

CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

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

AGENDA

COUNCIL CHAMBERS

December 17, 2012

6:30 P.M.

CALL TO ORDER: Mayor Hanel

PLEDGE OF ALLEGIANCE: Mayor Hanel

INVOCATION: Councilmember Ronquillo

ROLL CALL: Councilmembers present on roll call were:

MINUTES: December 10, 2012

COURTESIES:

PROCLAMATIONS:

ADMINISTRATOR REPORTS - TINA VOLEK

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item #'s: 1, 2, & 3 ONLY.

Speaker sign-in required. (Comments offered here are limited to one (1) minute. 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. For Items not on this agenda, public comment will be taken at the end of the agenda.)

1. CONSENT AGENDA -- Separations:

A. Mayor Hanel recommends that Council confirm the following appointments:

1.

	Name	Board/Commission	Term	
			Begins	Ends
1	Stanley Hill	Aviation and Transit Board	01/01/13	12/31/16
2	Peggie Gaghen	Aviation and Transit Board	01/01/13	12/31/16
3	Vince Ruegamer	Aviation and Transit Board	01/01/13	12/31/16
4	Ken Behling	Aviation and Transit Board*	01/01/13	12/31/15

5	Robert Pumphrey	Animal Control Board	01/01/13	12/31/16
6	No Applications	Animal Control Board	01/01/13	12/31/16
7	No Applications	Animal Control Board*	01/01/13	12/31/13
8	No Applications	Bicycle & Pedestrian Advisory	01/01/13	12/31/15
9	No Applications	Bicycle & Pedestrian Advisory	01/01/13	12/31/15
10	No Applications	Board of Appeals - Electrical	01/01/13	12/31/13
11	No Applications	Board of Appeals - Builder	01/01/13	12/31/15
12	Thomas Binon	Board of Ethics	01/01/13	12/31/16
13	Andrew Parker	Board of Ethics	01/01/13	12/31/16
14	Amy Mackenzie-Sanders	Board of Health*	01/01/13	12/31/14
15	Bea Ann Melchar	Board of Health	01/01/13	12/31/15
16	Katrina Kruger	Community Development Low Mod*	01/01/13	12/31/14
17	Edward Button	Community Development At Large	01/01/13	12/31/16
18	Fred Buford Jr.	Exchange City Golf Cooperation	01/01/13	12/31/15
19	No Applications	Housing Authority Res Comm	01/01/13	12/31/13
20	No Applications	Human Relations Board*	01/01/13	12/31/15
21	No Applications	Human Relations Board	01/01/13	12/31/16
22	No Applications	Mayor's Homelessness Lending	01/01/13	12/31/16
23	Carol Blank	Mayor's Homelessness Service Provider	01/01/13	12/31/16
24	Paul Chinberg	Mayor's Homelessness Civic/Bus	01/01/13	12/31/16
25	No Applications	Mayor's Homelessness Econ Dev	01/01/13	12/31/16
26	Ken Chase	Mayor's Homelessness Veteran	01/01/13	12/31/16
27	Sue Runkle	Mayor's Homelessness Academia	01/01/13	12/31/16
28	Gary Knopp	Mayor's Homelessness Consumer	01/01/13	12/31/16
29	Sandra McKee	Mayor's Homelessness Healthcare	01/01/13	12/31/16
30	Denise Smith	Mayor's Homelessness Civic/Bus*	01/01/13	12/31/14
31	No Applications	Mayor's Homelessness Econ Dev*	01/01/13	12/31/14
32	Johnnie McClusky	Mayor's Homelessness Lending*	01/01/13	12/31/14
33	No Applications	Parking Advisory Board*	01/01/13	12/31/14
34	Catherine Grott	Parks, Recreation & Cemetery	01/01/13	12/31/16
35	Rachael Cox	Parks, Recreation & Cemetery	01/01/13	12/31/16
36	Alan King	Parks, Recreation & Cemetery	01/01/13	12/31/16
37	Marcia Clausing	Parks, Recreation & Cemetery	01/01/13	12/31/16
38	Dayton Rush	Parks, Recreation & Cemetery*	01/01/13	12/31/13
39	Stephen Eliason	Police Board	01/01/13	12/31/15

40	Deborah Willis	Police Board	01/01/13	12/31/15
41	Ed Hammer	Public Works Board	01/01/13	12/31/16
42	Zach Meyers	Planning Board Ward I	01/01/13	12/31/14
43	Donna Forbes	Planning Board Ward III	01/01/13	12/31/14
44	Susan Gilbertz	Planning Board Ward IV	01/01/13	12/31/14
45	Richard Clark	Planning Board Ward V	01/01/13	12/31/14
46	LaRell Baldwin	Tourism BID*	01/01/13	06/30/15

- 4. Unexpired term of Norm Kolpin
- 7. Unexpired term of Solomon Neuhardt
- 14. Unexpired term of Rod Ostermiller
- 16. Unexpired term of David Goodridge
- 20. Unexpired term of Malcolm Bailey
- 30. Unexpired term of Stephan Bradley
- 31. Unexpired term of Bruce MacIntyre
- 32. Unexpired term of Jeanne Astle
- 33. Unexpired term of Bruce Simon
- 38. Unexpired term of Gary Gray
- 46. Unexpired term of Cheri Milne

B. Bid Awards:

- 1. **2013 4-Wheel Mechanical Broom High Dump Sweeper for Street/Traffic Division.** (Opened 12/11/12) Recommend delay of award until January 14, 2013.

C. Contract for Professional Services with HDR Engineering, Inc. for W.O. 12-43, Water Treatment Plant High Backup Power, Phase III; not to exceed \$82,100.

D. Approval of the City-County Special Investigations Unit (CCSIU) Agreement with Yellowstone County for calendar year 2013.

E. Utility Relocation Agreements with Northwestern Energy and Optimum for construction of the Empire Parking Garage.

F. Approval of 5-Year Limited Commercial Aviation Ground Lease with Edwards Jet Center for a permit-only parking lot (11/1/2012 - 10/31/2017); revenue first year - \$4,118.52; subsequent years adjusted annually by Consumer Price Index for All Urban Consumers (CPI-U).

G. Approval of the Assignment and Transfer of the Commercial Aviation and Ground Lease from Edwards Jet Center to EBH, LLC; the revised Lessor's Consent to Assignment to Stockman Bank; and EJC's assignment and transfer of the leasehold interest to EBH, LLC.

H. Approval of renewal and amendment of Stewart Park cell tower lease with GTP Acquisition Partners, LLC, for a 10-year term with three, subsequent automatic 5-year renewals.

- I. **Amendment #1, W.O. 10-19: Shiloh Conservation Area**, Professional Services Contract; DOWL HKM; \$780,565.
- J. **Right-of Way Easement** with Northwestern Energy for installation of a new electrical power feed to Six Romeo Mike's new hangar at the Billings Logan International Airport.
- K. **Authorizaton** for the Mayor to sign on to Bike Walk Montana's letter to Governor-Elect Steve Bullock asking for continued support of non-motorized transportation issues and projects in Montana.
- L. **Second/Final Reading Ordinance expanding Ward IV (Annexation #12-07 ROW)** for a 30-foot-wide petitioned county road easement located along the front of Tract 1A, Certificate of Survey 2990, on the south side of Grand Avenue just west of the Grand Avenue and 48th Street West intersection.
- M. **Preliminary Major Subdivision for Lease or Rent** of Amended Lots 1 & 2, Block 1, Lenhardt Square Subdivision, 1st Filing, generally located on the north side of King Avenue West, just east of S. 44th St. West and south of Monad Drive; and **approval** of a variance from Section 23-406.B.11, of the Billings Subdivision Regulations allowing for a reduction in design speed. Stock Development, owner; Sanderson Stewart, agent; conditional approval of the preliminary plan, approval of the variance, and adoption of the findings of fact.
- N. **Preliminary Major Plat** of Grand Peaks Subdivision, 3rd Filing, generally located northeast of the intersection of Grand Avenue and 54th Street West; Grand Peaks, LLC, owner; Sanderson Stewart, agent; conditional approval of the plat and adoption of the findings of fact.
- O. **Preliminary Major Plat** of Amended Lot 21, Block 3, and Lot 21, Block 4, Twin Oaks Subdivision, 2nd Filing, generally located on the south side of Wicks Lane west of Lake Elmo Drive; Twin Oaks Corporation, owner; Blueline Engineering, LLC, agent; conditional approval of the plat and adoption of the findings of fact.
- P. **Preliminary Minor Plat** of Western Subdivision, Lot 1A, Block 1, of Amended Lots 1 & 2, generally located at the southwest corner of King Avenue West and S. 44th Street West; American Exchange Corp./Cal Kunkel, owner; DOWL HKM, representing agent; conditional approval of the plat and adoption of the findings of fact.
- Q. **Bills and Payroll:**
 - 1. November 26, 2012

REGULAR AGENDA:

- 2. **APPROVAL OF PROPOSED SPECIAL DISTRICT PROTEST PROCEDURES.** Staff recommends approval. (Action: approval or disapproval of staff recommendations.)

3. **CITY ADMINISTRATOR EMPLOYMENT AGREEMENT RENEWAL FOR THE PERIOD OCTOBER 2012 THROUGH SEPTEMBER 2014.** (Action: approval or disapproval of Employment Agreement Renewal.)

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign up on the clipboard located at the podium.*)

COUNCIL INITIATIVES

ADJOURN

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

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

Regular City Council Meeting

Meeting Date: 12/17/2012
TITLE: Boards & Commissions Appointments
PRESENTED BY: Tina Volek
Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

The Mayor is requesting that the City Council confirm appointments for Board and Commission positions that are vacant due to resignations and positions at term end.

ALTERNATIVES ANALYZED

- Council may:
- Confirm the proposed appointments; or
 - Not confirm the appointments.

FINANCIAL IMPACT

The proposed action has no financial impact.

RECOMMENDATION

Mayor Hanel recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
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APPROVED BY CITY ADMINISTRATOR

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Bid Award for a 2013 4-Wheel Mechanical Broom High Dump Sweeper

PRESENTED BY: David Mumford

Department: Public Works

Information

PROBLEM/ISSUE STATEMENT

The Street/Traffic Division for the Public Works Department received bids on December 11, 2012, to purchase a 2013 4-Wheel Mechanical Broom High Dump Sweeper. The existing sweeper will be traded in to the company providing the new sweeper. The new sweeper will also have a 5-year warranty that is included in the bid price. Due to needing additional time to review bids, staff would like to delay bid award until January 14, 2013.

ALTERNATIVES ANALYZED

The City Council may:

- Delay bid approval until January 14th, 2013, to allow additional time for further review; or
- Not approve delay of bid approval and reject all bids.

FINANCIAL IMPACT

Purchase of this replacement sweeper was approved by the City Council in the FY2012 Equipment Replacement Program.

RECOMMENDATION

Staff recommends delaying this bid award until January 14, 2013 to allow for further review by staff.

APPROVED BY CITY ADMINISTRATOR

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: W.O. 12-43 Contract for Professional Services for Water Treatment Plant Backup Power Phase III

PRESENTED BY: David Mumford

Department: Public Works

Information

PROBLEM/ISSUE STATEMENT

Mayor and Council are asked to consider authorizing and executing a Contract for Professional Services with HDR Engineering, Inc. to provide engineering design for W.O. 12-43, Water Treatment Plant Backup Power Phase III. The purpose of this project is to provide backup power to the Voelker, Willett, and Leavens Pump Stations in the City's water distribution system. Electrical upgrades to the Chapple Pump Station will also be completed as part of the project. In the event of a power failure at these pump stations, it is critical these pump stations continue to operate so that the distribution system does not have water shortages. HDR Engineering, Inc., was selected for this work based on City staff review of project proposals submitted by pre-qualified firms. The negotiated price will not exceed \$82,100.

ALTERNATIVES ANALYZED

The Council may:

- Approve the Contract for Professional Services with HDR Engineering, Inc.; or
- Do not approve the Contract for Professional Services with HDR Engineering, Inc

FINANCIAL IMPACT

Funding for this project is from Water Revenues and is included in the FY13 budget.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign a contract for professional services with HDR Engineering, Inc., for W.O. 12-43, Water Treatment Plant Backup Power Phase III in the amount not to exceed \$82,100.00.

APPROVED BY CITY ADMINISTRATOR

Attachments

Contract

Contract for Professional Architectural and Engineering Services

Project: W.O. 12-43—WTP Backup Power Phase III

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

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 4 pages (Basic Services of Consultant);
- Appendix B consisting of 1 pages (Methods and Times of Payment);
- Appendix C consisting of 1 pages (Additional Services of Consultant);
- Appendix D consisting of 1 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 pages (Project Schedule);
- Appendix F consisting of 2 pages (Certificate(s) of Insurance); and

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his/her designee.
- B. "Billings" means the City of Billings.
- C. "Engineer" and/or "Contractor" means HDR Engineering, Inc.

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Contractor in accordance with Section 4.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.

- D. The Contractor shall provide hard copy as-built drawings and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on July 31, 2014.

Section 4. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than Eighty Two Thousand One Hundred and no/100 dollars (\$82,100.00) in accordance with this Section and Appendix B.
- B. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay the Engineer for all services provided not under dispute in the invoice. Billings will pay Contractor within 30 days of receiving an acceptable invoice.

Section 5. Termination of the Contractor's Services.

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

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

Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before

termination and Billings shall pay for services rendered prior to termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.

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

Section 7. Insurance.

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

- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings: Travis Harris
City of Billings
Public Works Engineering
2224 Montana Avenue
Billings, Montana 59101

e-mail: harrist@ci.billings.mt.us
FAX: (406) 237-6291

Contractor: Craig Habben
HDR Engineering, Inc
2913 Millennium Circle
Billings, MT 59102

e-mail: Craig.Habben@hdrinc.com
FAX: (406) 652-2758

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

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

Section 13. Financial Management System.

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

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

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

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

PART II
GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

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

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Consultant: Department Manager
(title of position)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

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

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

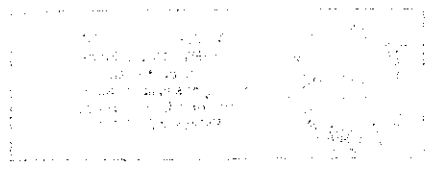
Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

[Faint, illegible text]



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

City of Billings

Contractor

Mayor

HDR Engineering, Inc.

Date: _____

Amanda B. McInnis

Name: Amanda B. McInnis

Title: Vice President

ATTEST:

Date: 12/3/12

City Clerk

IRS Tax ID # 47-0680568

Date: _____

APPROVED AS TO FORM:

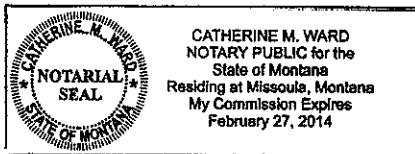
By _____
BRENT BROOKS, City Attorney

Date: _____

STATE OF MONTANA)
)
COUNTY OF Missoula) :ss.

On this 3rd day of December, 2012, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Amanda B. McInnis, known to me to be the Vice President of HDR Engineering, Inc., and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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



Catherine M. Ward
Notary Public for the State of Montana
Residing at Missoula, Montana
My Commission Expires: February 27, 2014

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

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

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

Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.

- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Craig Habben working under the Principal-in-Charge, Amanda McInnis.

Section 2. Billings Rights and Duties.

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

Section 3. Scope of Work.

The project consists of engineering services for the design, bidding and construction phases for the City of Billings Water Treatment Plant (WTP) Backup Power Phase III. The purpose of the project is to provide backup power to provisions to the Voelker, Willett and Leavens Pumps Stations in the City's water distribution System. Voelker Pump Station backup power will include a permanent generator to provide enough power for two of the larger pumps and house power. Willett and Leavens Pump Stations will include backup power for control panels and necessary instruments.

The scope of work is summarized below.

- Backup Power at Voelker Pump Station.
 - Provide permanent generator in an outdoor enclosure.
 - Generator to be sized for two large pumps and all house loads.
 - Generator to provide power to the entire MCC.
 - Provide an automatic transfer switch (ATS) to automatically start the generator and transfer loads to backup power from utility power and back.
 - Provide programming to automatically shut off all pumps on loss of power.

- Backup Power at Willett Pump Station and Leavens Pump Station
 - Provide a solar panel or small household generator to provide backup power to the Control Panel and any crucial instruments not powered by the Control Panel.
 - Provide new wiring and potentially a lighting panel to instruments requiring backup power
 - Provide a transfer relay to switch the UPS power source from the MCC lighting panel to the solar power system or for the household generator option provide a manual transfer switch to go between the feed from the current location in the MCC and the generator.
 - Provide docking station, wiring and ancillary components for using one of the City's portable generators to power the pump station.

- Chapple Pump Station Electrical Upgrades
 - Replace booster pump 480 volt VFDs
 - Provide miscellaneous wiring upgrades

DETAIL SCOPE OF SERVICES

The scope of services that will be utilized on the Backup Power Phase III project is presented in the summaries for Tasks 100 through 400. The scope of services is organized as follows:

<u>Task Series</u>	<u>Description</u>
100	Project Initiation, Coordination, Deliverables and Management
200	Final Design Phase
300	Bid Phase
400	Construction Phase

TASK SERIES 100

101 – Project Initiation

The purpose of this task will be to establish lines of communication between the City and HDR staff. Key project goals and objectives will be established. The project will also be kicked-off internally.

102 – Project Management

Coordinate design team, monitor project status and prepare financial documents.

TASK SERIES 200 – FINAL DESIGN

The basis of the design will be determined. Drawings/specifications for review and final drawings/specifications will be prepared. Specific tasks will include the following:

201 – 60% Design Concept

The system requirements for the project will be developed. These requirements will establish the basis of design for providing backup power to the three pump stations and VFD replacement at Chapple Pump Station. Develop the design concept and drawings to an approximate 60% design level. Conduct a review with the City

202 – Prepare Final Drawings

From the 60% design concept, drawings will be developed for all disciplines for 95% review.

203 – Prepare Detailed Specifications

Detailed specifications for all components of construction, equipment, and facility improvements will be prepared. The detailed specifications will establish general acceptable standards for equipment and materials.

204 – Perform In-House Review and City Review

Senior technical personnel not directly involved with the project will review the final drawings and specifications and the cost estimate for completeness, accuracy, and constructability.

205 – Resolve City Comments and Review Comments

Comments received from internal and City review will be addressed and incorporated in the final drawings, specifications.

206 – Construction Cost Estimate

The estimated capital costs for the project will be developed in this task series. The estimate will include an initial preliminary estimate with the final estimate prepared prior to bidding.

TASK SERIES 300 – BID PHASE

301 – Bidding Administrative Assistance

Prepare bid documents and distribute to prospective bidders and plan rooms. Answer bidder questions and prepare addendum as needed. Conduct pre-bid meeting. Attend Bid.

302 – Post-Bid Administrative Assistance

Receive, evaluate and tabulate bids. Assess completeness of bids. Make recommendations to the City on award of contract.

TASK SERIES 400 – CONSTRUCTION PHASE

Construction Phase scope of work is based on 15 week construction period, after which time only minor punch list items would need to be completed.

401 – Construction Initiation Services

The Consultant shall prepare construction contracts, conduct a preconstruction conference and prepare minutes summarizing the conference. The Consultant will provide the owner with three sets and the contractor one pdf of "Issue for Construction" plans and specifications.

402 – Office Assistance and Administration

During the construction phase of the project, the Consultant will provide office assistance to the City on the administration of the project. This effort will include review and preparation of change orders, shop drawing review, interpretation of drawings and specifications, monitoring of compliance with procedure requirements on the project, coordinating with the contractor, preparation of pay estimates, and conducting weekly construction meetings.

403 – Field Services

The Consultant will provide part-time on-site construction observation services. A resident project representative will provide up to 131 hours of construction observations and related tasks. The resident project representative will monitor the project for compliance with contract documents.

404 – Construction Wrap-Up and Acceptance

Upon completion of the construction of the improvements, the Consultant will schedule and hold a final project walk-through and assist the City in the final wrap-up of the project, including preparing record drawings, preparation of a punch list, start-up of facilities, operations and maintenance information review, and recommendation of final acceptance.

405 – Post-Construction Warranty Services

After final acceptance, the Consultant will provide warranty item consultation, assist in the eleven-month warranty inspection, and provide warranty follow-up.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

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

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall deduct five percent (5%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

A. The Engineer shall be paid based upon actual time accrued, but not to exceed the following amounts:

1. Project Initiation, Coordination and Management	\$3,100.00
2. Design	\$43,000.00
3. Bidding Services	\$ 3,900.00
4. Construction Services	\$32,100.00

B. Final payment shall be the above stated basic fee less all previous payments.

Section 2. Payments for Extra Services when Authorized by Billings.

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for based on a negotiated fee.

Section 3. Corrections.

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

Section 4. Fee Increases

For contracts and services that are expected to require more than one (1) year to complete, the above stated basic services payments may be reviewed and adjusted annually by mutual agreement of the parties, based upon documented evidence that the Engineer's costs have increased for all comparable clients.

Appendix C

Additional Services of Engineer

Extra Services of the Engineer will be paid only with written prior authorization by Billings.

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

Appendix D

Schedule of Professional Fees

Not Used

Appendix E

Project Schedule

Based on a notice to proceed by Billings dated no later than December 17, 2012, the completion date for the Engineer's work shall be:

A. Design

1. 60% Concept Review – March 1, 2013
2. 95% Design – April 19, 2013
3. Bid Documents/Advertisement – May 10, 2013

B. Bidding

1. Pre-Bid Meeting – May 22, 2013
2. Bid Date – June 4, 2013

C. Construction

1. November 2013 – January 2014.

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

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

Appendix F

Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)



CERTIFICATE OF LIABILITY INSURANCE

6/1/2013

DATE (MM/DD/YYYY)

5/22/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies, LLC-1 Kansas City 444 W. 47th Street, Suite 900 Kansas City 64112-1906 (816) 960-9000	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Hartford Fire Insurance Company	19682
	INSURER B : St. Paul Fire and Marine Insurance Company	24767
	INSURER C : Sentinel Insurance Company, Ltd.	11000
	INSURER D : Zurich American Insurance Company	16535
	INSURER E :	
	INSURER F :	

INSURED
13147
HDR ENGINEERING, INC.
ATTN: LOUIS J. PACHMAN
8404 INDIAN HILLS DRIVE
OMAHA, NE 68114-4049
BELLEVUE/KATIE WARD

COVERAGES HDRIN01 SA CERTIFICATE NUMBER: 2824447 REVISION NUMBER: XXXXXXXX

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.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL LIAB	N	N	37CSEQU0950	6/1/2012	6/1/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC							
A A A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS SCHEDULED AUTOS NON-OWNED AUTOS	N	N	37CSEQU0951 (AOS) 37CSEQU0952 (HD) 37MCPQU1160 (MA)	6/1/2012 6/1/2012 6/1/2012	6/1/2013 6/1/2013 6/1/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB EXCESS LIAB DED RETENTION \$	N	N	ZUP-10R64084-12-NF (EXCLUDES PROF. LIAB)	6/1/2012	6/1/2013	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ XXXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N	N/A	91WEOH1000	7/1/2012	7/1/2013	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	ARCHS & ENGS PROFESSIONAL LIABILITY	N	N	EOC9260026-05	6/1/2012	6/1/2013	PER CLAIM: \$2,000,000. AGG: \$2,000,000.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RE: CLIENT #000194: ALL PROJECTS. CITY OF BILLINGS, ITS OFFICIALS, OFFICERS, EMPLOYEES & AGENTS ARE NAMED AS ADDITIONAL INSUREDS AS RESPECTS GENERAL & AUTOMOBILE LIABILITY, AS PER WRITTEN CONTRACT. WAIVER OF SUBROGATION APPLIES.

