heights 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, six(6) parcels have an SID levied against them. Parcel A-01375 is being assessed under the 1995 Miscellaneous/Developer Related Project, with a payoff amount of \$2007.00, with a payoff date of 2007; Parcel A-05740 is being assessed under the 1997 Miscellaneous/Developer Related Project, with a payoff amount of \$205.66, with a payoff date of 2009. Parcel A-09627 is being assessed under SID 1344, with a payoff amount of \$4,964.19 and a payoff date of 2016; Parcel A-10965 is being assessed under SID 1319, with a payoff amount of \$855.83 and a payoff date of 2007; Parcel A-26161 is being assessed under SID 1327, with a payoff amount of \$10,352.50 and a payoff date of 2011. Parcel A-26161 is also being assessed under SID 1340, with a payoff amount of \$29,708.24, and a payoff date of 2015. Parcel C-01461A is being assessed under the 1999 Miscellaneous/Developer Related Project, with a payoff amount of \$2,371.45 and a payoff date of 2011.

As noted in Section 4, the estimated average assessment levied by this project will be \$1,741.18. With an average market value of \$141,507.11, and an average yearly principal payment of \$145 (monthly principal of \$12.09), 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 "C".

(d) Delinquencies. For tax year 2006, 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 \$343,000 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

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

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

9. **PUBLIC HEARING.** On Monday, March 26, 2007, at 6:30 p.m., in the Council Chambers located on the Second Floor of the Police Facility, 220 North 27th Street, Billings, MT, the City Council will conduct a public hearing concerning this project and all interested parties will be allowed to testify. The City Council will also consider all written comments submitted to the City Clerk prior to the hearing or submitted to the Council during the hearing.

10. **NOTICE OF PASSAGE OF RESOLUTION OF INTENTION.** The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the **BILLINGS TIMES**, a newspaper of general circulation in the county on March 8 and March 15, 2007, 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 26th day of February, 2007.

CITY OF BILLINGS:

BY: 
Ron Tussing

MAYOR

ATTEST:


Marita Herold, MMC CITY CLERK