CERTIFICATE HOLDER

CANCELLATION

<p>2824447 CITY OF BILLINGS PUBLIC WORKS DEPARTMENT ATTN: DAVE MUMFORD 2224 MONTANA AVE 2ND FLOOR BILLINGS MT 59101</p>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p> <p><i>Bonnie J. Foster</i></p>
---	---

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: City-County Special Investigations Unit (CCSIU) Agreement for 2013

PRESENTED BY: Rich St. John

Department: Police

Information

PROBLEM/ISSUE STATEMENT

In order to continue its operations, the City-County Special Investigations Unit (CCSIU) Agreement with Yellowstone County must be approved each year. The current agreement will expire on December 31, 2012, so it is time to renew the agreement for the 2013 calendar year. This agreement has been reviewed by the Yellowstone County Sheriff's Office and has been approved by the County Commissioners.

ALTERNATIVES ANALYZED

Council may:

- Approve the CCSIU Agreement for calendar year 2013; or
- Not approve the CCSIU Agreement for calendar year 2013.

FINANCIAL IMPACT

There will be no additional financial impact to the City since the costs for the officers assigned to the CCSIU are included in the Police Department budget and all other expenses for CCSIU are budgeted in Fund 718 - Drug Forfeitures and Fines.

RECOMMENDATION

Staff recommends that the City Council approve the City-County Special Investigations Unit (CCSIU) Agreement with Yellowstone County for calendar year 2013.

APPROVED BY CITY ADMINISTRATOR

Attachments

Agreement

AGREEMENT

CITY-COUNTY SPECIAL INVESTIGATIONS UNIT (CCSIU)

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

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

PARTIES: This Agreement is between:

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

DURATION: This Agreement is in effect from January 1, 2013 through December 31, 2013.

PROJECT DESCRIPTION:

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

STRUCTURE AND ORGANIZATION:

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

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

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

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

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

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

CONTEMPLATED UNIT TASKS:

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

UNIT OBJECTIVES:

This section identifies specific targeted objectives to be attained by the CCSIU during the program year.

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

PETTY CASH AND FORFEITURE FUND:

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

audited by the Yellowstone County Auditor or his/her representative, on a quarterly basis. A copy of the audit will be submitted to the Captain of Investigations or his designee.

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

CITY OF BILLINGS:

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

YELLOWSTONE COUNTY:

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

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

INDEMNITY CLAUSE:

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

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

RESOURCES:

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

THIS AGREEMENT IS EXECUTED THIS ____ DAY OF _____, 2012.

SIGNED:

MAYOR, CITY OF BILLINGS

DATE _____

COUNTY COMMISSIONER

DATE _____

COUNTY COMMISSIONER

DATE _____

COUNTY COMMISSIONER

DATE _____

ATTEST:

CARI MARTIN, CITY CLERK
CITY OF BILLINGS

JEFF MARTIN
CLERK AND RECORDER
YELLOWSTONE COUNTY

APPROVED AS TO FORM:

BRENT BROOKS, CITY ATTORNEY
CITY OF BILLINGS

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Utility Relocation Agreements for the Empire Parking Garage Project

PRESENTED BY: Chris Mallow, Parking Supervisor

Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

The Empire parking garage will be constructed on the north side of Montana Avenue between North 27th Street and North Broadway. The building consumes an entire half-block and the north side of the building will be adjacent to an alley that runs east/west on that block. There are several overhead and underground utilities that occupy the alley including power, data/telecommunications, and gas. All overhead and some underground utilities need to be relocated before any construction activity can begin on the Empire parking garage. The utility companies have agreed to relocate the utilities to a designated underground alley location. Relocating these utilities underground will allow the existing buildings to be torn down and the new garage constructed while meeting OSHA requirements. It is necessary to pay the utility companies because this relocation is due to a pending development and not their own initiative. The utility companies include Montana Dakota Utilities, Northwestern Energy, Optimum, Integra, Mid-Rivers Telecommunications, Zayo Group, and Century Link. It is necessary to enter into an agreement with these utility companies in order for them to start the relocation. Only the Northwestern and Optimum agreements require Council approval because their value exceeds the City Administrator's approval authority.

ALTERNATIVES ANALYZED

The Council may:

- Approve the agreements with Northwestern Energy and Optimum; or
- Do not approve the agreements which would require the overhead utilities to be temporarily relocated during demolition, redesign of the Empire garage so appropriate setbacks from energized utility lines are accounted for, and possible elimination of the proposed sky bridge between the Empire garage and the Northern Hotel.

FINANCIAL IMPACT

The City's price from Northwestern Energy to relocate the power will not exceed \$396,000.

The City's price from Optimum to relocate their cable and fiber optic lines is not to exceed \$80,000. Savings can be realized based on finalized utility trench design and CTA is currently working on this.

The agreements with the other utilities will be signed by the City Administrator.

The funds for the utility relocation are budgeted into the cost for the Empire parking garage budget and are estimated to total \$800,000.

RECOMMENDATION

Staff recommends that Council approve the agreements with Northwestern Energy and Optimum to relocate the utilities for the construction of the Empire parking garage.

APPROVED BY CITY ADMINISTRATOR

Attachments

NorthWestern Energy Agreement

CableVision Agreement



UTILITY RELOCATION AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2012, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “City,” and **NorthWestern Energy Company** hereinafter referred to as “Contractor.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. Purpose: City agrees to hire Contractor as an independent contractor to perform the services of underground utility relocation described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

2. Effective Date: This Agreement is effective upon the date of its execution and will terminate upon the anticipated completion of the utility relocation by Contractor which is anticipated to be March 1, 2013. The parties may extend this agreement, by mutual concurrence, for 60 days, in writing prior to its termination.

3. Scope of Work: The Contractor shall perform the services outlined in Exhibit “A”. In performing these services, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

4. Payment: City agrees to pay Contractor an amount **Not-to-Exceed** Three-Hundred Ninety-six thousand dollars (\$396,000) for the work described in the Scope of Work in Exhibit “A”. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

If partial payment is requested by Contractor, it shall be made upon invoice and said estimate being proportioned to the work completed by the Contractor. City shall deduct five percent (5%) from each pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final invoice by the City, and determination has been made by the City that the scope of work has been satisfactorily completed.



5. **Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

6. **Indemnity and Insurance:** Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees. **For this purpose, Contractor shall provide City with proof of Commercial General liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The insurance must be in a form suitable to City.**

7. **Warranty:** Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty for the lesser period of one (1) year from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".

8. **Compliance with Laws:** Contractor agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. Contractor agrees to purchase a City business license.



9. **Contractors' Gross Receipts Tax:** Contractor understands that all contractors or subcontractors working on a publicly funded construction project, including any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever, are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

10. **Nondiscrimination:** Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

11. **Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

12. **Liaison:** City's designated liaison with Contractor is Chris Mallow, Parking Supervisor, and Contractor's designated liaison with City is Walt Backer.

13. **Governing Law and Venue:** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

14. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

15. **Successors and Assigns:** Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.



16. Ownership of Documents: All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor’s work product.

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

CITY OF BILLINGS, MONTANA

CONTRACTOR (Print Name Above)

By _____
Thomas W. Hanel,
Mayor

By _____
Print Name _____
Print Title _____

APPROVED AS TO FORM:

By _____
BRENT BROOKS, City Attorney



UTILITY RELOCATION AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2012, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “City,” and **Cablevision System Corporation** hereinafter referred to as “Contractor.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. Purpose: City agrees to hire Contractor as an independent contractor to perform the services of underground utility relocation described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

2. Effective Date: This Agreement is effective upon the date of its execution and will terminate upon the anticipated completion of the utility relocation by Contractor which is anticipated to be March 1, 2013. The parties may extend this agreement, by mutual concurrence, for 60 days, in writing prior to its termination.

3. Scope of Work: The Contractor shall perform the services outlined in Exhibit “A”. In performing these services, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

4. Payment: City agrees to pay Contractor an amount **Not-to-Exceed** Eighty-Thousand dollars (\$80,000.00) for the work described in the Scope of Work in Exhibit “A”. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing. City agrees to pay Contractor Twenty Thousand dollars (\$20,000) upon execution of agreement in order for Contractor to order the necessary materials.

If partial payment is requested by Contractor, it shall be made upon invoice and said estimate being proportioned to the work completed by the Contractor. City shall deduct five percent (5%) from each pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final invoice by the City, and determination has been made by the City that the scope of work has been satisfactorily completed.



5. Independent Contractor Status: The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

6. Indemnity and Insurance: Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees. **For this purpose, Contractor shall provide City with proof of Commercial General liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The insurance must be in a form suitable to City.**

7. Warranty: Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty for the lesser period of one (1) year from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".

8. Compliance with Laws: Contractor agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. Contractor agrees to purchase a City business license.



9. **Contractors' Gross Receipts Tax:** Contractor understands that all contractors or subcontractors working on a publicly funded construction project, including any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever, are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

10. **Nondiscrimination:** Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

11. **Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

12. **Liaison:** City's designated liaison with Contractor is Chris Mallow, Parking Supervisor, and Contractor's designated liaison with City is Thomas Campbell.

13. **Governing Law and Venue:** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

14. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.



15. **Successors and Assigns:** Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

16. **Ownership of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor’s work product.

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

CITY OF BILLINGS, MONTANA

CONTRACTOR (Print Name Above)

By _____

**Thomas W. Hanel,
Mayor**

By _____

Print Name _____

Print Title _____

APPROVED AS TO FORM:

By _____

BRENT BROOKS, City Attorney



EXHIBIT "A"

Qty	MATERIAL DESCRIPTION	Unit Price	Unit	Typical units/mile	Amount	
	Feeder Coax -air=.25	\$ 0.365	ft	5280	\$ -	
1200	Feeder Coax -UG=.37	\$ 0.377	ft		\$ 452.40	
	Trunk Coax - air=.47	\$ 0.688	ft	1584	\$ -	
400	Trunk Coax -UG=.54	\$ 0.798	ft		\$ 319.20	
566	Strand	\$ 0.126	ft	5280	\$ 71.32	
3280	Fiber	\$ 1.290	ft	792	\$ 12,465.30	Manual Entry
1	Lash wire per 1200 ft	\$ 31.340	roll	6336	\$ 39.42	
0	Lash wire clamps	\$ 0.417	ea	60	\$ -	
0	Support straps	\$ 0.171	ea	70	\$ -	
0	Plastic Spacers	\$ 0.032	ea	70	\$ -	
	Feeder connectors	\$ 3.270	ea	70	\$ -	
	Trunk connectors	\$ 9.150	ea	4	\$ -	
	Feeder splices	\$ 7.950	ea	3	\$ -	
	Trunk splices	\$ 17.740	ea	1	\$ -	
	90 degree connectors	\$ 4.100	ea	16	\$ -	
	Housing to Housing connectors	\$ 2.350	ea	6	\$ -	
	Line Terminators	\$ 3.250	ea	4	\$ -	
	Distribution Splitters	\$ 29.500	ea	4	\$ -	
	Distribution DCs	\$ 29.500	ea	1	\$ -	
	Distribution Power Inserters	\$ 29.100	ea	0.3	\$ -	
	Power Supply Cabinet	\$ 444.000	ea	0.3	\$ -	
	Power Supply	\$ 1,100.000	ea	0.3	\$ -	
1	Fiber Termination Panel	\$ 350.000	ea	1.5	\$ 350.00	
576	Fiber fusion Sleeves	\$ 0.210	ea	30	\$ 120.96	
2	2man hole alley rated	\$ 750.000	ea	0.05	\$ 1,500.00	
	Optical Node	\$ 800.000	ea	0.1	\$ -	
6	Fiber Splice Enclosure	\$ 389.460	ea	0.07	\$ 2,336.76	
	Optical Splitter	\$ 650.000	ea	0.05	\$ -	
	Receiver Service Cable	\$ 205.000	ea	0.1	\$ -	
	Fiber patch cord - SC type	\$ 16.910	ea	0.1	\$ -	
0	Fiber storage loops	\$ 45.000	ea	1	\$ 4.82	
0	Fiber protectors/identifiers	\$ 2.130	ea	35	\$ -	
	Tap brackets	\$ 0.780	ea	35	\$ -	
12	Riser Brackets	\$ 1.650	ea	5	\$ 19.80	
	4 port Taps	\$ 12.450	ea	25	\$ -	
	8 port Taps	\$ 24.100	ea	2	\$ -	
	Heat Shrink tubing 6 inch	\$ 5.000	ea	75	\$ -	
1	Strand Dead Ends	\$ 1.040	ea	12	\$ 1.34	
0	Strand Splices	\$ 2.120	ea	2	\$ 0.45	
0	Anchor Rods	\$ 16.520	ea	1.5	\$ 2.66	
0	Guy Guards	\$ 3.300	ea	1.5	\$ 0.53	
0	Strain Insulators	\$ 4.800	ea	3	\$ 1.54	
1	K-UL bonding clamps	\$ 1.180	ea	10	\$ 1.26	
4	Bolts	\$ 1.200	ea	34	\$ 4.37	
3	Suspension Clamps	\$ 2.990	ea	30	\$ 9.62	
0	Rams Head down guy attach	\$ 2.750	ea	1.5	\$ 0.44	
11	# 6 Copper wire	\$ 0.490	ea	100	\$ 5.25	
0	8 foot ground rods	\$ 9.800	ea	1	\$ 1.05	
	Tree guard 8 inch	\$ 0.100	ea	34	\$ -	
	Tap Pedestal	\$ 28.050	ea	10	\$ -	
	LE Pedestal	\$ 58.500	ea	1	\$ -	
0	Amplifier Pedestal	\$ 165.100	ea	0.6	\$ -	
3000	1.5 "	\$ 0.640	ea	1652	\$ 1,920.00	
400	2"	\$ 1.500	ea	22	\$ 600.00	
7	Square Washers	\$ 0.230	ea	64	\$ 1.58	
3	Square Nuts	\$ 0.220	ea	32	\$ 0.75	
1	MDU Security Enclosure w/lock MHL1824	\$ 119.000	ea	1	\$ 119.00	
	Gradeboxes 15-15"	\$ 46.200	ea		\$ -	
	Gradeboxes 18-18'	\$ 66.850	ea		\$ -	
		\$ -			\$ -	
		\$ -			\$ -	
		\$ -			\$ -	
		\$ -			\$ -	
		\$ -			\$ -	
1	EDM Trip Charge	\$ -			\$ -	
0	EDM Daily Expense Charge	\$ -			\$ -	
	Material				\$ 20,349.83	
	Freight and Taxes (9%)				\$ 1,831.49	
	Material Total				\$ 22,181.32	



EXHIBIT "A"

Qty	Misc.	Unit Price	Unit	Typical units/mile	Amount
	Easement	\$ 2.00	ft		\$ -
4	Pole Engineering	\$ 350.00	ea	30	\$ 1,500.76
4	Make Ready	\$ 350.00	ea	2	\$ 1,400.00
	Railroad Permit	\$ 5,500.00	ea		\$ -
	DOT Permits	\$ 300.00	ea		\$ -
1	City Permits	\$ 500.00	ea		\$ 500.00
	County Permits	\$ -	ea		\$ -
	Traffic Control	\$ 1,200.00	day		\$ -
1	Walkout	\$ 0.04	ft	5280	\$ 0.04
	Design	\$ 500.00	mile	5280	\$ -
1	Mapping	\$ 550.00	Each	5280	\$ 550.00
	Print costs	\$ 0.50	ea		\$ -
	Misc. Total				\$ 3,950.79

Manual Entry

Multiple fiber count information - THIS WILL be added to cost in cell G84 automatically. Clear Qty's if you do not want these added to total.

Qty	Misc.	Unit Price	Unit	Minimum order amount	Cost per roll	Order cost
	O-006-CA-8W-F06NS	\$ 0.183	ft	3000	\$ 547.50	\$ -
	O-008-CA-8W-F08NS	\$ 0.196	ft	3000	\$ 587.40	\$ -
	O-010-CA-8W-F10NS	\$ 0.209	ft	3000	\$ 627.60	\$ -
	O-012-CA-8W-F12NS	\$ 0.223	ft	3000	\$ 667.50	\$ -
	O-014-CA-8W-F12NS	\$ 0.233	ft	3000	\$ 698.70	\$ -
	O-016-CA-8W-F12NS	\$ 0.243	ft	3000	\$ 729.00	\$ -
	O-018-CA-8W-F12NS	\$ 0.254	ft	3000	\$ 761.10	\$ -
	O-020-CA-8W-F12NS	\$ 0.269	ft	3000	\$ 805.50	\$ -
	O-022-CA-8W-F12NS	\$ 0.284	ft	3000	\$ 850.80	\$ -
	O-024-CA-8W-F12NS	\$ 0.298	ft	3000	\$ 894.60	\$ -
	O-026-CA-8W-F12NS	\$ 0.309	ft	3000	\$ 926.40	\$ -
	O-028-CA-8W-F12NS	\$ 0.320	ft	3000	\$ 958.50	\$ -
	O-030-CA-8W-F12NS	\$ 0.330	ft	3000	\$ 990.60	\$ -
	O-032-CA-8W-F12NS	\$ 0.343	ft	3000	\$ 1,028.10	\$ -
	O-034-CA-8W-F12NS	\$ 0.356	ft	3000	\$ 1,068.00	\$ -
1	O-036-CA-8W-F12NS	\$ 0.369	ft	3000	\$ 1,105.50	\$ 1,105.50
	O-038-CA-8W-F12NS	\$ 0.384	ft	3000	\$ 1,150.80	\$ -
	O-040-CA-8W-F12NS	\$ 0.403	ft	3000	\$ 1,209.60	\$ -
	O-042-CA-8W-F12NS	\$ 0.423	ft	3000	\$ 1,269.60	\$ -
	O-044-CA-8W-F12NS	\$ 0.433	ft	3000	\$ 1,299.60	\$ -
	O-046-CA-8W-F12NS	\$ 0.445	ft	3000	\$ 1,333.80	\$ -
	O-048-CA-8W-F12NS	\$ 0.455	ft	3000	\$ 1,365.00	\$ -
	O-050-CA-8W-F12NS	\$ 0.467	ft	3000	\$ 1,400.10	\$ -
	O-052-CA-8W-F12NS	\$ 0.478	ft	3000	\$ 1,432.50	\$ -
	O-054-CA-8W-F12NS	\$ 0.492	ft	3000	\$ 1,476.00	\$ -
	O-056-CA-8W-F12NS	\$ 0.508	ft	3000	\$ 1,523.40	\$ -
	O-058-CA-8W-F12NS	\$ 0.524	ft	3000	\$ 1,570.80	\$ -
1	O-060-CA-8W-F12NS	\$ 0.539	ft	3000	\$ 1,618.20	\$ 1,618.20
	O-062-CA-8W-F12NS	\$ 0.556	ft	3000	\$ 1,669.20	\$ -
	O-064-CA-8W-F12NS	\$ 0.574	ft	3000	\$ 1,722.30	\$ -
	O-066-CA-8W-F12NS	\$ 0.592	ft	3000	\$ 1,776.60	\$ -
	O-068-CA-8W-F12NS	\$ 0.608	ft	3000	\$ 1,824.60	\$ -
	O-070-CA-8W-F12NS	\$ 0.624	ft	3000	\$ 1,872.60	\$ -
	O-072-CA-8W-F12NS	\$ 0.640	ft	3000	\$ 1,920.30	\$ -
	O-074-CA-8W-F12NS	\$ 0.663	ft	3000	\$ 1,988.10	\$ -
	O-076-CA-8W-F12NS	\$ 0.684	ft	3000	\$ 2,052.90	\$ -
	O-078-CA-8W-F12NS	\$ 0.706	ft	3000	\$ 2,117.70	\$ -
	O-080-CA-8W-F12NS	\$ 0.718	ft	3000	\$ 2,154.60	\$ -
	O-082-CA-8W-F12NS	\$ 0.729	ft	3000	\$ 2,188.20	\$ -
	O-084-CA-8W-F12NS	\$ 0.734	ft	3000	\$ 2,201.40	\$ -
	O-086-CA-8W-F12NS	\$ 0.748	ft	3000	\$ 2,243.10	\$ -
	O-088-CA-8W-F12NS	\$ 0.763	ft	3000	\$ 2,287.80	\$ -
	O-090-CA-8W-F12NS	\$ 0.778	ft	3000	\$ 2,332.50	\$ -
	O-092-CA-8W-F12NS	\$ 0.793	ft	3000	\$ 2,379.90	\$ -
	O-094-CA-8W-F12NS	\$ 0.805	ft	3000	\$ 2,414.40	\$ -
	O-096-CA-8W-F12NS	\$ 0.816	ft	3000	\$ 2,448.00	\$ -
1	O-192-CA-8W-F12NS	\$ 2.970	ft	3280	\$ 9,741.60	\$ 9,741.60
		\$ -	ft	3000	\$ -	\$ -
	Total				\$ 12,465.30	



EXHIBIT "A"

Qty		Unit Price	Unit	Typical units	Amount				
	Ucyp- Customer premise solution								
0	24 program bulk decrypt, pro:re-encrypt 1	\$ 16,820.10	ea	1	\$ -				
0	Cable Cards	\$ 250.00	ea	4	\$ -	←---	CableCARD Board Blue (#0)		
0	Firewall - Juniper SSG5	\$ 495.00	ea	1	\$ -		CableCARD ID: 000-003-963-983-6		
			ea		\$ -		Host ID: 061-000-000-242-4		
				Sub Total	\$ -		Data: 282-353-594-12		
							Serial: MA0809CAACX9		
	Centralized fiber solution transport								
0	Narrowcast transmitter DWDM/CWDM	\$ 2,860.00	ea	1	\$ -				
0	Aurora Chasis	\$ 840.00	ea	2	\$ -				
0	Power Supply	\$ 150.00	ea	2	\$ -		CableCARD Board Green (#1)		
0	Forward receiver	\$ 800.00	ea	1	\$ -		CableCARD ID: 000-003-942-745-5		
0	Mux/Demux	\$ 2,210.00	ea	1	\$ -		Host ID: 061-000-000-241-6		
				Sub Total	\$ -		Data: 274-781-454-05		
							Serial: MA0809CAEQ12		
	Ancillary materials								
	Deletion filter - Custom	\$ 1,200.00	ea		\$ -				
	Deletion filter - 9-BWL-9050-55	\$ 808.50	ea		\$ -				
	Deletion filter - 9-BWH-BWL(C)	\$ 1,352.40	ea		\$ -		CableCARD Board Red (#2)		
	Deletion filter - 9-LP-8750-R	\$ 131.25	ea		\$ -		CableCARD ID: 000-003-725-445-5		
	Deletion filter - 9-BWL-9050-Q	\$ 922.00	ea		\$ -		Host ID: 061-000-000-236-6		
1	Deletion filter - 9-BWH/BWL-Q	\$ 2,014.00	ea		\$ 2,014.00		Data: 064-916-346-29		
	Deletion filter - 9-BWH-9060-55-Q	\$ 1,058.50	ea		\$ -		Serial: MA0809CADZ38		
	Deletion filter - 9-BWL-9050(A)	\$ 672.00	ea		\$ -				
	Deletion filter - 9-BWH-BWL-Q	\$ 1,602.40	ea		\$ -				
	Rack, floor mount 7 foot, 4 post, 19 inch	\$ 700.00	ea		\$ -		CableCARD Board Purple (#3)		
	Rack, wall mount, 19 inch WM5611	\$ 307.10	ea		\$ -		CableCARD ID: 000-003-963-979-4		
100	Rack Screws	\$ 0.03	ea		\$ 3.30		Host ID: 061-000-000-248-1		
	UPS	\$ 1,150.00	ea		\$ -		Data: 106-174-885-22		
							Serial: MA0809CAAY6		
0	Optical Jumper SC-APC to SC-APC 2M sii	\$ 16.95	ea		\$ -				
	Optical Jumper SC-APC to SC-APC 3M sii	\$ 11.60	ea		\$ -				
	Optical Jumper SC-APC to SC-APC 5M sii	\$ 12.10	ea		\$ -				
	Optical Jumper SC-APC to SC-APC 9M sii	\$ 12.50	ea		\$ -				
1	Headend cable RG 59 (color)	\$ 100.00	1000	1000	\$ 100.00				
	BNT-T; BNC T-Connector F-F-M	\$ 1.20	ea	25	\$ -				
	BNC connectors; DSBNC-59Q	\$ 49.00	pk	50	\$ -				
	CAT5E wire; 720444	\$ 90.00	1000	1000	\$ -				
	Copper GigE SFP	\$ 100.00	ea	6	\$ -				
0	ethernet cable-straight through 1M	\$ 3.20	ea		\$ -				
	ethernet cable-straight through 2M	\$ 3.20	ea		\$ -				
	ethernet cable-straight through 3M	\$ 3.20	ea		\$ -				
	ethernet cable-straight through 6M	\$ 3.20	ea		\$ -				
	RJ45 connectors; 700101	\$ 13.20	100	200	\$ -				
1	Digicon Connector, DS59Q-HEC2	\$ 17.70	pk	100	\$ 17.70				
1	Rack Mount power strip	\$ 100.00	ea		\$ 100.00				
	2-way splitter Hard line	\$ 23.70	ea		\$ -				
	3-way splitter Hard line	\$ 25.30	ea		\$ -				
2	2-way splitter	\$ 0.80	ea		\$ 1.60				
	3-way splitter	\$ 1.31	ea		\$ -				
	4-way splitter	\$ 1.46	ea		\$ -				
	8-way splitter	\$ 3.45	ea		\$ -				
	16-way splitter	\$ 7.50	ea		\$ -				
2	Directional Coupler 7 Hard line	\$ 22.60	ea		\$ 45.20				
	Directional Coupler 9 Hard line	\$ 22.60	ea		\$ -				
	Directional Coupler 12 Hard line	\$ 23.70	ea		\$ -				
	Directional Coupler 16 Hard line	\$ 23.70	ea		\$ -				
	Mini Directional Coupler 6	\$ 1.20	ea		\$ -				
	Mini Directional Coupler 9	\$ 1.20	ea		\$ -				
	Mini Directional Coupler 12	\$ 1.20	ea		\$ -				
	Mini Directional Coupler 16	\$ 1.20	ea		\$ -				



EXHIBIT "A"

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Limited Commercial Aviation Ground Lease – Remote Parking Lot for Edwards Jet Center

PRESENTED BY: Tom Binford

Department: Airport

Information

PROBLEM/ISSUE STATEMENT

Edwards Jet Center (EJC) desires to renew its Lease for ground space to provide parking for its employees and customers. This five-year ground Lease is for 16,285.10 square feet. EJC will continue to operate the remote parking lot as a permit only parking lot located west of EJC's main facility. The Lease identifies that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language. The City Council approved EJC's previous five-year term Lease on November 26, 2007, for a term that began on November 1, 2007 and ended on October 31, 2012. The term of the new Lease commences on November 1, 2012 and will end on October 31, 2017. A copy of the Lease is on file in the City Clerk's Office.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the renewal of the ground Lease with EJC for a five-year term commencing November 1, 2012; or
- Not approve the renewal of the ground Lease with EJC for a five-year term commencing November 1, 2012.

FINANCIAL IMPACT

This ground Lease will generate \$4,118.52 in the first year of the Lease. Future Lease year rentals will be adjusted annually by the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics.

RECOMMENDATION

Staff recommends that Council approve a new five-year Limited Commercial Aviation Ground Lease with EJC for use as a permit only parking lot, for a term beginning November 1, 2012 and ending on October 31, 2017.

APPROVED BY CITY ADMINISTRATOR

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Assignment and Transfer of Commercial Aviation Ground Lease with Edwards Jet Center – Lot 8

PRESENTED BY: Tom Binford

Department: Airport

Information

PROBLEM/ISSUE STATEMENT

On July 23, 2012, the City Council approved a new twenty-five year Commercial Aviation Ground Lease with Lynch Flying Service, Inc., DBA Edwards Jet Center (EJC) for a large future aircraft hangar on a vacant, 73,094 square foot parcel known as Commercial Lot 8, located at the east end of the Airport. In conjunction with approval of the new Ground Lease, the City Council approved a Lessor's Consent to Assignment of EJC's interest in the Ground Lease to Stockman Bank to secure the financing for construction of the new hangar.

The hangar construction is nearing completion and EJC now desires to assign its interest in the Ground Lease to EBH, LLC, another entity in its family of companies. EBH will also assume the bank note from EJC on the new hangar, and as a result, Stockman Bank desires to revise the Lessor's Consent to Assignment to reflect the assignment and transfer of the leasehold interest from EJC to EBH, and EBH's assumption of EJC's bank note. Copies of both the Assignment and Transfer of Lease and the revised Lessor's Consent to Assignment are on file in the City Clerk's Office.

ALTERNATIVES ANALYZED

The City Council may:

- Approve both the Assignment and Transfer of Lease from EJC to EBH, LLC, and the revised Lessor's Consent to Assignment to Stockman Bank to secure the bank's financing of the construction of the new hangar built on this parcel and to reflect EBH, LLC's assumption of EJC's bank note on this hangar; or
- Not approve both the Assignment and Transfer of Lease from EJC to EBH, LLC, and the revised Lessor's Consent to Assignment to Stockman Bank to secure the bank's financing of the construction of the new hangar built on this parcel and to reflect EBH, LLC's assumption of EJC's bank note on this hangar.

FINANCIAL IMPACT

Approval of both the Assignment and Transfer of the Lease and the revised Lessor's Consent to Assignment will have no direct financial impact to the annual Lease revenues to be paid to the City.

RECOMMENDATION

Staff recommends the City Council approve both the Assignment and Transfer of the Lease from EJC to EBH, LLC, and the revised Lessor's Consent to Assignment to Stockman Bank to secure the bank's financing for the new hangar construction at the Airport and to reflect EJC's assignment and transfer of the leasehold interest to EBH, LLC.

APPROVED BY CITY ADMINISTRATOR

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Renewal and Amendment to Stewart Park Cell Tower Lease

PRESENTED BY: Brent Brooks

Department: Legal

Information

PROBLEM/ISSUE STATEMENT

In 1998, The Mayor and City Council approved a 15-year lease for a small portion of land west of Field #2 in the Stewart Park softball field complex. This lease was for the purpose of locating a cell tower. Since that time two additional co-locating sublessees have been using the tower as authorized by the lease document. It is now time for the Mayor and Council to consider renewal of the lease because the term of 15 years under the original lease has expired. Under the new document that renews and amends the original lease, there is an initial 10-year term and then three, subsequent 5-year automatic renewals. There are increases in the annual lease payments from the primary lessee, GTP Acquisition Partners, LLC, as well as increased annual fees for co-locating companies who currently have equipment affixed to the tower or may desire to attach equipment to the tower in the future. If the lease is assigned or transferred to another company not affiliated with GTP Partners, there will be a \$10,000 transfer fee. All of these amounts are provided in Sections 2 and 3 of the attached, new renewal/amendment document. There is also a three percent (3%) annual increase of the lease fees as provided in Section 3. Both the renewal/amendment document and the original 1998 lease will govern the lease terms and both are attached.

ALTERNATIVES ANALYZED

Council may:

- Approve the renewal and amendments to the original lease agreement; or,
- Disapprove the renewal and amendments to the original lease agreement.

FINANCIAL IMPACT

The City will be paid lease amounts as provided in Section 3 which are \$10,000 per year for the primary lessee, GTP Partners, and \$3,000 per year for each sublessee or co-locator. Each of these payments will be increased by 3% annually and will go into the General Fund.

RECOMMENDATION

Staff recommends that Council approve the attached Renewal and Amendment to the original 1998 cell tower lease.

APPROVED BY CITY ADMINISTRATOR

Attachments

Renewal & Amendment

Original Lease



RENEWAL OF and FIRST AMENDMENT TO COMMERCIAL GROUND LEASE FOR USE AS A COMMUNICATIONS EQUIPMENT SITE

This Renewal and First Amendment ("First Amendment") to Commercial Ground Lease For Use As A Communications Equipment Site ("Agreement") dated February 23, 1998, is made and entered into this ____ day of _____, 2012, by and between City of Billings, Montana, (hereinafter "Lessor") and GTP Acquisition Partners II, LLC, a Delaware limited liability company, as successor to 3 Rivers PCS, Inc. (hereinafter "Lessee").

RECITALS

WHEREAS, Lessor and Lessee entered into a certain Agreement dated February 23, 1998, for the use of a certain portion of real property located at 2600 Central Avenue, in the City of Billings, County of Yellowstone, in the State of Montana 59102 and more particularly described in the Agreement for the construction, maintenance and operation of a communications facility and any and all uses incidental thereto; and

WHEREAS, Lessor and Lessee agree and acknowledge that they desire to modify certain terms in the Agreement.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lessor and Lessee hereto agree as follows:

1. Term. The first term of this renewal shall be for Ten (10) years ending on December 17, 2022. The lease shall then be renegotiated. Thereafter, once renegotiated, beginning in 2022 Lessee shall have the right to extend the Agreement for three (3) additional five (5) year terms ("Extension Terms"), provided Lessee delivers to Lessor written notice of each election to extend the Lease Term at least ninety (90) days prior to the expiration of the then current Extension Term. Accordingly, provided Lessee gives notice to renew for each of the Extension Terms, the last Extension Term shall expire on February 23, 2037. Upon the expiration of the last Extension Term, the parties may negotiate a new lease agreement or an additional term extension of this Lease.

2. Transfers. Article I (G) is amended by adding the following as the last sentence:

If all of the leased premises is assigned to an unaffiliated third party, a fee of Ten Thousand Dollars (\$10,000.00) shall be a prerequisite for such assignment.

3. Ground Rental And Use Fee. Article III A and B are hereby amended as follows:

Beginning February 23, 2013, Lessee shall pay to Lessor Ten Thousand and No/100 Dollars (\$10,000.00) as an annual ground rental and use fee payment for one anchor sublessee's antenna system. Lessee shall pay to Lessor an additional Three Thousand and No/100 Dollars (\$3,000.00) annual payment for each additional sublessee use fee per year for each antenna system placed on Lessee's tower or each separate set of operating equipment placed in Lessee's building or on the Lessee's leased property by additional subtenants or users. Said rental and use fees shall be payable annually in advance without billing on the 1st day of each new contract year. Any delinquent co-location fees due from sublessees under the previous Lease shall survive and remain the obligation of Lessee to remit to Lessor under this Renewal and First Amendment.



3. Annual Readjustment of Ground Rental and Use Fee. Article III D is hereby deleted in its entirety and replaced with the following:

"During the term of the Agreement, the ground rental and use fee will be adjusted annually on the anniversary of the Agreement (such date being February 23) each year at the rate of three percent (3%) over the annual rental payment paid during the previous year and for each year thereafter."

4. Insurance and Indemnification.

a. Article VI A is amended to include the following:

"Lessee shall indemnify, defend and save harmless the Lessor from any and all losses, claims, causes of action, lawsuits, damages, demands, liabilities, judgments and litigation costs and expenses including reasonable attorneys' fees that may result to the Lessor because of any negligence, act or omission on the part of the Lessee, and shall indemnify Lessor against any and all mechanic's and materialmen's liens or other types of liens imposed upon the premises that arise out of Lessee's use of the premises."

b. The first paragraph of Article VI B is amended and restated as follows:

"Lessee shall within ten (10) working days after the execution of this Lease, procure at its expense and deliver to Lessor a certificate of public liability insurance in a minimum amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) per occurrence for bodily injury, property damage, personal injury and or death growing out of any one accident or other cause. The City of Billings shall be named as additional insured. The policy of insurance shall contain a provision requiring the issuer to notify Lessor, by at least thirty (30) days written notice, of any reduction in the face amount of the policy, cancellation or other adverse amendments to the risk covered."

5. Notices. Lessee's notice address is as follows:

GTP Acquisition Partners II, LLC
750 Park of Commerce Blvd. – Suite 300
Boca Raton, FL 33487-3612
Asset Manager – MT-5094

6. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this Renewal and First Amendment, the terms of this Renewal and First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

7. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.



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IN WITNESS WHEREOF, the Lessor and Lessee hereto have set their hands and seals to this First Amendment to Commercial Ground Lease For Use As A Communications Equipment Site as of the day and year first written above:

LESSOR: City of Billings, Montana

By: _____
Printed: _____
Date: _____

STATE OF _____ §
COUNTY OF _____ §

On the ____ day of _____, in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, _____ of the City of Billings, Montana personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public: _____

My commission expires:



LESSEE: GTP Acquisition Partners II, LLC
a Delaware limited liability company

By: _____
Shawn Ruben
Secretary

Date: _____

STATE OF FLORIDA §
COUNTY OF PALM BEACH §

On the ____ day of _____, in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Shawn Ruben, Secretary of GTP Acquisition Partners II, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public: _____

My commission expires:

COMMERCIAL GROUND LEASE
FOR USE AS A COMMUNICATIONS EQUIPMENT SITE

THIS LEASE AGREEMENT, made and entered into this 23 day of Feb, 1998

by and between the following:

CITY OF BILLINGS, MONTANA, hereinafter
designated "Lessor"

and

3 RIVERS PCS Inc.
a Montana Corporation; Fairfield, Montana,
hereinafter designated "Lessee"

WITNESSETH

RECITALS

- 1) Lessor owns and operates STEWART PARK situated in the City of Billings, Montana, and
- 2) Lessor deems it advantageous to itself and the operation of the City to lease to the Lessee a certain parcel of land hereinafter described together with certain privileges, rights, uses and interests, and
- 3) Lessee a firm wishing to engage in certain commercial activities, proposes to lease on a net basis from Lessor said parcel of land and to avail itself of the same privileges, rights, uses and interests contemplated herein and,
- 4) Lessee has indicated a willingness and ability to properly keep, maintain and improve said land in accordance with standards established by Lessor.

NOW THEREFORE, the Parties hereto covenant and agree as follows:

ARTICLE I

PREMISES AND PRIVILEGES

A. Description of the Premises Lessor hereby leases to Lessee and Lessee hereby hires and takes from Lessor that certain parcel of real property, together with improvements (hereinafter called the premises), for its exclusive use, specifically described in "Exhibit A," attached hereto and incorporated herein by reference as if fully set out.

B. Construction of Improvements. Lessee may construct a single tower a building for housing communications equipment and necessary vehicle parking on the parcel of land described above pursuant to the Plans hereto attached, marked "Exhibit B," and by reference specifically made a part of the Lease. Lessee shall not deviate from the plans in any way without the prior written consent of Lessor. The plan shall include a building plan which must be approved by the City Building Division of the Public Works Department and shall show where vehicle parking will occur. The construction of the facility shown on "Exhibit B" building plans will be completed within twelve (12) months of the signing of this Lease. Failure to complete the structures during said period shall constitute a default. If this default occurs, the Lease is canceled immediately and control of the premises reverts to the Lessor.

The Lessor shall review and approve all building materials, exterior finishes, colors, foundation plans and location of improvements on the premises. Lessor's approval will in part be contingent upon plan approval by the City of Billings Building Department. Lessor hereby consents to the construction contemplated in Exhibit B hereto. Additionally:

- 1) Building structures shall be constructed of cinder block of concrete and have a finished exterior appearance.
- 2) All antenna structures shall be free standing and use no guy wires for support.
- 3) The Lessee's leased area must be fenced with chain link fencing of height and

location approved by the City. The City may require that the Lessee install decorative slatting in the chain link fence to shield the site from other areas.

4) Lessee shall complete and submit to the Federal Aviation Administration (FAA), FAA Form 7460-1 Notice of Proposed Construction or Alteration. FAA approval must be received prior to the beginning of any site or facility construction. Lessee must be in full compliance of the FAA rules and regulations regarding painting and lighting.

5) Lessee's Equipment. Article VII, Paragraph A, controls the disposition of Lessee's equipment and property upon expiration or other termination of this Lease. Except as otherwise noted in Article VII, Paragraph A, Lessor acknowledges and agrees that all personal property, equipment, apparatus, fittings, building, fixtures and trade fixtures installed or stored on the Premises constitute personal property, not real property, and shall continue to be the personal and exclusive property of Lessee, including, without limitation, all telecommunication equipment, towers, switches, cables, wiring and associated equipment or personal property (collectively, the "Equipment"). The Equipment shall remain at all time the personal property of Lessee, and neither Lessor nor any person claiming by, through or under Lessor shall have any right, title or interest (including without limitation a security interest) in the Equipment. Lessee, and Lessee's successors in interest, shall have the right to remove the Equipment at any time during the Term of this Lease or its earlier termination. Removal of equipment shall not damage, deface, or destroy Lessor's property in any way. With respect to the holder of any mortgage, deed of trust or other lien affecting Lessor's interest in the Premises, whether existing as of the date hereof or arising hereafter, Lessor and Lessee hereby agree, acknowledge and declare that the Equipment is now and shall at all times hereafter remain the personal and exclusive property of Lessee. The parties further acknowledge and agree that Lessor shall have no right or authority to grant a lien upon or security interest in any of the Equipment.

C. General Privileges, Uses and Rights. Lessor hereby grants to Lessee the following general privileges, uses, rights, all of which shall be subject to the terms, conditions and covenants herein set forth.

1) The general unrestricted use of all public facilities and improvements which are now or may hereafter be connected with or appurtenant to said facility, except as hereinafter provided, to be used by Lessee and its sublessees for commercial activities as herein defined. For the purpose of this Lease, public facilities shall include all automobile parking areas, roadways, sidewalks, or other public facilities appurtenant to said property. Said use shall be subject to Federal and State laws, rules, regulations and City Ordinances as now or may hereafter have application to the property.

2) The right of ingress to and egress from the premises over and across public roadways serving the area for Lessee, his agents and servants, patrons, and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the property.

D. Specific Privileges, Uses and Rights In addition to the general privileges, uses and rights described above and without limiting the generality thereof, Lessor hereby grants to Lessee and sublessees the right to engage in commercial activities on the premises as defined in sub-paragraphs 1 through 2 below, subject to the conditions and covenants hereafter set out:

1) The construction of tower structure and support building and operation repair, replacement and maintenance of communications equipment with antennas on the premises described in "Exhibit A" necessary for the conduct of business. Antenna systems must be placed in accordance with this Agreement, and all operating equipment must be

located within the Lessee's area as shown on "Exhibit B".

2) The parking of vehicles conducting site maintenance in the designated parking area on the leasehold.

E. Reservation of Right-of-Way. Lessor hereby reserves a right-of-way easement for access purposes over the above described leasehold. Said reserved rights-of-way may be used by Lessor and all of Lessor's tenants, agents, employees of said tenants, and persons or entities serving said tenants.

F. Access/Inspections by Lessor. The Lessor or any person designated by the Lessor shall at all times have reasonable access to the premises, and in the event of any emergency, the Lessor or its representatives shall have the right to take such action at the premises as they deem necessary for the protection of persons or property.

G. Subleasing and Transferring. The Lessee shall have the right to sell, sublease, assign or transfer all or any part of the premises for the same purpose established in Article I, Paragraph D, provided written approval of the Lessor is obtained. Any sublessee shall be subject to the same conditions, obligations and terms as set forth herein, and Lessee shall be liable to Lessor for the performance on the part of sublessee of all of the terms and conditions in the Lease agreement on the part of Lessee to be kept and performed.

H. Renting Antenna and Building Space. The Lessee is authorized to rent space to others on the Lessee's tower, building space and ground space for additional communication buildings for the same purpose established in Article I, Paragraph D, under the same terms and conditions of this Lease agreement at a reasonable rate without discrimination for the occupancy provided the following requirements are met:

- 1) Prior written approval of the Lessor is obtained.
- 2) Lessee provides the Lessor, in writing, the name, address and frequencies that will be operated.

- 3) Provide documentation that the new antenna/equipment will not interfere with the existing frequencies currently in use.
- 4) Lessee agrees to collect and submit to the Lessor the Use Fee for all new installations as established in Article III, Paragraphs B and C.

ARTICLE II

TERM OF LEASE

A. Term. The term of this Lease shall be for a period of fifteen (15) years, commencing on the 23 day of Feb, 1998, and terminating on the 23 day of Feb, 2013

B. First Right of Refusal. Provided Lessee is not then in default of this Lease and has kept and performed all of its obligations and duties, at the end of the term hereof the Lessee shall have the first right to accept a new lease of the premises at the same rates and charges that the premises may be offered to any other person or entity, subject to City Council approval. Provided, that the Lessor shall have the sole discretion as to the use of said premises and whether or not it will be relet at the end of said term. Provided further, that 60 days prior to the end of the term Lessee shall give notice in writing to Lessor of intent to exercise the first right of refusal. Lessor upon election to relet said premises, shall give Lessee notice in writing of its decision and the proposed terms. Lessee shall have 30 days in which to give Lessor notice in writing of acceptance.

ARTICLE III

RENTAL AND FEES

A. Ground Rental. For the land described in Article I, Paragraph A, Lessee shall pay to Lessor an annual rental of \$2,500.00 per annum for all ground included in this Lease.

Said rental shall be payable annually in advance without billing on the 1st day of each new contract year in an amount equal to the total annual rental.

B. Use Fee. Lessee shall pay to Lessor an annual use fee of \$2,500.00 per year for the Lessee's antenna system and operating equipment. In addition, each sublessee or tenant shall pay to Lessor an additional \$2,500.00 use fee per year for each antenna system placed on Lessee's tower or each separate set of operating equipment placed in Lessee's building or on the Lessee's leased property by other tenants or users. Said use fees shall be payable annually in advance without billing on the 1st day of each new contract year in an amount equal to the total annual rent. Lessee shall be liable for and shall pay to Lessor all use fees whether the fees are incurred by the Lessee or its sublessee/tenant.

C. Additional Compensation. In addition to the ground rental and use fee the Lessor shall be permitted to install up to two antennas on Lessee's antenna structure at no cost to the Lessor, provided Lessor's equipment does not interfere with Lessee's equipment.

D. Annual Readjustment of Ground Rental and Use Fee During the term of the Agreement the ground rental and use fee will be adjusted annually on the anniversary of the Agreement using the Consumer Price Index for the previous 12 month period. In no case shall the rates be less than the previous year.

ARTICLE IV

OBLIGATIONS OF LESSOR

A. Lessor Warranties Lessor warrants all things have happened and have been done to make its granting of said Lease effective and that Lessee shall have peaceful possession and quiet enjoyment of the leased premises during the term hereof, upon performance of

Lessee's covenants herein.

B. Operation of Stewart Park Lessor will continue to operate Stewart Park as a public park and that all those uses are to remain unrestricted outside the area of the fenced compound (50' x 40') by any provision of the lease agreement, intended or implied.

C. Condition and Maintenance of Premises. Lessor shall assume no responsibility for the condition of the demised premises after delivery of premises to said Lessee. Lessor shall remove snow from the access road as Lessor's resources permit. Snow removal on Lessee's premises will be the responsibility of the Lessee.

ARTICLE V

OBLIGATIONS OF LESSEE

A. Condition of Premises. It shall be the sole responsibility of the Lessee to develop, keep, maintain and operate the entirety of the premises and all improvements and facilities placed thereon at Lessee's sole cost and expense. This Lease in every sense shall be without cost or expense to the Lessor. Lessee accepts the premises in its present condition and will repair and maintain any installations thereon except as provided in Article III, Paragraph C, and Article IV, Paragraph B.

B. Improvements. Lessee shall have the right to and shall provide for the siting, construction, erection, maintenance of its own improvements, in any lawful manner, upon or in the premises, for the purpose of carrying out any of the activities provided for herein, but all such activities shall require the prior review and written approval of Lessor.

C. Maintenance. Lessee shall, at its sole cost and expense, maintain the premises and the buildings, improvements and appurtenances thereto in a presentable condition free of refuse and debris consistent with good business practice.

If the FAA requires obstruction lighting, the Lessee shall undertake a preventative maintenance plan to prevent an inoperable obstruction light. Should the obstruction light fail to operate for any reason, the Lessee shall repair the light within forty-eight (48) hours after notification by the City.

D. Utilities. Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term thereof, provided, however, that Lessee shall have the right to connect to any available electrical outlets at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefore.

E. Trash, Garbage, Etc. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage and other refuse occurring as a result of the operation of its business. Lessee shall provide and use lessor-approved receptacles for all garbage, trash and other refuse and shall place them on the premises in a location acceptable to the Department of Solid Waste for their removal. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner, or open storage of materials, personal property, salvage, junk or refuse on or about the premises, is forbidden. Department of Solid Waste costs will be paid by the Lessee.

F. Signs. Lessee shall not maintain on the premises any billboards or advertising signs; provided, however, that Lessee may maintain on the outside of its buildings its name(s) or signs, the size, location and design of which shall be subject to prior written approval of Lessor.

G. Federal, State and Local Regulations Lessee acknowledges that the right to use said facilities in common with others authorized to do so shall be exercised subject to and in accordance with the laws of the United States of America, the State of Montana and the City of Billings. Lessee shall comply with all Federal, local and State laws, rules, regulations and ordinances, and all Rules and Regulations of Lessor now in force or hereafter prescribed or

promulgated by authority or by law shall be closely observed during the full term of this Lease.

H. Hazardous Substances. Lessee assumes full responsibility for the proper and legal use, handling, storage and disposal of any hazardous substances used or consumed in the conduct of its business. "Hazardous substance" shall be interpreted broadly to mean any substance or toxic material, hazardous or toxic or radioactive substance, or other similar term by any Federal, State or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Lessee will hold Lessor harmless from and indemnify Lessor against and from any damage, loss, expense or liability resulting from any breach of this representations and warranty including all attorneys' fees and costs incurred as a result thereof.

I. FCC Authorization. Prior to activating any communications equipment the Lessee must possess a valid Federal Communications Commission (FCC) authorization, and insure that the operation of the equipment will be conducted in strict compliance with applicable FAA requirements. A copy of each applicable license must be maintained by the Lessee for each transmitter being operated by Lessee or sublessee. The Lessee must provide the City, when requested, with a current copy of each license for equipment in or on facilities covered by this Lease Agreement. When requested by the City the Lessee shall provide technical information concerning the equipment operated by the Lessee under the terms of this Agreement.

J. Interference with Existing Signals. The Lessee must insure that all equipment is operated in a manner which will not cause interference with the operation of existing communication equipment at the Billings Logan International Airport. If the RF Engineer at the Billings Logan International Airport determines that the Lessee's equipment is interfering with existing equipment located at the Billings Logan International Airport, the Lessee will have

fifteen (15) days to eliminate the interference to the satisfaction of the City and the FAA. If the interference is not corrected in fifteen (15) days the Lessee's equipment shall be shut down until the problem can be corrected.

K. Encumbrances, Mortgages and Liens Lessee shall not encumber in any way any part of the real property of the leasehold estate by assignment, hypothecation, security interest, mortgage, pledge, deed of trust or any other instrument given to or for the benefit of any bank, financing institution or to or for the benefit of any contractor or other third party. Further, Lessee shall keep the real property of the leasehold estate free and clear of all liens arising out of any work performed, material furnished, or obligations incurred by Lessee or any sublessee.

ARTICLE VI

INSURANCE AND INDEMNIFICATION

A. Indemnification. Lessor shall stand indemnified by Lessee as herein provided. It is expressly understood and agreed that Lessee is and shall be deemed to be an independent Lessor shall in no way be responsible therefore. It is further agreed that in the use of the property in the erection or construction of any improvements thereon, and in the exercise or enjoyment of the privileges herein granted, Lessee shall indemnify and save harmless the Lessor from any and all losses that may result to the Lessor because of any negligence, act or omission on the part of the Lessee, and shall indemnify Lessor against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the premises.

B. Insurance. Lessee shall within ten working days after the execution of this Lease, procure at its expense and deliver to Lessor a certificate of public liability insurance in a minimum amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, property damage, personal injury and or death growing out of any one accident or other cause. The City of Billings

shall be named as co-insured. The policy of insurance shall contain a provision requiring the issuer to notify Lessor, by at least twenty (20) days written notice, of any reduction in the face amount of the policy, cancellation or other adverse amendments to the risk covered.

Lessee shall maintain said insurance with insurance underwriters authorized to do business in the State of Montana satisfactory to Lessor. All policies shall name Lessor, its officers, servants and agents and employees as additional insureds as their interests shall appear. Lessee shall furnish Lessor with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this Lease, or shall deposit with Lessor copies of said policies immediately up on execution of this Agreement. Failure to obtain and maintain said policy of insurance shall be considered a material breach of this agreement.

ARTICLE VII

TERMINATION OF LEASE, CANCELLATION & TRANSFER

A. Termination. This Lease shall terminate at the end of the full term hereof without any notice by either party. A holding over by the Lessee, its assigns or sublessees beyond the expiration of the term shall not be permitted without the written consent of the Director of Parks and Recreation, and then only on a month-to-month basis.

Upon expiration or other termination Lessee shall have the right to remove from the leasehold premises all moveable fixtures, machinery, equipment, apparatus, fittings, fixtures and trade fixtures, all telecommunication equipment, towers, switches, cables, wiring and associated equipment, other personal property, and all buildings and other structures owned or installed by Lessee on the premises. All expenses connected with such removal shall be borne by the Lessee. Said property shall be removed within thirty (30) days after expiration or other termination of the apparatus, fittings, fixtures and trade fixtures, telecommunication equipment, towers, switches, cables, wiring and associated equipment, other personal property, buildings,

structures or other property installed or located on the premises within thirty (30) days after expiration or other termination of the Lease, then Lessor shall acquire sole possession, right and title to said property.

Lessor shall then have the right to remove or otherwise dispose of said property and charge to Lessee the actual cost of removal and restoration of the leasehold premises.

Lessee shall restore the premises to its original condition or to the satisfaction of the Lessor.

B. Cancellation by Lessee. This Lease shall be subject to cancellation by Lessee after the happening of the following events:

1) The default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of ninety (90) days after receipt from Lessee or written notice to remedy same.

2) The lawful assumption of the City of Billings or any other authorized agency thereof, of the operation, control or use of the City facilities, or any substantial part or parts thereof, in such a manner that substantially restricts Lessee for at least thirty (30) days from operating in a normal manner.

Lessee may exercise such right of termination by written notice to Lessor at any time after the lapse of the above applicable periods of time and this Lease shall terminate as of that date. Rental due hereunder shall be payable only to the date of the happening of the event which results in said termination. Upon termination under the provisions of this paragraph, Lessee shall have the same rights as described in the second paragraph of Article VII, Paragraph A herein.

C. Cancellation by Lessor.

- 1) This Lease shall be subject to cancellation by Lessor in the event Lessee shall:
- a) Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after payment is due.
 - b) File a voluntary petition of bankruptcy.
 - c) Make a general assignment for the benefit of creditors.
 - d) Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after written notice from Lessor of said default.
 - e) Abandon its conduct of business on the leased premises.

2) In the event of termination because of the happening of any of the aforesaid events, Lessor may take immediate possession of the premises and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing. Upon said entry, this Lease shall terminate.

3) It is agreed that failure of Lessor to declare this Lease terminated or to re-enter and take possession upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to declare this Lease null and void by reason of any subsequent violation of the terms of this Lease.

ARTICLE VIII

GENERAL PROVISIONS

A. Attorney's Fees. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest

in any manner arising under this Agreement, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

B. Taxes. Lessee shall pay any taxes or assessments which may be lawfully levied against Lessee's occupancy or use of the premises or any improvements placed thereon as a result of Lessee's occupancy, but Lessee as independent contractor reserves the right to contest the levy of any tax or assessment which it feels is unjust.

C. Subordination of Lease.

1) Notwithstanding any other prohibition or limitation of Lessee's right to sublease or assign its interest under this Lease, Lessor acknowledges and agrees that Lessee shall have the right to grant a security interest in its rights and interest under this Lease. Lessor further agrees that any person foreclosing or other wise realizing upon such a security interest granted by Lessee shall succeed to, and shall have the benefits of, all Lessee's rights, title and Interest in, to and under this Lease. Lessor in no event shall be liable for the payment of the sum secured by such mortgage or trust indenture, nor for any expenses in connection with the same. Furthermore, such mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary will seek no money judgment against Lessor. The mortgage or trust indenture shall also contain provisions requiring the holder of the indebtedness secured by such mortgage or trust indenture to mail to Lessor by certified mail a copy of each notice of breach of covenant, default or foreclosure given by the holder or the trustee under such mortgage or deed of trust.

D. Non-Discrimination. Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree: (a) that no person, on the grounds of race, color, creed, political ideas, sex, age, or

physical or mental handicap, shall be excluded from participation, denied the benefits of, or otherwise subjected to discrimination in the use of facilities, or the exercise of its rights and privileges under this Agreement (b) that, in the construction of any improvements on behalf of Lessee and the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, creed, political ideas, sex, age, or physical or mental handicap: (c) that Lessee shall use the facilities in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Acts of 1964, and as said Regulations may be amended.

E. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease or the particular paragraphs.

F. Notices. Notices to Lessor provided for herein shall be sufficient if sent by certified mail, postage prepaid, address to:

Parks and Recreation Director
City Hall
Billings, MT 59103

and notices to Lessee, of sent by certified mail, postage prepaid, address to:

3 Rivers PCS, Inc.
PO Box 3387
Great Falls, MT 59403

or to such other addresses as the parties may designate to each other in writing from time to time.

G. Successors and Assigns. All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of successors, assignees and sublessees of the respective parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands this

23 day of Feb, 1998.

ATTEST:

BY Marita Herold
CITY CLERK



CITY OF BILLINGS

BY Michael A. Hanson
MAYOR Deputy Mayor in the absence of the Mayor

ATTEST:

BY _____
SECRETARY

3 RIVERS PCS, INC.

BY Ernest P. Pote
MANAGER

COUNTY OF Lewis & Clark)

)SS

STATE OF Montana)

On this Second day of February, 1998, before the undersigned Notary Public for the State of Montana , personally appeared Earnest J. Peterson known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

(NOTARY SEAL)

W Robert Kozick
Notary Public for the State of Montana
Residing at Helena
My Commission Expires Sept. 7, 1999

STATE OF Montana)

ss.

COUNTY OF Yellowstone)

On this 23 day of February, 1998, before the undersigned Notary Public for the State of Montana, personally appeared Michael A Larson known to me to be the Deputy Mayor of the City of Billings that (s)he(y) executed the within instrument, acknowledged to me that such corporation executed the same.

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

(NOTARY SEAL) Marita Herold
Notary Public for the State of Montana
Residing at Billings, MT
My Commission Expires 7-24-2000

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: W.O. 10-19; Shiloh Conservation Area. Professional Services Contract Amendment #1

PRESENTED BY: David Mumford

Department: Public Works

Information

PROBLEM/ISSUE STATEMENT

This Professional Services Contract Amendment #1 with DOWL HKM is for final design and construction administration services of Work Order 10-19; Shiloh Conservation Area. The Preliminary Design Contract was approved at the March 12, 2012, City Council Meeting in the amount of \$105,909. This project was scoped into preliminary design and final design because the final design scope and fee could not be accurately identified until the preliminary design was completed to provide clear direction for the project.

ALTERNATIVES ANALYZED

The Council may:

- Approve this Professional Services Contract Amendment #1 in the amount of \$780,565; or
- Do not approve this Professional Services Contract Amendment #1.

FINANCIAL IMPACT

This Professional Services Contract Amendment #1 is for \$780,565 and will be paid from Stormwater Funds.

RECOMMENDATION

Staff recommends that Council approve Professional Services Contract Amendment #1 with DOWL HKM in the amount of \$780,565 for final design and construction administration services for W.O. 10-19; Shiloh Conservation Area.

APPROVED BY CITY ADMINISTRATOR

Attachments

W.O. 10-19 Contract Amendment #1

W.O. 10-19 Contract Amendment #1 - Scope of Work

AMENDMENT NO. 1

TO

CONTRACT FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES

CITY OF BILLINGS WORK ORDER 10-19,

SHILOH CONSERVATION AREA

THIS AGREEMENT, made and entered into on _____, 2012, by and between the following:

CITY OF BILLINGS, a Municipal Corporation,
Billings, Montana 59103,
Hereinafter designated the City

and

DOWL HKM
222 N. 32nd Street, STE 700
Billings, Montana 59101
Hereinafter designated the Contractor

WITNESSETH:

WHEREAS, the City and Contractor have entered into a contract dated March 12, 2012, for Contractor to provide preliminary design professional services to the City for Work Order 10-19, and;

WHEREAS, the City has need for additional professional services, and;

WHEREAS, the City has authority to contract for professional services, and;

WHEREAS, the Contractor represents that he is qualified to perform such services, is in compliance with Montana Statutes relating to the registration of professional engineers and is willing to furnish such services to the City;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree as follows:

Part 1, Special Provisions, Section 3, Paragraph C:

Contract, as amended, shall terminate at midnight, December 31, 2015.

Appendix A, Section 3 is amended as follows:

The attached scope of work (8 pages) for Amendment No. 1 services is hereby made a part of this contract.

Appendix B, Section 1, Part A is amended as follows:

A. For services rendered prior to construction, Appendix A, the Engineer shall be paid based upon actual time accrued, but not to exceed the following amounts:

Project management, final design, finalize bid package	\$494,560.00
plus,	
Additional design, bidding services, construction administration and record drawings	\$286,005.00
<hr/>	
Contract Amendment #1	\$780,565.00
<u>Original Contract (Preliminary Design)</u>	<u>\$105,909.00</u>
Total W.O. 10-19 Contract	\$886,474.00

All other terms and conditions of the contract, as amended, to which this amendment applies, shall remain in full effect.

CONSULTANT

NAME: DOWL HKM

BY: _____

TITLE: Regional Manager

DATE: _____

CITY OF BILLINGS, MONTANA

BY: _____

TITLE: _____

DATE: _____

Shiloh Conservation Area

Final Design and Construction Administration

SCOPE OF WORK

Introduction

The following Scope of Work describes the tasks that will be performed to complete final design and construction administration for the Shiloh Conservation Area.

This Scope of Work is guided by the work completed during the Preliminary Design phase of this project. The results of the preliminary design are documented in the DRAFT Preliminary Design report dated August 2012. Additional flow measurements, water quality sampling, and water table monitoring will be completed as part of the Preliminary Design phase to add to the existing data sets. Completion of these preliminary design elements will be performed concurrent with the initiation of Final Design. The Scope of Work is divided into the following components:

Final Design

- Project Management and Partner Coordination
- Final Design Surveys
- Final Hydraulics Analysis and Design
- Final Wetlands Design
- Final Landscape Design
- Construction Drawings
- Final Bid Packages

Construction Administration

- Bidding and Preconstruction Services
- Construction Administration
- Record Drawings and Project Completion

FINAL DESIGN

Project Management and Coordination

Provide project management and internal quality assurance. Provide contract administration, budget tracking and invoicing as well as general coordination through conference calls and correspondence to maintain close communication among the interdisciplinary design team and the City. Meet with agencies such as Montana Fish, Wildlife and Parks to present project concepts and refine criteria for final design. Meet with permitting agencies such as the Corps of Engineers to support environmental compliance. Meet with the City of Billings to discuss planned conservation area maintenance in order to integrate that information with the maintenance and operations plan for wetlands and natural areas. Participate in coordination meetings with the various project partners. Attend 30% and 70% design review, and other necessary design review and coordination meetings with City staff.

Final Design Surveys

Conduct field design surveys within the project limits. Data collection will include establishment of permanent horizontal and vertical control, topographic features, existing utilities and existing property pins. Utilize the One-Call service to locate and demarcate buried utilities for survey. Field survey data will be used to develop project base mapping. Perform research to verify existing right-of-way locations utilizing platted information, ownership records, and found property pins. Incorporate information into base mapping. Determine locations where additional right-of-way or easements must be secured by the City or sold to Northwestern Energy.

Final Site Layout and Permitting

Perform final StormNet modeling of flow routing through the channels, ponds, and wetlands of the proposed Shiloh Conservation Area. Perform final hydraulic analysis and design of the various hydraulic channels and structures required to convey flows and control water surface elevations. Determine hydraulic grade line along each of the potential flow courses and for the full range of potential flows.

Perform hydrogeologic evaluation of potential groundwater contribution to conservation area water balance. Coordinate with Montana DNRC Water Rights Bureau to obtain a water right permit for the site. This does not include responding to or addressing objections that may arise to the permit application from existing water right holders.

Prepare a Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains and Other Water Bodies; and supplemental permit documentation including a

wetland delineation report, monitoring plan and related performance standards. This task also includes communication with agencies in order to coordinate needs and time frames for permit application submittals. This does not include support for ESA compliance, MEPA or NEPA. If those are required, it will be necessary to develop a strategy to address them.

Perform final site design, wetland/revegetation design and landscape design as further described in the following section.

Design Detailing and Construction Drawings

This project will require two separate bid packages including Bid Package A – Site Civil and Bid Package B – Wetland and Revegetation and Landscape Improvements. Underlined tasks will be completed independently for both Bid Package A and B.

- Complete final design and prepare construction drawings and specifications for Bid Package A - Site Civil aspects of the final plan set including:
 - Site demolition and invasive species removal
 - Design and development of rough site grading plan and coordinates
 - Design and detailing of pre-sedimentation basin, maintenance access roads, and hard-surface lining
 - Design and detailing of diversion/regulation structures
 - Design and detailing of water level control structures
 - Design and detailing of spillway weirs and channels
 - Design and detailing of flow conveyance channels
 - Design and development of parking lot plan and details
 - Access bridge design and details
 - Pond and waterway design and details
 - Materials and construction specifications
- Complete final design and prepare construction drawings and specifications for Bid Package B - Fine Grading , Landscape Improvements, Wetland and Revegetation-related aspects of the final plan set including:
 - Design and development of wetland cell layouts
 - Wetland grading showing desired feature depths and fine shaping to support wetland fringe
 - Profile details of wetland cells and extended detention ponds
 - Vegetation plan for each planting zone
 - Design and detailing of soft control structures between wetland cells
 - Hogan's slough restoration details
 - Fine grading and shaping plan
 - Trail layout design and details
 - Wayfinding /interpretive signage design and details
 - Upland planting plan

- Riparian planting plan
 - Materials and construction specifications
-
- Prepare opinion of probable project cost
 - Deliverables for this phase include for each bid package:
 - a. 30% design drawings; 5 sets; 11"x17" format; PDF Copy
 - b. 70% design drawings; 5 sets; 11"x17" format, or full size drawings upon request; PDF Copy
 - c. Preliminary specifications; 2 copies; PDF Copy
 - d. Preliminary opinion of probable cost; PDF Copy

Final Bid Package

1. Prepare final plans and specifications using input received from review of design and construction plans for both bid packages. Plans and specifications will be prepared in accordance with MPWSS and City of Billings Standard Modifications, latest editions. Stamp and sign all plans and specifications with the seal of a Professional Engineer and or Licensed Landscape Architect.
2. Tabulate project quantities and create bid schedule. Finalize the Engineer's opinion of probable cost based on final quantities.
3. Prepare Final Design report for the City.
4. Deliverables for this phase include:
 - a. 95% design drawings for final review; 5 sets; 11"x17" format; PDF Copy
 - b. 100% design drawings and specifications for approval and bidding
 - c. Design report
 - d. Final opinion of probable cost

CONSTRUCTION ADMINISTRATION

This project will require two separate bid packages requiring management of two separate construction contracts. Underlined tasks will be completed independently for both Bid Package A and B contracts.

Bidding and Preconstruction Services

1. Apply for all permits, licenses, and approvals necessary to construct the project. All permit and licensing fees will be paid by the City. Construction stormwater permits shall be the responsibility of the construction contractor; Engineer will prepare a draft SWPPP to be provided to the selected contractor for processing and implementation. Erosion and sedimentation control plans will be prepared for inclusion in the project specifications.
2. Supply all bidding documents necessary for bidding and construction. Provide bid advertisement text to the City for publication. Schedule and conduct a pre-bid conference, publish meeting minutes, answer bid questions, and prepare any necessary addenda. Conduct a pre-bid field review with bidders as necessary.
3. Attend the bid opening, analyze the bids, prepare and distribute a bid tabulation, and make a construction contract award recommendation.
4. Assist the City in procurement of the final contract agreement, review bonds and insurance provided by the contractor, assemble and distribute conforming copies of contract documents, and issue a notice to proceed for construction.
5. Deliverables for this phase include:
 - a. Bid advertisement
 - b. Pre-bid meeting minutes
 - c. Addenda, as required
 - d. Bid tabulation
 - e. Recommendation of Award letter
 - f. Conforming copies of the construction contract; 5 sets total
 - g. Notice to proceed
 - h. Contractor's construction plans and specifications; up to 10 sets; 11"x17" format (2 full-size plan sets upon request); PDF Copy;

Construction Administration Services

1. This scope and the associated professional fee assume:
 - a. Two construction contracts with a combined construction duration of 150 days.
 - b. Engineer shall consult with the City and act as representative for the City as defined in the construction contract documents, which will incorporate the MPWSS, and specifically the General Conditions contained therein as modified by the City of Billings Standard Modifications, latest edition.
 - c. The extent and limitation of the duties, responsibilities, and authority of the Engineer will be as assigned in the construction contract documents and shall not be modified, except as Engineer may otherwise agree in writing.
2. Schedule and conduct a pre-construction conference, publish meeting minutes, and answer contractor questions. Conduct a pre-construction field review with contractors as necessary.
3. Take pre-construction photos and videos of the project areas.
4. Provide part-time construction observation utilizing a Resident Project Representatives (RPR) to assist Engineer in observing progress, quality of work, and conformance to the contract documents and other applicable codes and standards. City of Billings will utilize in-house construction inspection for the majority of the Contract A with only limited involvement in Contract B. Inspection activities shall include review of all key work items that will not be inspected by the City of Billings. The breakdown of the key work items will be determined in the final design based in part on the budget allowance. RPRs will prepare daily inspection reports, daily quantity summaries, weekly progress reports, weekly workforce and equipment reports, and other reports as required. RPR responsibilities are further defined in the General Conditions contained in the City of Billings Standard Modifications, latest edition.
5. Develop and implement a quality assurance testing plan for materials testing in accordance with the City of Billings Standard Modifications, latest edition. It was assumed that 20, 4-hour material testing trips will be needed for both contracts. Conduct a pre-construction testing meeting with RPRs, field testing personnel, and lab manager to coordinate testing requirements. Provide qualified personnel, equipment, and supplies for field testing of materials throughout construction.
6. Monitor and collect results from contractor's separate quality control materials testing program.
7. Provide personnel, equipment, and supplies for field staking of principal elements of the construction layout to give the contractor measurements, lines, locations, and grade necessary for construction. The contractor will be responsible for any detailed layouts, such as laser and/or other techniques for establishing grade between Engineer's staking intervals.

8. Provide oversight for wetland construction and revegetation. Provide a Resident Project Representative (RPR) to assist Engineer during key phases of project stake-out, wetland construction and revegetation activities; updating plans and specifications as needed during construction; and coordinating with Engineer and Contractors as needed.
9. Provide oversight for fine grading and landscape construction. Provide a Resident Project Representative (RPR) to assist Engineer during key phases of the site layout, trail construction, fishing dock construction, wayfinding and interpretive signage installation, shade shelter construction, site furnishings installation, and landscape revegetation activities; updating plans and specifications as needed during construction; and coordinating with Engineer and Contractors as needed.
10. Review contractor's submittals, such as shop drawings, samples, equipment, mix designs, aggregates, and other data, for conformance to the contract documents. This review does not include review of any dewatering plans and shall not extend to contractor's means, methods, techniques, sequences, procedures, or safety programs.
11. Attend and conduct a weekly construction meeting with the City and contractor.
12. Respond to contractor requests for information. Issue necessary clarifications and interpretations of the contract documents. Notify the City immediately of any contract problems or deviations from the approved contract documents. Issue notices as required by the construction contract. Recommend and prepare Work Change Directives and Change Orders for the City as necessary. Change orders that require additional design or construction services by Engineer will be considered Additional Services and compensated in accordance with the provisions of this Contract.
13. Prepare periodic website informational update content, including current project maps and work descriptions. The City will host and maintain the website, with content provided by the Engineer.
14. Make visits to the site at intervals appropriate to various stages of construction to observe, as an experienced and qualified design professional, the progress of the contractor's work in coordination with the City representative. Visits by the Engineer shall be limited to spot checking and similar methods of general observation of the work as assisted by the RPR.
15. Provide in-field coordination with the Contractor as necessary for site and landscape construction details.
16. Review and recommend monthly contractor payment requests.
17. Conduct substantial completion and final inspections with City and contractor. Prepare and monitor punchlist items required for completion of the work by contractor.

18. Deliverables for this phase include:

- a. Pre-construction meeting minutes
- b. Pre-construction photos
- c. Contractor submittals; one copy to City
- d. Weekly RPR inspection reports, upon request
- e. Monthly quality assurance materials testing reports and charts
- f. Miscellaneous construction forms, as required
- g. Review set of record drawings; 2 copies; 11"x17" format

Record Drawings and Project Close-Out

1. Maintain documentation of all field installations, including the location of any underground utilities encountered during construction, for assistance with preparation of project record drawings. Prepare record drawings by incorporating all field modifications to the construction drawings. Allow review by City of record drawings prior to issuing final record drawings.
2. Perform on-year monitoring of wetlands to facilitate establishment of wetland vegetation.
3. Conduct a one-year anniversary inspection of the project. Identify deficiencies and warranty items requiring correction, and provide notification to contractor.
4. Deliverables for this phase include:
 - a. Final record drawings, as described in Part I, Section 2, Article D of this Contract

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Approval of NorthWestern Energy's Easement to Provide a Power Feed to Six Romeo Mike's (Steve Durrett) New Hangar

PRESENTED BY: Tom Binford

Department: Airport

Information

PROBLEM/ISSUE STATEMENT

NorthWestern Energy is requesting an Easement to install an electrical power feed to the Six Romeo Mike (Steve Durrett) hangar being constructed on the west side of the Airport. On September 24, 2012, the City approved a Ground Lease with Six Romeo Mike for 13,440 square feet to be used for the construction of the new hangar. The new hangar will be built at 2445 Overlook Drive in the executive hangar area. Since the new power feed and associated easement will be on Airport property, a Right-of-Way Easement must be approved by the City Council and signed by the Mayor before the electrical power feed can be installed.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the Easement with NorthWestern Energy; or
- Decline to approve the Easement with NorthWestern Energy delaying completion of the hangar.

FINANCIAL IMPACT

This Easement will not produce any financial impact to the City of Billings.

RECOMMENDATION

Staff recommends that the City Council approve the Right-of-Way Easement with NorthWestern Energy for the installation of a new electrical power feed to Six Romeo Mike's new hangar at the Billings Logan International Airport.

APPROVED BY CITY ADMINISTRATOR

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Non-Motorized Transportation Support Letter to Governor Elect Steve Bullock

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

Bike Walk Montana (BWM) is a newly formed statewide organization consisting of representatives from communities and organizations across Montana that support and build transportation infrastructure that serves pedestrians, cyclists, people with disabilities, and all non-motorized users. The Bicycle and Pedestrian Advisory Committee (BPAC) here in Billings is the local advisory group to the City Council and County Commissioners on all non-motorized transportation issues and activities in the Billings urban area. BPAC has provided information to BWM about local non-motorized activities and was recently asked to sign a letter BWM is sending to Governor Elect Steve Bullock regarding continued support of non-motorized issues and projects across the state. Since BPAC is advisory to the Council and Commissioners, BPAC approved a recommendation at its December 3 meeting to the City Council and County Commissioners to approve and sign the letter of support.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the recommendation of BPAC and sign on to the BWM letter to Governor Elect Steve Bullock
- Not approve the recommendation of BPAC and not sign on to the BWM letter to Governor Elect Steve Bullock

FINANCIAL IMPACT

There is no direct financial impact from supporting this letter to Governor Elect Steve Bullock. However, past local, state and federal funding and support of projects that improve the safety and access for bicycling and walking have resulted in support of construction jobs, improved transportation options for all users, and cost-effective quality of life improvements for Billings.

RECOMMENDATION

The Bicycle Pedestrian Advisory Committee recommends the City Council approve the Mayor signing the Bike Walk Montana letter to be sent to Governor-elect Steve Bullock regarding continued support of non-motorized transportation issues and projects in Montana.

APPROVED BY CITY ADMINISTRATOR

Attachments

[Bike Walk Montana Support Letter](#)

[Bike Walk Montana Information](#)

Dear Governor Elect Steve Bullock,

We are excited about the future of Montana and we know you will do your best to meet the needs of our State. As you may remember, we contacted you right after the election with our concerns for selecting a director of the Montana Department of Transportation who is supportive, as well as understanding, of the role of non-motorized transportation.

Our newly formed Bike Walk Montana organization, along with many other groups across the State, want you to be aware of the positive impacts that bicycling and walking have had on our local communities. State and federal investments in bicycling and walking have resulted in valuable, cost-effective quality of life improvements. With these infrastructure improvements, children can walk or bicycle to school safely. Businesses can save money on health costs when their employees lead healthier lifestyles by pursuing active transportation for their daily commute. People have a choice in how they move in their community.

Some examples from the State that we mentioned to you before include:

- A trail wide network around Lewistown using the old railroad corridor that also provides direct access to the schools for a safe route to bike and walk;
- 36 miles of trails and 18 miles of bicycle lanes in Billings to provide safer corridors for non-motorized travel, plus SRTS funding for an assessment of all elementary schools and for encouragement and education to get more students to bike and walk to school;
- Trails, bicycle lanes and pedestrian bridges in Missoula to provide active transportation for citizens and their large university population;
- Bicycle lanes and a bicycle camp in the small town of Twin Bridges for their cycling visitors and locals
- A five-mile paved path through the town of Shelby providing residents a safe place to walk and bicycle;
- A 44 mile River's Edge Trail in Great Falls which has received national notoriety and is key to providing a multimodal transportation system in the city.

We now have the opportunity to continue this work with your support as you bring forth your changes and new administration to serve Montana. With the new federal transportation law (MAP-21) in place, we ask that the State fully fund, staff and implement the new Transportation Alternatives program as local demand for bicycling and walking is overwhelming. Specifically, we ask the state to:

- **Fully Fund:** Do not transfer any funds away from Transportation Alternatives or opt-out of the Recreational Trails program

- **Fully Staff:** Preserve or increase staff support for Transportation Alternatives by retaining the state Safe Routes to School coordinator and bicycle and pedestrian coordinator
- **Fully Implement:** Promptly award Transportation Alternatives grants with the participation of relevant stakeholders. Utilize all MAP-21 funding programs – including HSIP, CMAQ, and STP – to include bicycling and walking in all transportation projects.

In addition, we urge that Montana fully spend remaining funds available under SAFETEA-LU (the previous Federal Transportation Plan) for the Transportation Enhancements, Safe Routes to School, and Recreational Trails programs.

We appreciate your leadership as you take on the governorship of the State of Montana and would like to have the opportunity to meet personally with you. The federal government has given the State more flexibility in administering the transportation dollars. We understand that safety dollars (HSIP) have increased to each state. What better way to use safety funds than by providing infrastructure to create a safer environment for those who are most vulnerable on the roads; bicyclists and pedestrians. We ask that you support and fund bicycling and walking projects statewide, so that these programs can continue to support all of our transportation needs. Our success will send a powerful message to Congress that we need to expand bicycling and walking programs in the next federal transportation bill.

Please let us know your commitment to the State for Transportation Alternatives funds and for expanded support for bicycling and walking.

Thank you for your consideration and we urge you to support local access to funds for a safe transportation network for **all** residents and **all** users.

Sincerely,

Thomas W. Hanel, Mayor
City of Billings

● ● ● | Our Goals

Build a Coalition: cultivate mutually beneficial relationships with all active transportation advocacy groups and clubs around the state.

Partnering: cultivate strategic partnerships with organizations and agencies that advance the mission of Bike Walk Montana.

Messaging: develop and implement outreach and communications strategies so that biking and walking are appealing, safe, and accessible.

Campaigns: actively pursue and pass legislation and policy to improve biking and walking in Montana.

Build Organizational Capacity: Secure a strong, representative, board, attain appropriate staff, and establish diverse and sustainable funding to support and grow Bike Walk Montana's work.

Membership: Develop a membership strategy based on best practices of like state organizations.

Creative Opportunities Abound...



Bike Walk Montana

PO Box 584
Helena, MT 59624
406-438-5368
www.bikewalkmontana.org (coming soon)

Bike Walk Montana

Montana's Voice for
Bicyclists and Pedestrians



About Us

Board of Directors

Chair:	Taylor Lonsdale	Bozeman
Vice-Chair:	Bill Schneider	Helena
Treasurer:	Nancy Wilson	Missoula
Secretary:	Darlene Tussing	Billings
	Kathy Aragon	Billings
	Marty Basta	Great Falls
	John Coulthard	Butte
	Bill Foisy	Red Lodge
	Tom Muri	Whitefish
	Lisa Schmidt	Helena

Executive Director

Melinda Barnes resides in Helena, MT. She has a strong business background, is an avid cyclist and runner and was one of the founding members of Bike Walk Montana.

Our Mission

Bike Walk Montana makes biking and walking safe and accessible for all.



Our Vision

In communities across Montana, cycling and walking are safe, everyday, mainstream activities. Cycling and walking are recognized, accommodated and funded as legitimate and essential modes of transportation. As a result, Montanans enjoy an enhanced quality of life, a cleaner environment, and better health. Montana is a model for innovative cycling and walking facilities and programs.

Guiding Principles

- Bicycling and walking are healthy, safe, economical, and fun.
- Everyone should feel safe while walking or riding a bike.
- Everyone has a right to transportation choices.
- We increase safe cycling and walking through education, appropriate legislation, and improved infrastructure.
- Cycling and walking provide a simple and inexpensive way to promote public health, ease traffic congestion, and improve the environment.
- Diversity is critical to developing a strong cycling and walking community.



Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Second Reading of Ordinance Amending Ward IV Boundary: Annexation 12-07 (ROW)

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

City election ward boundaries must be adjusted to conform to city limit amendments resulting from annexation of property into the City. The City Council approved the annexation of property described as a Yellowstone County road easement for Grand Avenue, a portion of County Road Petition Number 37 (Annexation #12-07 ROW) on November 13, 2012. This requires a change in the boundaries of Ward IV. The City Council conducted a public hearing and approved the first reading of the ordinance to adjust the Ward IV election boundary to include this property at its regular meeting on December 10. The second reading is scheduled for this meeting.

ALTERNATIVES ANALYZED

City Council may approve or not approve the ordinance to amend the boundary of Ward IV on second reading.

- Approving the ordinance will modify the boundaries of Ward IV to include the property described as Yellowstone County road easement for Grand Avenue, a portion of County Road Petition Number 37.
- Denying the ordinance will not modify the boundaries of Ward IV and create a problem where property inside the City Limits is not within one of the City Ward Boundaries.

FINANCIAL IMPACT

There is no budget/financial impact from this action.

RECOMMENDATION

Staff recommends that Council approve this ordinance on second reading adding recently annexed property to Ward IV.

APPROVED BY CITY ADMINISTRATOR

Attachments

Ward Ordinance

ORDINANCE NO. 12-_____

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 IV 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 Ward IV the following described real property:

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

Yellowstone County road easement for Grand Avenue also described as a portion of County Road Petition Number 37, road Ordered Open June 4, 1891, being that portion south and adjacent to Zimmerman Acreage Tracts, Recorded May 27, 1958 under Document Number 601982 in the office of the Clerk and Recorder of Yellowstone County, said portion lying within Tract 1A, of Certificate of Survey No. 2990 Recorded December 29, 1998 under Document Number 3033372 in the office of the Clerk and Recorder of Yellowstone County described as follows:

Basis of bearings the north line of said Tract 1A of Certificate of Survey 2990, Beginning at the south west corner of said Zimmerman Acreage Tracts; thence S 89°56'21" E for a distance of 242.0 feet; thence to a point 30.0 feet and perpendicular to and in a southerly direction to the said north line of said Tract 1A, said point also being on the south easement line of said County Road Petition Number 37; thence along said County Road Petition and 30.0 feet parallel to the said north line of said Tract 1A for a distance of 242.0 feet; thence in a northerly direction for a distance of 30.0 feet to the Point of Beginning.

Said Tract containing 0.167 acres.

(#12-07) 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 10th day of December 2012.

PASSED by the City Council on the second reading this 17th day of December, 2012.

THE CITY OF BILLINGS:

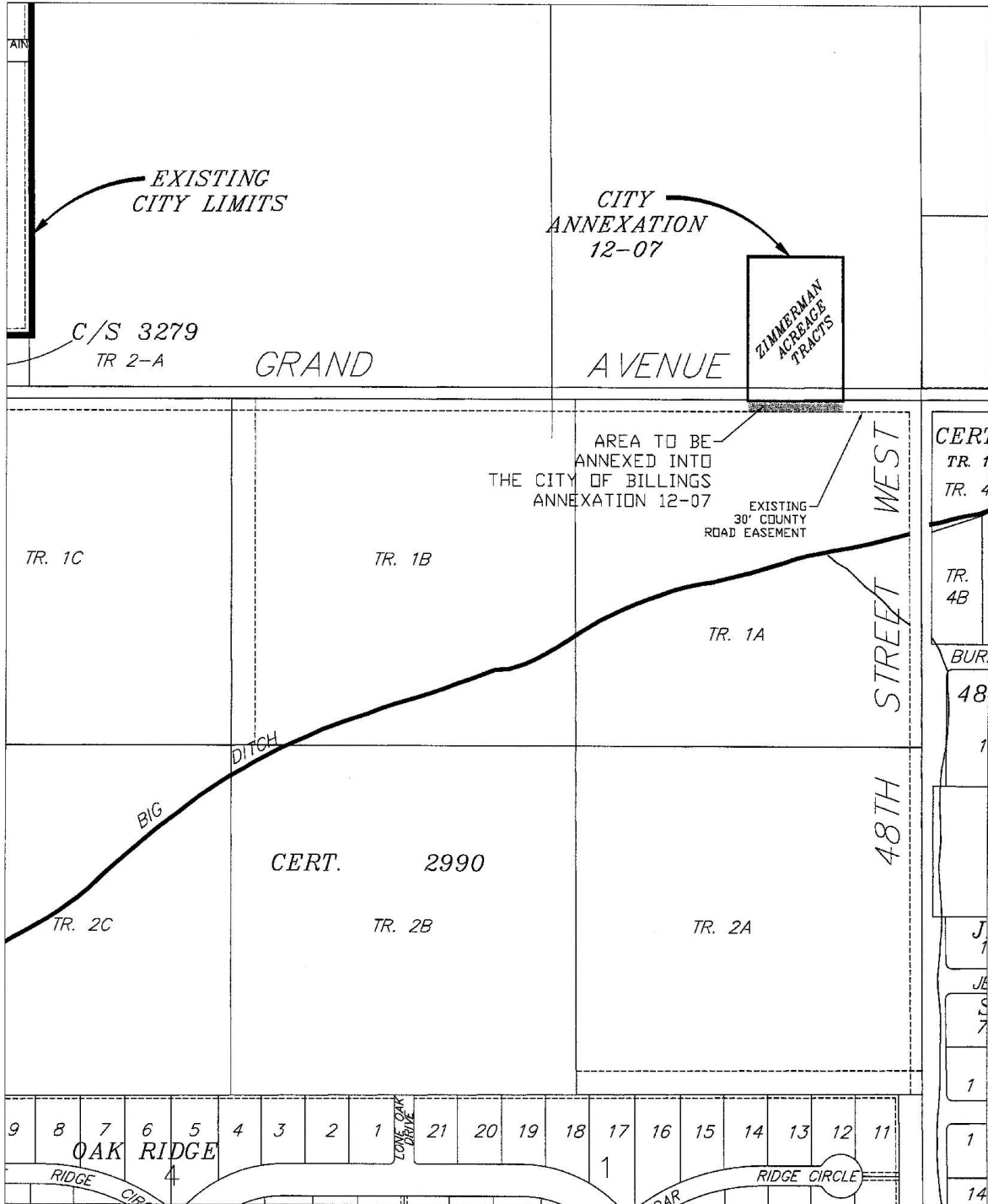
Thomas W. Hanel, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

(AN 12-07)(Grand Ave. ROW Easement)

EXHIBIT "A"



Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Lenhardt Square Subdivision, 1st Filing, Amended Lots 1 & 2, Block 1 -- Preliminary Major Subdivision for Rent or Lease

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

On October 1, 2012, subdivider, Stock Development, applied for preliminary major plan approval for Amended Lots 1 & 2, Block 1, Lenhardt Square Subdivision, 1st Filing. The proposed subdivision for rent or lease creates 320 residential rental units in 4 buildings on two lots. The subject property is generally located on the north side of King Avenue West, just east of S. 44th St. West, and south of Monad Drive. The property is zoned for Multifamily Apartments (MF-R) within the Lenhardt Square Planned Unit Development (PUD). One variance from the City Subdivision Regulations has been requested, as described further in this report. The Yellowstone County Board of Planning reviewed the proposal and held a public hearing on November 27, 2012. Sanderson Stewart is the representing agent.

ALTERNATIVES ANALYZED

In accordance with state law, the City Council has 60 working days to act upon this major preliminary subdivision for rent or lease application; the 60 working day review period for the proposed plan ends on January 2, 2013. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 day review period, the City Council is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Subdivision for Rent or Lease application.

FINANCIAL IMPACT

Should the City Council approve the preliminary subdivision for rent or lease plan, the subject property may further develop under private ownership, resulting in additional tax revenues.

BACKGROUND

General location: Southeast corner of Monad Rd. and S. 44th St. West

Legal Description: Lots 1 & 2, Block 1, Lenhardt Square Subdivision, 1st Filing, located in the S 1/2, Section 10, T1S, R25E

Owner/Subdivider: Stock Development, Mike Stock, Pres.

Engineer and Surveyor: Sanderson Stewart

Existing Zoning: PUD with underlying MF-R

Existing land use: vacant

Proposed land use: multi-family residential

Gross and Net area: 15.6 acres/ 14.4 acres

Proposed number of lots: 2 lots / 320 dwelling units

Lot sizes: Max: 7.3 acres

Min.: 7.1 acres

Parkland requirements: Parkland dedication was planned for the entire PUD during the 2008 master planning process. The subject property is proposing to provide a 10-foot wide parkway easement in accordance with the master plan (see Attachment).

Variance requested: A variance from Section 23-406.B.11, BMCC, which requires that 'collector' streets be designed to accommodate speeds of 35 miles per hour. Due to the design geometrics of the curve on Monad Road as it heads south, this variance is required. The developer's request and staff analysis are found in the Attachments.

STAKEHOLDERS

A public hearing was conducted by the Yellowstone County Board of Planning on November 27, 2012. Property owners adjacent to the subject property were notified by certified mail of the hearing and a legal notice was published in the Billings Times.

Two representatives from the West End neighborhood task force attended the meeting and spoke in opposition to elements of the proposal. Specifically, they were concerned about the design of Monad Road as it does not continue in a direct east/west course, but curves and heads south connecting to 44th Street West and out to King Ave. West. They felt it is important to preserve the street grid and desire Monad Road to continue straight across the top of the PUD. There was great deal of discussion by the Planning Board about the Functional Classification Map (part of the 2009 Urban Area Transportation Plan), and the purpose of Monad as a collector street at this location. There was concern about funneling the traffic from Monad east of Shiloh through this subdivision.

A representative of the Lenhardt Square Master Association (the association responsible for administering and enforcing the CCRs and other private development standards for the subdivision) attended the public hearing to give additional background on the PUD and spoke in favor of the development. The representative also indicated that the street layout for Monad and S. 44th St. West was carefully analyzed and considered during the original master planning process and that it follows the current Functional Classification map. She indicated that the Master Association has given approval to the general layout of the site plan, but they are still reviewing the site specific details such as landscaping and building elevation design to ensure compliance with the CCRs.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the Transportation Plan 2009 Update, and Billings Area Bikeway and Trail Master Plan are discussed within the Findings of Fact.

RECOMMENDATION

The Planning Board recommends that the City Council conditionally approve the preliminary plan of the subdivision for rent or lease on Amended Lots 1 & 2, Block 1, Lenhardt Square Subdivision, 1st Filing and to adopt the Findings of Fact as presented in the staff report. The Planning Board also recommends approval of the variance request from Section 23-406.B.11, of the City Subdivision Regulations.

Recommended Conditions of Approval

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

1. To minimize impacts on local services, an update to original Lenhardt Square Traffic Impact Study, dated February 2009, shall be provided and any impacts identified resulting from this subdivision shall be mitigated prior to final plan approval for Phase I impacts, and prior to release for transfers for Phase II impacts.
2. To minimize impacts on local services and utility easements, the 30-foot wide parkway/pathway easement shall be relocated and a new easement document recorded prior to final plan approval. The 2008 Lenhardt Square Master Plan shall be updated to reflect this and any other changes and shall be attached to the final Subdivision Improvements Agreement (SIA) for recording.
3. To ensure compliance with zoning and all applicable site development codes, the final overall site development documents, including but not limited to landscaping plans, building elevations, grading and drainage plans, parking and access plans, and utility locations, shall be submitted by the applicant and reviewed and approved by City staff prior to final plan approval by City Council.
4. To minimize impacts on local services, the developer shall construct the entire Monad Road street section, including 39 feet back-of-curb to back-of-curb, curb, gutter, and sidewalk/bikeway on the north side of Lot 1A where it fronts the Shiloh Drain, during Phase II of development. The final SIA shall be updated to reflect this requirement.
5. To minimize impacts on public safety, the temporary emergency access road through traffic shall be restricted using gates or bollards designed to Fire Department standards. Design plans shall be reviewed and approved by the Fire Department prior to installation. The final SIA shall be updated to reflect this requirement.
6. To minimize impacts on local services, a recordable temporary emergency access and perpetual public utility easement shall be provided from the northeastern corner of the subject property to Shiloh Road along the future alignment of Monad Road prior to final plan approval, unless right-of-way dedication is otherwise provided for the entire length of Monad Road.
7. To minimize impacts on local services, speed reduction measures shall be used at the curve on Monad Road including appropriate signage and other design features. The design features could include the construction of bulb-outs and/or speed tables as approved by the City Engineer's Office. The SIA shall be updated to reflect this requirement.

8. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

9. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

APPROVED BY CITY ADMINISTRATOR

Attachments

Preliminary plan

2008 Lenhardt Square Master Plan

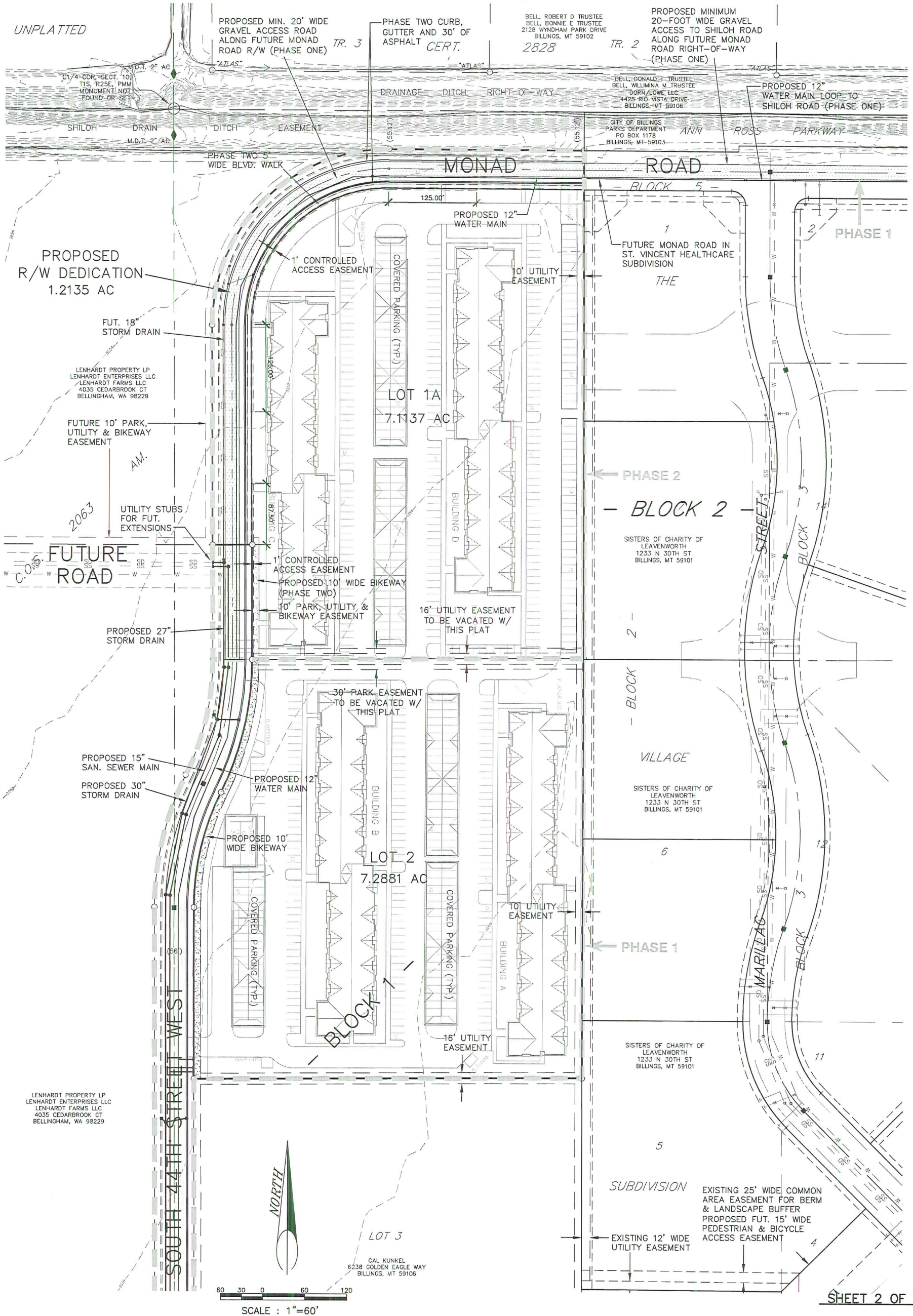
Variance Request

Variance Analysis

Finding of Fact

Mayor's letter

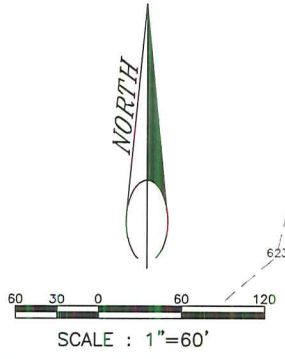
**PRELIMINARY AMENDED PLAT OF
 LOTS 1 & 2, BLOCK 1, LENHARDT SQUARE SUBDIVISION, FIRST FILING,
 SITUATED IN THE SE1/4 AND SW1/4 OF SECTION 10, T. 1 S., R. 25 E., P.M.M.
 YELLOWSTONE COUNTY, MONTANA**



P:\PROJECTS\2012\20120811\20120811_11_12\20120811_11_12\20120811_11_12.dwg

LENHARDT PROPERTY LP
 LENHARDT ENTERPRISES LLC
 LENHARDT FARMS LLC
 4035 CEDARBROOK CT
 BELLINGHAM, WA 98229

LOT 3
 CAL KUNDEL
 6338 GOLDEN EAGLE WAY
 BILLINGS, MT 59106



SHEET 2 OF 2

November 5, 2012

Ms. Juliet Spalding, AICP
Planner II
City of Billings Planning Department
501 North Broadway, 4th Floor
Billings, MT 59101

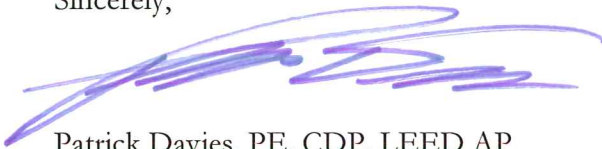
Reference: Amended Lots 1 & 2, Block 1, Lenhardt Square Subdivision, First Filing
Variance Request
Project No. 07054.08

Dear Juliet:

On behalf of the Subdivider, we are submitting a variance request from Section 23-406.B.11 of the City of Billings Subdivision Regulations to allow for a reduction in design speed along the proposed horizontal curve of Monad Road adjacent to proposed Lot 1A in lieu of the required 35 miles per hour design speed for a collector street (see attached existing plat and proposed plat/site plan). Attached for your review are the Findings of Fact addressing Section 23-1101 of the subdivision regulations.

Please contact me if you have any questions or if you need additional information. Thank you.

Sincerely,



Patrick Davies, PE, CDP, LEED AP
Associate Principal/Senior Engineer

PJD/bjm

Enc.

c: Stock Land Development
P:07054.08_Variance_Request_110512

FINDINGS OF FACT:

Variance Request: 23-406.B.11 to allow for a reduction in design speed along the proposed horizontal curve of Monad Road adjacent to proposed Lot 1A in lieu of the required 35 miles per hour design speed for a collector street.

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

The variance would not be detrimental to the public health, safety, or general welfare of the public, or be injurious to other properties. It has been determined that by reducing the design speed along the proposed horizontal curve the proposed radius of the curve is adequate. The design speed will be reduced by utilizing appropriate traffic signage as approved by the City of Billings Engineering Department. In addition, other design features may be incorporated into the street design to encourage motorists to reduce speeds along the horizontal curve.

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

By enforcing the 35 mile per hour design speed requirement on Monad Road, the radius of the horizontal curve would have to be increased and the developable area of the property would be significantly impacted. In addition, increasing the radius of the horizontal curve would create an unusable parcel of land to the northwest of the horizontal curve. By allowing Monad Road to be dedicated along the existing property line of Lot 1 of Lenhardt Subdivision, First Filing, the area of developable property is maximized and allows for the densities agreed upon during the zoning process to be attainable.

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

By allowing a reduction in design speed, the City of Billings would actually be creating more developable area within the Lenhardt Square Subdivision, First Filing; thus creating a higher tax base for the City of Billings. In addition, all the street improvements for the subdivision are the responsibility of the Subdivider.

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

Allowing a reduction in design speed would not place the subdivision in nonconformance with the adopted City of Billings Zoning regulations. In addition, this variance would still allow the subdivision to be in compliance with the Growth Policy and the West Billings Plan.

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

With the appropriate traffic signage and/or other street design features implemented onto the street design to reduce the design speed along the horizontal curve, the reduced radius will be equally effective. In addition, the smaller radius curve will require motorists to reduce speed, which will be a benefit for the residential area.

ATTACHMENT A

Variance Request and Staff Analysis/Recommendation

The applicant has requested a variance from Section 23-406.B.11 of the City Subdivision Regulations which requires that Collector designated streets be build to accommodate speeds of 35 miles per hour. Monad Road, in this case, is identified as a collector street on the Functional Classification Map. With this plat, Monad Road is being proposed with a rather sharp curve to the south as one travels west from Shiloh Road. The proposed curve has a design speed less than 35 miles per hour.

The applicant's engineer has proposed to reduce the design speed of the curve using signage, and other design features such as bulb-outs and speed tables. They indicate that to design the curve for a 35 mile per hour design speed, the curve would create a large undevelopable parcel of land to the north and west of the property.

City Engineering staff has indicated their support for the variance request if speed reduction design alternatives are put in place. Initial ideas include speed tables to slow traffic from both the south and the east as they approach the curve, bulb-outs to narrow the street at strategic locations, and signage to reduce speed. City Engineering would review and approve what is proposed by the applicant's engineer prior to construction of the street in Phase II.

**FINDINGS OF FACT – Lenhardt Square Subdivision, 1st Filing,
Amended Lots 1 & 2, Block 1, Subdivision for Rent or Lease**

The Planning staff has prepared the Findings of Fact for the preliminary plan of Amended Lots 1 & 2, Block 1, Lenhardt Square Subdivision, 1st Filing and has provided them for approval by the Billings City Council, as follows:

A. What are the effects on agriculture, local services, the natural environment, wildlife, wildlife habitat, and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-302.H.2.]

1. Effect on agriculture and agricultural water user facilities

The subject property is part of a larger 114-acre property that was annexed into the City in 2008 and rezoned for Planned Unit Development (PUD) zoning at that time. The property has remained as agricultural land since the annexation and zone change and is now beginning to be prepared for development. There is agricultural and large-lot residential property to the north and west of the subject property, and a multi-family development was built on property within the development to the south. The subject property has been irrigated and farmed for many years. The proposed development will take 15.6 acres out of agricultural production and the remaining acreage will be taken out of agricultural production as it develops in the future. The property owners plan to maintain the irrigation ditches and infrastructure on the non-developed portions of the property and changes to irrigation on this property are not expected to affect other agricultural water user facilities in the area.

2. Effect on local services

- a. Utilities** – Water services will be provided by the City of Billings. The subdivider will tie into the existing 12-inch water main in S. 44th St. West, and extend the water main for the remaining length of S. 44th St. West to Monad Road north and east to Shiloh Road. The City will be granted a perpetual easement for the length of Monad from the eastern edge of Lot 1-A if the street dedication has not yet been made in the future “St. Vincent Healthcare Subdivision” to the east (**Condition #6**). As with the original filing of Lenhardt Square Subdivision, a maximum of 600,000 gallons per day of water shall be supplied to the entire Lenhardt Square development, until the Zone 2 West Storage Expansion Project improvements are completed. 600,000 gallons per day is approximately half the originally anticipated water needs for the entire development, so no shortage is expected with this development.

Sanitary sewer service will be provided by connecting to the existing City of Billings’ 18-inch sewer main in S. 44th St. West. The subdivider will install sanitary sewer main lines to the north as far as needed to service both lots. Individual services for each lot will be installed in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ.

MDU will provide gas services and NorthWestern Energy will provide electric services to the subdivision. Easements have been shown on the face of the plat that are acceptable to these utility providers.

- b. **Storm water** – Storm water drainage for the public streets shall be provided by surface drainage via curbs and gutters to underground storm drain lines. These and all other drainage 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.
- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** –The subject property fronts S. 44th Street West and Monad Road. The developer will be responsible for construction of those streets where they front the subject property. For street frontage where there is adjacent private property to the west (i.e. Tracts 2A and 3A, Certificate of Survey 2063, Amended) this developer is responsible for construction of 30 feet of street, and curb, gutter and sidewalk or bikeway on the east side. The remaining nine feet, and the west-side curb, gutter and sidewalk or bikeway will be constructed when the adjacent properties are developed in the future. However, there is a portion of Monad Road (approximately 278 feet) fronting the north property line of proposed Lot 1A that fronts the Shiloh Drain which is owned by the City of Billings. It is not the policy of the City to complete half streets fronting these types of facilities. Therefore, it is recommended as a condition of approval that the developer be responsible for the entire street section, including 39 feet of width, curb, gutter and sidewalk and bikeway along the 278 feet of frontage (**Condition #4**).

Development of the above streets is proposed to be done in phases. The first phase will include the development of S. 44th St. West as it fronts Lot 2, as well as a temporary emergency access road (20-foot wide all-season gravel surface) beyond this point following the S. 44th St. W./Monad Road corridor north then east, across land owned by St. Vincent Healthcare to Shiloh Road. St. Vincent Healthcare has a pending subdivision plat that would dedicate the needed right-of-way for this emergency access road. However, if the platting and dedication is not complete prior to the final plat of this development, a temporary emergency access and perpetual utility easement shall be provided from all appropriate landowner(s) to complete this secondary access road (**Condition #6**). Additionally the design and construction plans for the emergency access road, including the gates, bollards, and/or signage shall be reviewed and approved by City Fire Department prior to its construction (**Condition #5**).

The other peculiarity of this stretch of Monad Road is that the proposed curve does not meet the required design speed for the ‘collector’ status street that it is. The City Subdivision Regulations specify that collector streets must be designed to handle speeds of 35 miles per hour. In order to maximize the development potential of the property, the subdivider is proposing a variance from that requirement of the Subdivision Regulations. Staff is recommending approval of the variance request, with the condition that

alternative speed reducing measures be installed as reviewed and approved by City Engineering (**Condition #7**). The request and staff analysis are included in the Attachments.

Each of the lots will be granted two access driveways; Lot 2 will have accesses off of South 44th St. West, and Lot 1-A off of Monad Road. Internal roads for the apartment complex will be reviewed and approved prior to approval of the final development plan (**Condition #3**) and a reciprocal access easement will be recorded for the entire complex so that residents will have unrestricted internal circulation.

Impacts of traffic on off-site intersections generated by this development shall be analyzed and mitigated. Specifically, the original Lenhardt Square Traffic Impact Study, dated February 2009, shall be updated and any impacts identified resulting from this subdivision shall be mitigated prior to final plan approval for Phase I impacts, and prior to release for transfers for Phase II impacts (**Condition #1**).

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire stations are located at 604 S. 24th St. W. (Station #5) and at 54th St. W. and Grand Ave. (Station #7). The subdivision is located within the ambulance service area of American Medical Response (AMR). Two points of access shall be provided to meet the emergency access road design standards and fire hydrants shall be installed and the apartments will have sprinklers installed. These provisions will be reviewed and approved with the final site plan prior to final plat approval (**Condition #3**).
- f. **Schools** – The subdivision is located within School District #2. Students from the proposed subdivision will likely attend Central Heights Elementary School, Riverside Middle School and West High School. School District #2 is currently undergoing a Facilities Master Planning effort to determine appropriate capacities and district boundaries for all of its schools. Results will be available in January 2013, but for now, the affected schools appear to have adequate capacity to serve the students of this proposed subdivision. School bus access to the site will be reviewed and organized by the bussing providers.
- g. **Parks and Recreation** – When the original Lenhardt Square PUD was reviewed and approved in 2008, an overall master plan was derived for the entire subdivision. The master plan (see Attachments) established two major common/ open space areas and a series of linear parkways. The subject property has linear parkways identified along its street frontages, in which bikeways will be installed during street construction. Additionally, there is a linear parkway/pathway “connector” identified to be provided within a 30-foot wide easement shown on the First Filing plat. The original purpose of the connector was to connect to a similar pathway proposed on the property to the east within the St. Vincent Healthcare (SVHC) Subdivision. Since that time, SVHC has redesigned the layout of the trail network within their subdivision resulting in no adjacent connection to the east. At this time, the proposal is to relocate the 30-foot wide easement further south within Lot 3 of Lenhardt Square Subdivision, 1st Filing. It is recommended

as a condition of approval that the new easement document be recorded prior to final plat approval, and that the Lenhardt Square Master Plan document be updated and attached to the final SIA of this subdivision (**Condition #2**).

- h. Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has requested the installation of centralized mailbox units (CBUs). The developer is proposing to locate the CBUs inside the management office and will work with the USPS to meet their needs.

3. Effect on the natural environment

The subject property is on the western edge of the City of Billings. The generally flat property has been used for agricultural purposes for many years before it was planned for residential and commercial development.

A geotechnical study was performed for the First Filing of the subdivision in 2009 which gave general structural recommendations for building on the site. An additional project-specific study will be completed prior to issuance of building permits on property. A note to this effect is included in the SIA. Overall the subdivision should have a minimal effect on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. There is a note in the SIA that warns future lot owners of the presence of deer and other wildlife in the area, which may cause damage to their landscaping. Since the property is near urban development and has been annually tilled for agricultural production this subdivision should have a minimal effect on wildlife and wildlife habitat.

5. Effect on the public health, safety and welfare

Fire hydrants will be constructed to meet fire department requirements and apartment buildings will have sprinkler systems installed. A secondary temporarily emergency access road to Shiloh Road will be constructed until a permanent full-access road develops. Sidewalks and trails to the parks will offer a safe place for pedestrians to walk. The effects on public health and safety should be minimal.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-302.H.1.)]

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-616, MCA.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2008 Growth Policy, the 2001 West Billings Plan, the Urban Area Transportation Plan--2009 Update, and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-302.H.4.]

1. Yellowstone County-City of Billings 2008 Growth Policy

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

- a. Goal: Predictable land use decision that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans. (p. 6)
- b. Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods. (p. 6)
- c. Goal: Contiguous development focused in and around existing population centers separated by open space. (p.6)
- d. Goal: Affordable housing for all income levels dispersed throughout the City. (p. 6)
- e. Goal: Additional bicycle facilities throughout the City and County (P. 12).

2. 2001 West Billings Plan

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

The subject property is located in an area that the West Billings Plan identifies as a place for residential development, with a commercial center identified to the east at the intersection of Shiloh Road and King Avenue West. The proposal for development of the property would include both residential and commercial uses in a mixed use environment (Theme 3, Achieving a Distinctive Community Character, Page 38).

3. Urban Area Transportation Plan 2009 Update

The proposed subdivision adheres to the goals and objectives of the Transportation Plan 2009 Update and preserves the street network and street hierarchy specified in the plan and on the Functional Classification Map.

4. Billings Area Bikeway and Trail Master Plan (BABTMP)

The proposed subdivision lies within the jurisdiction of the BABTMP. The Plan identifies a proposed long-term bike *lane* along both S. 44th St. West and Monad Road at this location. However, the developer, in accordance to the Master Plan for Lenhardt Square Subdivision, is proposing to construct a 10-foot wide separated bikeway on the east side of S. 44th St. W. and the west and north side of Monad Rd. These provisions will meet the intent of the Plan.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-302.H.3.a.]

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and in general to the design standards specified in the local subdivision regulations. On variance is being requested to the design specifications for Monad Road. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-302.H.3.e.]

The subject property is located within the Lenhardt Square PUD. All development shall comply with the standards set forth in the City Council approved Planned Development Agreement. Final development plans will be reviewed for compliance with zoning prior to final plan approval (**Condition #3**).

F. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-302.H.3.b.]

The subdivider has provided utility easements as requested by MDU and NWE on the face of the plat. In order to loop the City water main lines to Shiloh Road, the City has requested that either the Monad Road right-of-way be dedicated the entire length to Shiloh Road, or a perpetual utility easement be provided for recording with the final documents (**Condition #6**).

G. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-302.H.3.c.]

Legal and physical access is provided to the proposed lots from S. 44th St. West and Monad Road.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Amended Lots 1 & 2, Block 1, Lenhardt Square Subdivision, 1st Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2008 Growth Policy Update, the West Billings Plan, and does not conflict with the Transportation or Bikeway and Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, December 17, 2012.

Thomas W. Hanel, Mayor

December 18, 2012

Stock Development
Mike Stock
1135 Bluegrass Drive
Billings, MT 59106

Dear Mr. Stock:

On December 17, 2012, the Billings City Council conditionally approved the preliminary subdivision for rent or lease plan of Amended Lots 1 & 2, Block 1, Lenhardt Square Subdivision, 1st Filing, subject to the following conditions of approval:

1. To minimize impacts on local services, an update to original Lenhardt Square Traffic Impact Study, dated February 2009, shall be provided and any impacts identified resulting from this subdivision shall be mitigated prior to final plan approval for Phase I impacts, and prior to release for transfers for Phase II impacts.
2. To minimize impacts on local services and utility easements, the 30-foot wide parkway/pathway easement shall be relocated and a new easement document recorded prior to final plan approval. The 2008 Lenhardt Square Master Plan shall be updated to reflect this and any other changes and attached to the final Subdivision Improvements Agreement (SIA) for recording.
3. To ensure compliance with zoning and all applicable site development codes, the final overall site development documents, including but not limited to landscaping plans, building elevations, grading and drainage plans, parking and access plans, and utility locations, shall be submitted by the applicant and reviewed and approved by City staff prior to final plan approval by City Council.
4. To minimize impacts on local services, the developer shall construct the entire Monad Road street section, including 39 feet back-of-curb to back-of-curb, curb, gutter, and sidewalk/bikeway on the north side of Lot 1A where it fronts the Shiloh Drain, during Phase II of development. The final SIA shall be updated to reflect this requirement.
5. To minimize impacts on public safety, the temporary emergency access road shall be restricted to through traffic using gates or bollards designed to Fire Department standards. Design plans shall be reviewed and approved by the Fire Department prior to installation. The final SIA shall be updated to reflect this requirement.
6. To minimize impacts on local services, a recordable temporary emergency access and perpetual public utility easement shall be provided from the northeastern corner of the subject property to Shiloh Road along the future alignment of Monad Road

prior to final plan approval, unless right-of-way dedication is otherwise provided for the entire length of Monad Road.

7. To minimize impacts on local services, speed reduction measures shall be used at the curve on Monad Road including appropriate signage and other design features. The design features could include the construction of bulb-outs and/or speed tables as approved by the City Engineer's Office. The SIA shall be updated to reflect this requirement.
8. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
9. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding at (406) 247-8684 or by email at spaldingj@ci.billings.mt.us.

Sincerely,

Thomas W. Hanel, Mayor

Pc: Pat Davies, PE, Sanderson Stewart
Dennis Randall, PE, Sanderson Stewart

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Grand Peaks Subdivision, 3rd Filing -- Preliminary Major Plat

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

On October 1, 2012, owner, Grand Peaks, LLC applied for preliminary major plat approval for Grand Peaks Subdivision, 3rd Filing. The proposed subdivision re-plats 4 lots originally platted in the Grand Peaks Subdivision into 30 lots. The subject property is located northeast of the intersection of Grand Avenue and 54th Street West and is zoned Residential Multi-family Restricted (RMF-R) and Residential-5000 (R-50). The proposal would create 28 lots for single-family homes, one storm water retention pond lot, and one large lot to be further subdivided in the future. The Yellowstone County Board of Planning reviewed the plat and held a public hearing at its November 27, 2012, meeting. Sanderson Stewart is the representing agent.

ALTERNATIVES ANALYZED

In accordance with state law, the City Council has 60 working days to act upon this major preliminary plat; the 60 working day review period for the proposed plat ends on January 2, 2013. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 day review period, the City Council is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plat

FINANCIAL IMPACT

Should the City Council approve the preliminary plat, the subject property may further develop under private ownership, resulting in additional tax revenues.

BACKGROUND

General location: Northeast of the intersection of Grand Avenue and 54th Street West

Legal Description: Lots 2 and 3, Block 2, Lot 1, Block 3, and Lot 1, Block 4 of Grand Peaks Subdivision, located in the SW ¼, Section 32, T1N, R25E

Owner: Grand Peaks, LLC

Subdivider: J&S Development Co.; Jeff Junkert, President

Engineer and Surveyor: Sanderson Stewart

Existing Zoning: RMF-R, R-50

Existing land use: Platted vacant lots

Proposed land use: Single-family residential

Gross and Net area: 15.14 acres; 12.69 acres

Proposed number of lots: 30

Lot size: Max: 4.0 acres
Min.: 10,850 square feet

Parkland requirements: Parkland dedication is proposed to be met by a cash payment in lieu of land dedication.

STAKEHOLDERS

A public hearing was conducted by the Yellowstone County Board of Planning on November 27, 2012. Property owners adjacent to the subject property were notified by certified mail of the hearing and a legal notice was published in the Billings Times. No public input was provided at the public hearing.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the Transportation Plan 2009 Update, and Billings Area Bikeways and Trail Master Plan are discussed within the Findings of Fact.

RECOMMENDATION

The Planning Board recommends conditional approval of the preliminary plat of Grand Peaks Subdivision, 3rd Filing and adoption of the Findings of Fact as presented in the staff report.

Recommended Conditions of Approval

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

1. To minimize impacts on local services, centralized mail delivery site(s) shall be coordinated and identified prior to final plat approval. A letter from the USPS shall be provided for verification.
2. To minimize impacts on local services, the previously dedicated right-of-way for Grand Peaks Drive and Thunder Mountain Trail within the area of this 3rd Filing shall be vacated prior to final plat approval.
3. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

APPROVED BY CITY ADMINISTRATOR

Attachments

Preliminary Plat

Zoning Exhibit

Findings of Fact

Mayor's Letter

REVISED MASTERPLAN AND PRELIMINARY PLAT GRAND PEAKS SUBDIVISION, THIRD FILING

BEING LOT 2-3 OF BLOCK 2 AND LOT 1, BLOCK 3, AND LOT 1, BLOCK 4, GRAND PEAKS SUBDIVISION
SITUATED IN THE SW1/4 OF SECTION 32, T. 1 N., R. 25 E., P.M.M.,
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : J&S DEVELOPMENT COMPANY

AUGUST, 2012

PREPARED BY : SANDERSON STEWART

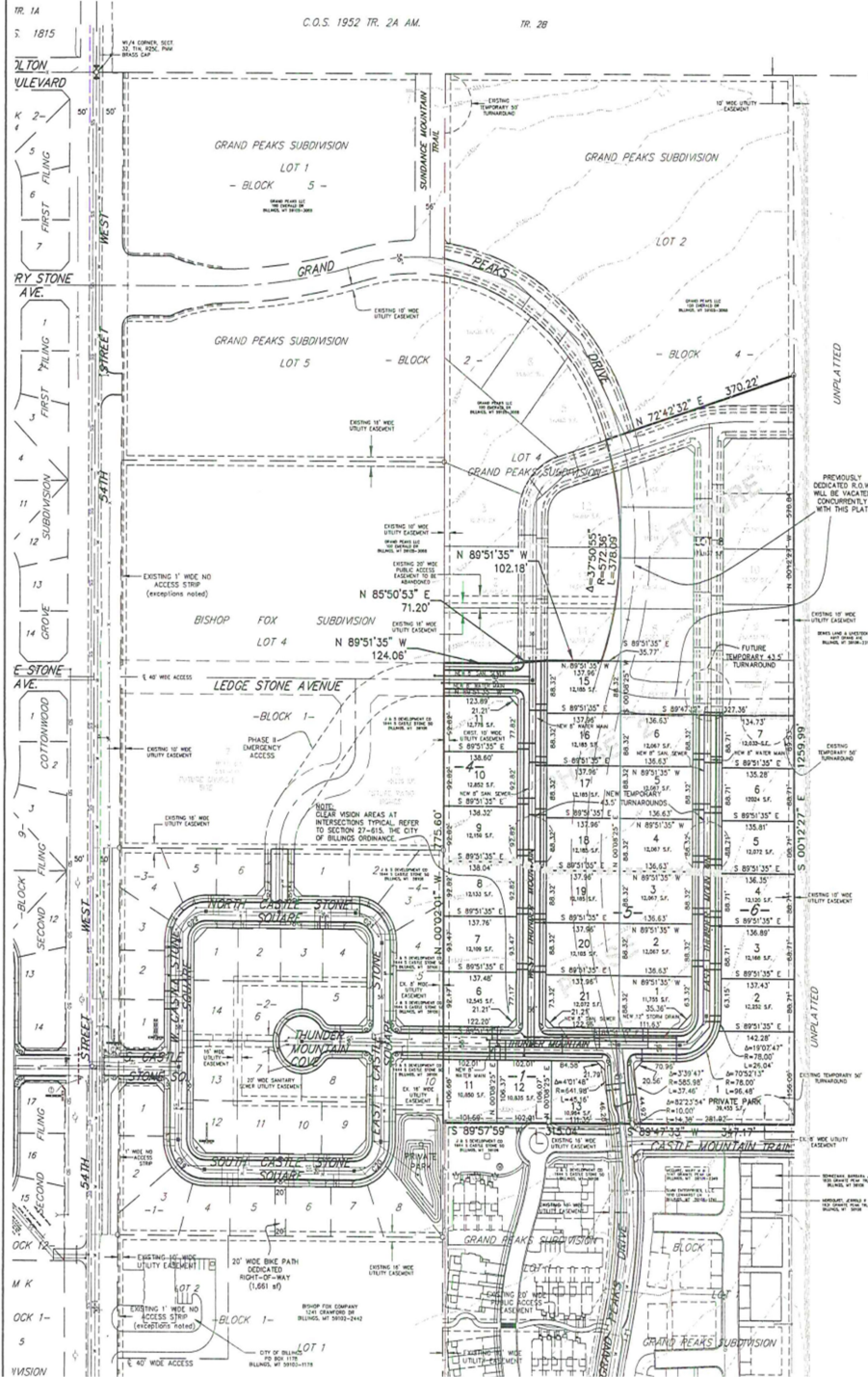
BILLINGS, MONTANA



VICINITY MAP
NOT TO SCALE



SCALE: 1"=100'



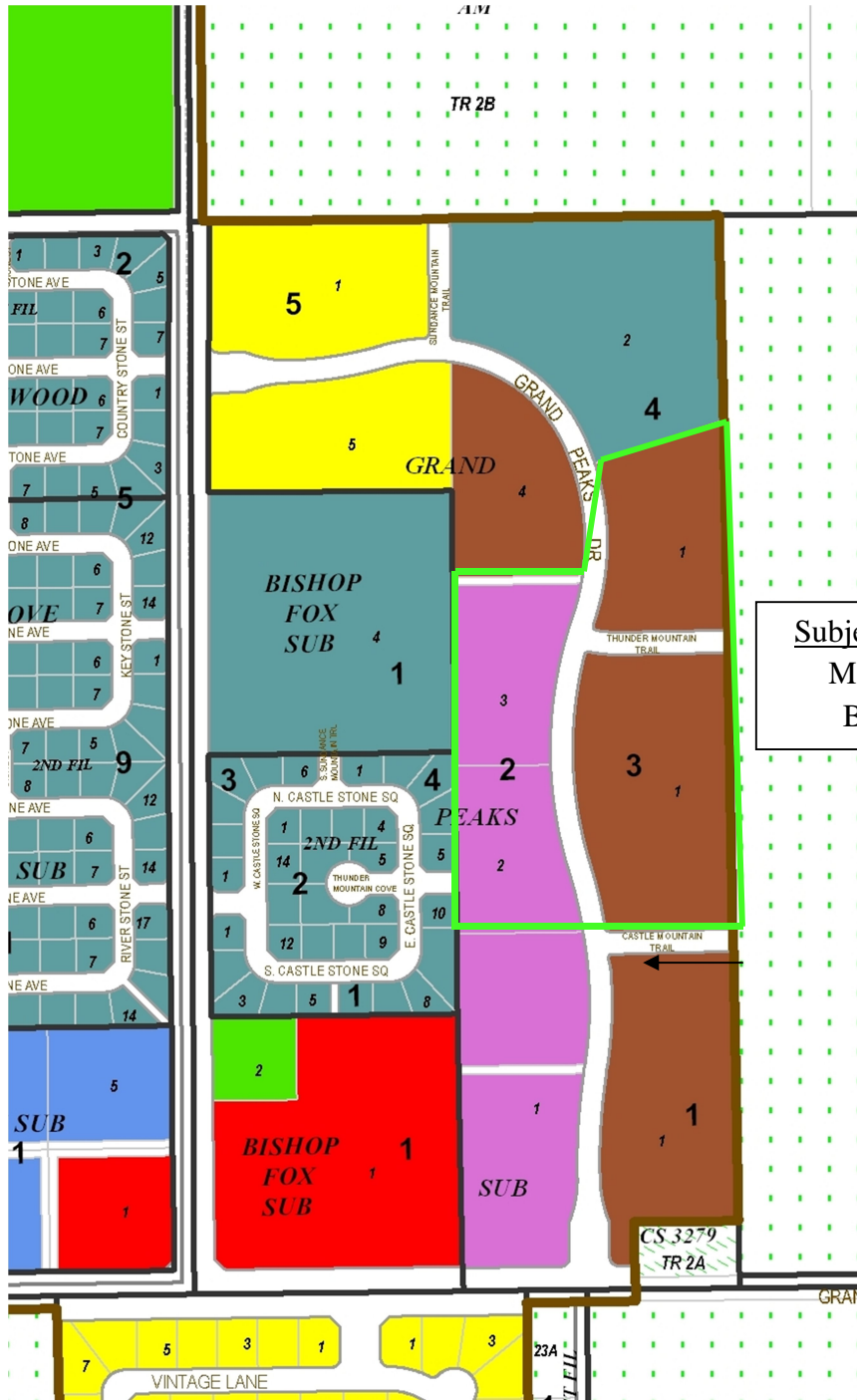
BASIS OF BEARING: GRAND PEAKS SUBDIVISION

- FOUND SURVEY MONUMENT, AS NOTED
- SET 5/8" X 18" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "SANDERSON STEWART"
- SET INTERSECTION MONUMENT, 5/8" X 18" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "SANDERSON STEWART". WILL BE REPLACED WITH BRASS CAP MONUMENT BOX UPON COMPLETION OF STREET IMPROVEMENTS.

PLAT DATA

GROSS AREA	= 15.14 AC
NET AREA	= 12.69 AC
NUMBER OF LOTS	= 30
MINIMUM LOT SIZE	= 10,850 SF
MAXIMUM LOT SIZE	= 173,937 SF
LINEAL FEET OF STREETS	= 1918 LF
PARKLAND REQUIREMENT	= 1.40 AC
PARKLAND DEDICATION	= CASH-IN-LIEU
EXISTING ZONING	= R-5000, RMF-R
SURROUNDING ZONING:	
NORTH	= R-5000 & RMF-R
SOUTH	= R-5000, RMF-R
EAST	= AG OPEN
WEST	= R-7000
EXISTING LAND USE	= VACANT
PROPOSED LAND USE	= SINGLE-FAMILY RESIDENTIAL

Zoning Exhibit



FINDINGS OF FACT – Grand Peaks Subdivision 3rd Filing

The Planning staff has prepared the Findings of Fact for the preliminary plat of Grand Peaks Subdivision, 3rd Filing and has provided them for approval by the Billings City Council, as follows:

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-302.H.2.]

1. Effect on agriculture and agricultural water user facilities

Although the subject property is currently being used for irrigated crop production, it is located in the City limits and has been slated for urban development since it was originally platted in 2007. With this further platting and development, the property will be removed from crop production and irrigation water rights will be severed. Adjacent cropland properties will be guaranteed access to existing irrigation water rights via ditch easements currently in place. As such, this development should not have a negative effect on the agricultural industry.

2. Effect on local services

- a. Utilities** – Water services will be provided by the City of Billings. There are two existing water mains, an 8-inch main in Grand Peaks Drive and an 8-inch main in Thunder Mountain Road, to which the development can connect. The developer will install new 8-inch water mains in all of the new local streets, new individual services to all of the lots, and new fire hydrants in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality (MDEQ).

Sanitary sewer service will be provided by connecting to the existing City of Billings' sewer main in Grand Peaks Drive. The subdivider will install new 8-inch sewer mains in the local streets and individual services for each lot in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ.

MDU will provide gas services and NorthWestern Energy will provide electric services to the subdivision. Easements have been shown on the face of the plat that are acceptable to these utility providers.

- b. Storm water** – Storm water drainage for the public streets shall be provided by surface drainage via curbs and gutters to underground storm drains that discharge into a new storm water retention pond at the southeast corner of the subdivision. The storm water pond shall be sized appropriately to hold all the required storm water, and will be deeded to the City of Billings' Public Works Department after final plat approval. These and all other drainage 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 Engineering Department.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** – Internal streets, Grand Peaks Drive and Thunder Mountain Trail, were previously platted and dedicated in 2007 when Grand Peaks, 1st Filing was approved. The subdivider is proposing to vacate the original right-of-way dedication and replat it in a different configuration with this 3rd Filing. City Engineering is agreeable to this reconfiguration as the original streets were never built. The subdivider will need to vacate the existing right-of-way prior to final plat approval (**Condition #2**).

All of the interior local access streets such as the extension of Grand Peaks Drive, South Thunder Mountain Road, East Thunder Mountain Road, West Thunder Mountain Road, and Field Stone Avenue, shall be constructed to the current residential local street standard, including 34-foot width of hard surface, curbs, gutters, and boulevard-style sidewalks.

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station (which also has a part-time police department presence) is located very near to the subdivision, on 54th St. West (Station #7). The subdivision is located within the ambulance service area of American Medical Response (AMR).

In order to permit the extension of Grand Peaks Drive as a temporary dead-end greater than 600 feet in length, the subdivider will construct a temporary 20-foot wide emergency access road from the end of Field Stone Avenue, connecting to North Castle Stone Square prior to development of the second phase. The Fire Department will review and approve the plans for this emergency access road.

- f. **Schools** –School District #2 provides educational services to elementary through high school students. Burlington Elementary School, Lewis and Clark Middle School, and Senior High School currently serve the children in previous filings of this subdivision; however, SD#2 is undergoing a Facilities Master Planning process at this time to evaluate school capacities and attendance boundaries. This study should be completed in 2013 and will guide future school services.
- g. **Parks and Recreation** – The parkland dedication requirement for this subdivision is proposed to be met by making cash contributions in lieu of land dedication. The cash will be used toward the eventual construction of Cottonwood Park, just to the northwest of the subdivision, across 54th St. West. The lot owners within the subdivision will also be required to join a Park Maintenance District for Cottonwood Park once it is developed. The developer proposes to provide the monetary contribution in phases, in accordance with the phasing plan proposed for the subdivision development.
- h. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has requested the installation of centralized mailbox units (CBUs). It is

recommended as a condition of approval that the developer work with the USPS to identify appropriate locations of CBUs prior to final plat approval (**Condition #1**).

3. Effect on the natural environment

The subject property is flat, agricultural property that has been planned for urban development since its original platting in 2007. One item of potential concern related to the natural environment identified during previous filings was the soils underlying the site. A geotechnical evaluation was done for the building sites in the area in April of 2010. The study was prepared to investigate soil, rock, and groundwater conditions and provide recommendations to support design and construction of foundation and drainage elements. The study indicated that the property has soils that are characterized by a relatively low bearing capacity and high consolidation potential under the anticipated foundation loads. As a result, the study recommends using “underpinning or deep foundation systems (piers or piles)” or over-excavation and soil replacement, to ensure foundation stability. The recommendations of the geotechnical study will be enforced at the time of building permit issuance for the future homes on the proposed lots.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. There is a note in the SIA that warns future lot owners of the presence of deer in the area, which may cause damage to their landscaping. This subdivision should have a minimal effect on wildlife and wildlife habitat.

5. Effect on the public health, safety and welfare

As noted above in #3, the proposed subdivision is located in an area with soils of relatively low bearing capacity and high consolidation potential under the anticipated foundation loads. The soil conditions have been disclosed in the SIA, and mitigation measures will be employed at the time of site construction, as enforced through the building permit process.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-302.H.1.)]

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-616, MCA.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2008 Growth Policy, the Urban Area Transportation Plan, 2009 Update, and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-302.H.4.]

1. Yellowstone County-City of Billings 2008 Growth Policy

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

- a. Goal: More housing and business choices within each neighborhood (p. 6).
- b. Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).

- c. Goal: Contiguous development focused in and around existing population centers separated by open space (p. 6).

2. Urban Area Transportation Plan 2009 Update

The proposed subdivision adheres to the goals and objectives of the 2009 Transportation Plan Update and preserves the street network and street hierarchy specified in the plan.

3. Billings Area Bikeway and Trail Master Plan (BABTMP)

The proposed subdivision lies within the jurisdiction of the BABTMP. No trail corridors are identified on the plan within this subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-302.H.3.a.]

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

E. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-302.H.3.e.]

The subject property is located within the RMF-R and R-50 zoning districts and shall comply with the standards set forth in Section 27-308, BMCC.

F. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-302.H.3.b.]

The subdivider has provided utility easements as requested by MDU and NWE on the face of the plat.

G. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-302.H.3.c.]

Legal and physical access is provided to the proposed lots from Grand Peaks Drive and South Thunder Mountain Road.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Grand Peaks Subdivision, 3rd Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2008 Growth Policy Update and does not conflict with the Transportation or Bikeway and Trail Plans.

- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, December 17, 2012.

Thomas W. Hanel, Mayor

December 18, 2012

Grand Peaks, LLC
Jeff Junkert
1644 Castle Stone Square
Billings, MT 59106

Dear Sirs:

On December 17, 2012, the Billings City Council conditionally approved the preliminary plat of Grand Peaks Subdivision, 3rd Filing, subject to the following conditions of approval:

1. To minimize impacts on local services, centralized mail delivery site(s) shall be coordinated and identified prior to final plat approval. A letter from the USPS shall be provided for verification.
2. To minimize impacts on local services, the previously dedicated right-of-way for Grand Peaks Drive and Thunder Mountain Trail within the area of this 3rd Filing shall be vacated prior to final plat approval.
3. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding at (406) 247-8684 or by email at spaldingj@ci.billings.mt.us.

Sincerely,

Thomas W. Hanel, Mayor

Pc: Dennis Randall, PE, Sanderson Stewart

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Twin Oaks Subdivision, 2nd Filing, Amended Lot 21, Block 3 and Lot 21, Block 4 -- Preliminary Major Plat

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

On October 1, 2012, owner, Twin Oaks Corporation, applied for preliminary major plat approval for Amended Lot 21, Block 3, and Lot 21, Block 4, Twin Oaks Subdivision, 2nd Filing. The proposed subdivision re-plats two large lots into 23 lots for single-family residences. The subject property is generally located on the south side of Wicks Lane, west of Lake Elmo Drive. The property is zoned Residential-5,000 (R-50) and Residential-6,000 (R-60). The Yellowstone County Board of Planning reviewed the plat and held a public hearing on November 27, 2012. Blueline Engineering is the representing agent.

ALTERNATIVES ANALYZED

In accordance with state law, the City Council has 60 working days to act upon this major preliminary plat. The 60 working day review period for the proposed plat ends on January 2, 2013. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 day review period, the City Council is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plat

FINANCIAL IMPACT

Should the City Council approve the preliminary plat, the subject property may further develop under private ownership, resulting in additional tax revenues.

BACKGROUND

General location: South of Wicks Lane, west of Lake Elmo Drive in the Heights.

Legal Description: Lot 21, Block 3, & Lot 21, Block 4, Twin Oaks Subdivision located in the NW ¼, Section 22, T1N, R26E

Owner/Subdivider: Twin Oaks Corporation; Gary Oakland, President; Landy Leep, Vice President

Engineer and Surveyor: Blueline Engineering, LLC; North Star Land Services, PC

Existing Zoning: R-50 and R-60

Existing land use: vacant

Proposed land use: single-family residential

Gross and Net area: 4.25 acres

Proposed number of lots: 23

Lot sizes: Max: 14,093 square feet

Min.: 6,151 square feet

Parkland requirements: Parkland dedication was met with the previous filings of this subdivision.

Variance requested: No variances have been requested.

STAKEHOLDERS

A public hearing was conducted by the Yellowstone County Board of Planning on November 27, 2012. Property owners adjacent to the subject property were notified by certified mail of the hearing and a legal notice was published in the Billings Times. No public input was given at the public hearing.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the Transportation Plan 2009 Update, and Billings Area Bikeway and Trail Master Plan are discussed within the Findings of Fact.

RECOMMENDATION

The Planning Board recommends conditional approval of the preliminary plat of Amended Lot 21, Block 3, and Lot 21, Block 4, Twin Oaks Subdivision, 2nd Filing, and adoption of the Findings of Fact as presented in the staff report.

Recommended Conditions of Approval

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

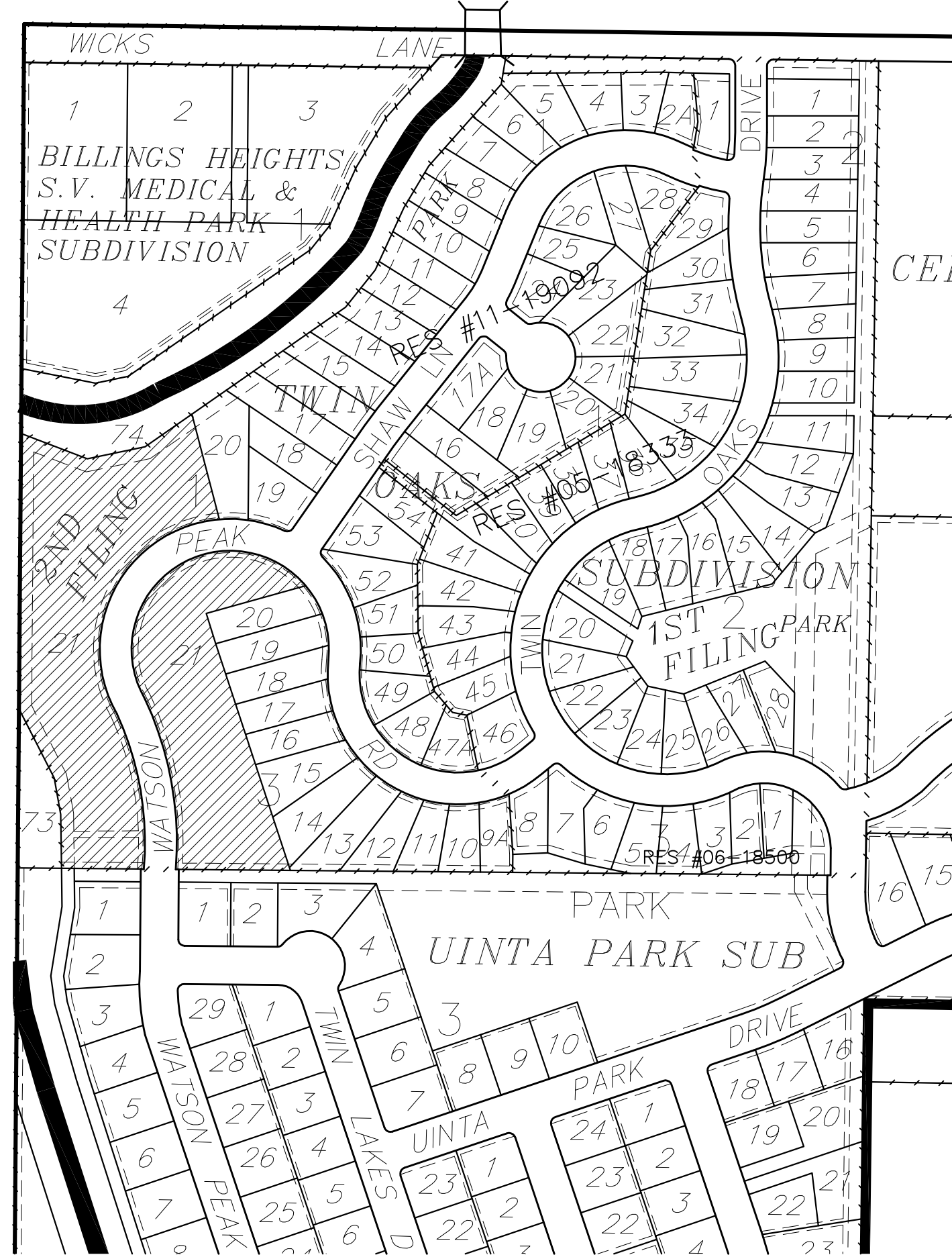
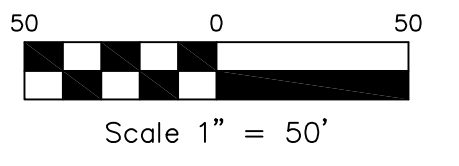
1. To minimize impacts on local services, the applicable Park Maintenance District shall be expanded to include the new lots prior to final plat approval.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

APPROVED BY CITY ADMINISTRATOR

preliminary plat
Findings of Fact
Aerial view
Mayor's Letter

PRELIMINARY PLAT OF
 AMENDED LOT 21, BLOCK 3, AND LOT 21, BLOCK 4,
TWIN OAKS SUBDIVISION, 2ND FILING

SITUATED IN THE NW 1/4, SECTION 22, T. 1 N., R. 26 E., P.M.M.
 CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

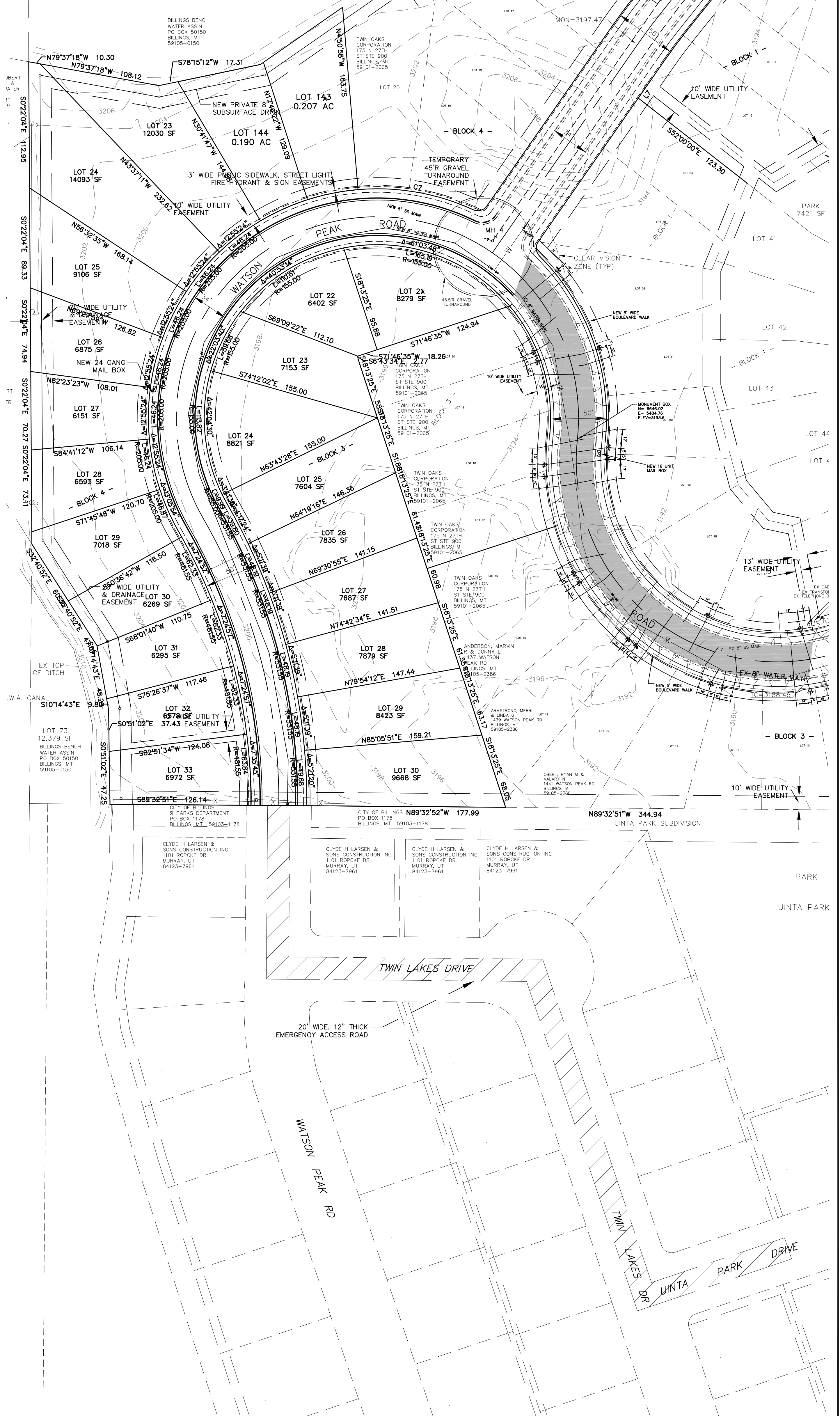


VICINITY MAP
 NOT TO SCALE

PREPARED FOR: TWIN OAKS CORPORATION
 SURVEYOR: NORTH STAR LAND SERVICES, P.C.
 ENGINEER: BLUELINE ENGINEERING LLC
 SEPTEMBER, 2012
 BILLINGS, MONTANA

SUBDIVISION DETAILS:

GROSS AREA	=	4.248 ACRES
NET AREA	=	4.248 ACRES
ROAD AREA	=	0 ACRES
NUMBER OF LOTS	=	23
MINIMUM LOT SIZE	=	6,151 SF
MAXIMUM LOT SIZE	=	14,093 SF
EXISTING ZONING	=	R-5000 & R-6000
SURROUNDING ZONING	=	
NORTH	=	COMMERCIAL
SOUTH	=	RESIDENTIAL
EAST	=	RESIDENTIAL
WEST	=	RESIDENTIAL
EXISTING LAND USE	=	VACANT
PROPOSED LAND USE	=	RESIDENTIAL



**FINDINGS OF FACT – Twin Oaks Subdivision, 2nd Filing,
Amended Lot 21, Block 3, and Lot 21, Block 4**

The Planning staff has prepared the Findings of Fact for the preliminary plat of Amended Lot 21, Block 3, and Lot 21, Block 4, Twin Oaks Subdivision, 2nd Filing and has provided them for approval by the Billings City Council, as follows:

A. What are the effects on agriculture, local services, the natural environment, wildlife, wildlife habitat, and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-302.H.2.]

1. Effect on agriculture and agricultural water user facilities

The subject property was historically used for pasture land and hay crop production prior to 2005 when the first filing of the development was initiated. At that time, the property was master planned for residential development, and agricultural activities ceased. The subject property is wholly surrounded on all sides by developed properties within the City Limits and its removal from agricultural use should have a minimal effect on agriculture in the County.

The Billings Bench Water Association (BBWA) canal courses along the western boundary of the property. With the original platting of the Twin Oaks Subdivision, the subdivider deeded two parcels, containing a total of approximately 2.56 acres to the BBWA for the canal right-of-way and maintenance purposes. This is consistent with what was done for the platting of Uinta Park Subdivision to the south. As such, this development should not have a negative effect on the adjacent agricultural water user facilities.

2. Effect on local services

- a. Utilities** – Water services will be provided by the County Water District of Billings Heights (CWDBH). The subdivider will extend the existing water mains for the remaining length of Watson Peak Road to provide individual services to all of the lots, and new fire hydrants in accordance with design standards, specifications, rules and regulations of the CWDBH, the City Fire Department and the Montana Department of Environmental Quality (MDEQ).

Sanitary sewer service will be provided by connecting to the existing City of Billings' sewer main nearby. The subdivider will install sanitary sewer main lines for the remainder of Watson Peak Road, and individual services for each lot in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ.

MDU will provide gas services and NorthWestern Energy will provide electric services to the subdivision. Easements have been shown on the face of the plat that are acceptable to these utility providers.

- b. Storm water** – Storm water drainage for the public streets shall be provided by surface drainage via curbs and gutters to underground storm drain lines. In accordance with the *Heights Storm Drainage Master Plan (1989)* and the SIA recorded for the original Twin Oaks Subdivision, 2nd Filing, the developer is required to install a storm drain line to the

east in Sioux Lane to tie into the storm sewer line in Lake Elmo Road before construction of this subdivision, or before June 2013, whichever is sooner. These and all other drainage 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.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** – Access to all of the lots will be provided by the construction of Watson Peak Road. This street was platted and dedicated to the City (but not built) with the original Twin Oaks Subdivision plat. At that time, a variance for the right-of-way width was granted to allow 50-foot wide street right-of-way dedications in lieu of 60 feet (the requirement at that time). This variance is still in effect for Watson Peak Road as no changes to its alignment are proposed at this time.

Watson Peak Road will be built to current residential street standards with 30 feet of pavement, curb and gutter (entire section back-of-curb to back-of-curb is 34 feet), a five-foot planting strip (boulevard) and a five-foot wide sidewalk. In order to avoid a dead-end street longer than 600 feet, a temporary emergency access road will be constructed at the end of Watson Peak Road to connect with the current end of Uinta Park Drive to the southeast. This emergency access road will be built to emergency access standards with a 20-foot wide all-weather surface, capable of handling a loaded fire truck, and will be blocked at both ends to prevent through traffic. It will follow the existing platted Twin Lakes Drive and Uinta Park Drive rights-of-way.

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** – The subdivision is located within School District #2. Students from the proposed subdivision will attend Sandstone or Bench Elementary School, Castle Rock Middle School and Skyview High School. School District #2 is currently undergoing a Facilities Master Planning effort to determine appropriate capacities and district boundaries for all of its schools. Results will be available in January 2013, but for now, the affected schools appear to have adequate capacity to serve the students of this proposed subdivision.
- g. **Parks and Recreation** – When the original Twin Oaks Subdivision was taken through preliminary plat review in 2006, an overall park master plan was derived for the entire subdivision. Updates to that master plan were made with the second filing. There are no further changes proposed at this time. Lots will be served by Uinta Park and Twin Oaks Park, both very nearby and properties will be required to contribute to the Twin Oaks Park Maintenance District (**Condition #1**).

- h. Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has requested the installation of centralized mailbox units (CBUs). The developer will work with the USPS to identify appropriate locations of CBUs prior to final plat approval.

3. Effect on the natural environment

The subject property is vacant property that has been planned for urban development since the original preliminary plat review in 2006. The property slopes to the east, and is bounded on the north and west by the BBWA canal. Due to the proximity to the canal, a future subsurface drain will be installed and maintained privately. However, slab on grade homes are proposed, so ground water issues should be minimal.

The geotechnical study was performed for the first phase of the subdivision and structural recommendations were included in that study. Additional studies will be completed prior to issuance of building permits on subsequent phases. The subdivision should have a minimal effect on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. There is a note in the SIA that warns future lot owners of the presence of deer in the area, which may cause damage to their landscaping. This subdivision should have a minimal effect on wildlife and wildlife habitat.

5. Effect on the public health, safety and welfare

Fire hydrants will be constructed to meet fire department requirements. Sidewalks and trails to the parks will offer a safe place for pedestrians to walk. The effects on public health and safety should be minimal.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-302.H.1.)]

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-616, MCA.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2008 Growth Policy, the 2006 Billings Heights Neighborhood Plan, the Urban Area Transportation Plan-2009 Update, and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-302.H.4.]

1. Yellowstone County-City of Billings 2008 Growth Policy

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

- a. Goal: Predictable land use decision that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans. (p. 6)
- b. Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods. (p. 6)

- c. Goal: Contiguous development focused in and around existing population centers separated by open space. (p.6)
- d. Goal: Affordable housing for all income levels dispersed throughout the City. (p. 6)

2. 2006 Billings Heights Neighborhood Plan

The proposed subdivision is consistent with the following goals of the Heights Neighborhood Plan:

- a. Goal: Provide safe routes for pedestrians to travel between schools, parks, neighborhoods and other community facilities. (p. 14)
- b. Goal: Provide safe, good quality and affordable housing in the Heights. Develop housing patterns that are compatible with existing neighborhoods. Encourage high density multi-family development along arterial routes. Maintain similar housing in established neighborhoods. (p. 19)

3. Urban Area Transportation Plan 2009 Update

The proposed subdivision adheres to the goals and objectives of the Transportation Plan 2009 Update and preserves the street network and street hierarchy specified in the plan.

4. Billings Area Bikeway and Trail Master Plan (BABTMP)

The proposed subdivision lies within the jurisdiction of the BABTMP. The Plan identifies a trail corridor along the BBWA canal. However, during the review of the original Twin Oaks Subdivision plat, it was determined that the preferred location for the trail in this area would be along the eastern boundary of the subdivision, within the Twin Oaks Park. At that time, a 20-foot wide trail easement was identified. This easement provision meets the intent of the Plan.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-302.H.3.a.]

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

E. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-302.H.3.e.]

The subject property is located within the R-50 and R-60 zoning districts. All development shall comply with the standards set forth in Section 27-308, BMCC.

F. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-302.H.3.b.]

The subdivider has provided utility easements as requested by the City, MDU and NWE on the face of the plat.

G. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-302.H.3.c.]

Legal and physical access is provided to the proposed lots from Watson Peak Road. No changes to the existing right-of-way alignment are proposed.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Amended Lot 21, Block 3, & Lot 21, Block 4, Twin Oaks Subdivision, 2nd Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2008 Growth Policy Update, the Heights Neighborhood Plan, and does not conflict with the Transportation or Bikeway and Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, December 17, 2012.

Thomas W. Hanel, Mayor

December 18, 2012

Twin Oaks Corp.
175 N. 27th Street, Suite 900
Billings, MT 59101

Dear Sirs:

On December 17, 2012, the Billings City Council conditionally approved the preliminary plat of Twin Oaks Subdivision, 2nd Filing, Amended Lot 21, Block 3, and Lot 21, Block 4, subject to the following conditions of approval:

1. To minimize impacts on local services, the applicable Park Maintenance District shall be expanded to include the new lots prior to final plat approval.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding at (406) 247-8684 or by email at spaldingj@ci.billings.mt.us.

Sincerely,

Thomas W. Hanel, Mayor

Pc: Marshall Phil, PE, Blueline Engineering

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Western Subdivision--Preliminary Minor Plat

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

On November 15, 2012, the Planning Division received an application for preliminary plat approval for Western Subdivision. The subject property is located at the southwest corner of King Avenue West and S. 44th Street West. The subdivision would create 4 lots out of Lot 1A, Block 1, Western Sky Subdivision, Amended Lots 1 & 2. The property is zoned Residential Multi-Family Restricted (RMF-R), and is proposed for multi-family buildings under condominium ownership. The subdivider is Cal Kunkel and the representing agents are Dowl-HKM and AT Architecture.

ALTERNATIVES ANALYZED

In accordance with state law, the City Council has 35 working days to act upon this minor preliminary plat; the 35 working day review period for the proposed plat ends on January 8, 2013. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plat

FINANCIAL IMPACT

Should the City Council approve the preliminary plat, the subject property may further develop under private ownership, resulting in additional tax revenues.

BACKGROUND

General location: Southeast corner of King Avenue West and South 44th Street West.

Legal Description: Lot 1A, Block 1, of Amended Plat of Lots 1 & 2, Western Sky Subdivision,

Owner/Subdivider: American Exchange Corp./Cal Kunkel

Engineer and Surveyor: Dowl HKM

Existing Zoning: RMF-R

Existing land use: vacant agricultural land

Proposed land use: multi-family/ apartment buildings with condominium ownership

Gross/Net area: 32.59 acres

Proposed number of lots: 4

Parkland requirements: Parkland dedication requirements amount to approximately 3 acres. The applicant proposes to meet this requirement by land dedication.

Variances: None requested

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting; however nearby property owners may attend the City Council meeting. The Planning Division has received no public comments or questions regarding the proposed subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the West Billings Plan, the Transportation Plan 2009 Update, and the Billings Area Bikeway and Trail Master Plan are discussed within the Findings of Fact.

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Western Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

Recommended Conditions of Approval

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

1. To ensure the provision of easements, the subdivider shall provide utility easements on the final plat as requested by the City Engineering Division and the private utility companies.
2. To minimize effects on local services, required improvements for S. 44th Street West and the construction phasing plan shall be described in detail in the Subdivision Improvements Agreement (SIA) as recommended by City Engineering in its 11/26/12 memo to City Planning.
3. To minimize effects on local services, a 'one-foot no-access strip' shall be shown along the Lot 2 frontage of King Avenue West and a 'one-foot controlled-access strip' shall be shown along the Lot 1, King Avenue West frontage.
4. To minimize effects on local services, the subdivider shall obtain approval or denial of the left turn lane on King Avenue West prior to final plat approval. If MDT requires the turn lane it shall be the responsibility of the subdivider to construct it and updates to the final SIA shall be made to reflect this improvement.
5. To minimize effects on local services, the following notes shall be added to the final SIA: "The northern-most access on S. 44th St. West may be limited to right-in/right-out operation when a traffic signal or roundabout is constructed at the intersection of King Avenue West and South 44th Street West." Also, "Updates to the Traffic Impact Study will be required with development

of each of the lots in this subdivision.”

6. To minimize effects on public health and safety, Section IV. of the final SIA shall be updated to include the standard language regarding emergency access road design and installation, and other emergency services provisions as recommended by the Fire Department in its 11/26/12 memo to City Planning.

7. To minimize effects on local services, the final plat and SIA shall be updated to reflect the parkland proposal acceptable to PRPL.

8. To minimize effects on public health and safety, a note shall be added to Sections II. and IX. of the final SIA indicating that final project-specific geotechnical studies will need to be completed and submitted at the time of the building permit plan review process.

9. To conform with the Montana Subdivision and Platting Act and the City Subdivision Regulations, the condominium or townhome ownership shall be established for the proposed multiple building project on Lot 2 by the creation of the Homeowners Association and the filing of the applicable unit-ownership documentation with the County Clerk & Recorder prior to final plat approval. If condominium or townhouse ownership is not desired for Lot 2 or any subsequent multi-building projects on the other lots within the subdivision, the development shall undergo ‘Subdivision for Rent or Lease’ review, unless otherwise exempt under state and local law.

10. Minor changes may be made in the Subdivision Improvements Agreement and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.

11. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

APPROVED BY CITY ADMINISTRATOR

Attachments

Preliminary Plat

Findings of Fact

Mayor's letter

DOWLHKM FILE No. XXX-XX
G:\22\20514\Minor Sub Plat\WestSubFrelim\Plat1_13_12.dwg PLOT DATE: 2012-11-14 08:54 SAVED DATE: 2012-11-14 08:47 USER: zhossler

PRELIMINARY PLAT OF WESTERN SUBDIVISION

BEING LOT 1A OF THE AMENDED PLAT OF LOTS 1 AND 2, BLOCK 1, WESTERN SKY SUBDIVISION.

LOCATED IN THE NW1/4 OF SECTION 15, T. 1 S. R. 25 E., P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

FOR: CAL KUNKEL

BY: DOWL HKM
GRANITE TOWER BUILDING
222 NORTH 32ND STREET, SUITE 700
BILLINGS, MT 59102

NOVEMBER 2012

CURRENT ZONING: RMFR

PLAT DATA

GROSS AREA: 32.59 AC. 1419491 SQ FT.
NET AREA: 32.59 AC. 1419491 SQ FT.
OF LOTS: 4
MAX. LOT SIZE: 421368 SQ FT. (6.66 AC.)
MIN. LOT SIZE: 290221 SQ FT. (9.67 AC.)
LINEAR FT. OF STREETS: 2840 FT. (760 PUBLIC (44TH ST. W.); 2080 PRIVATE (STREETS A,B,C,D))
EXIST. ZONING: RMFR

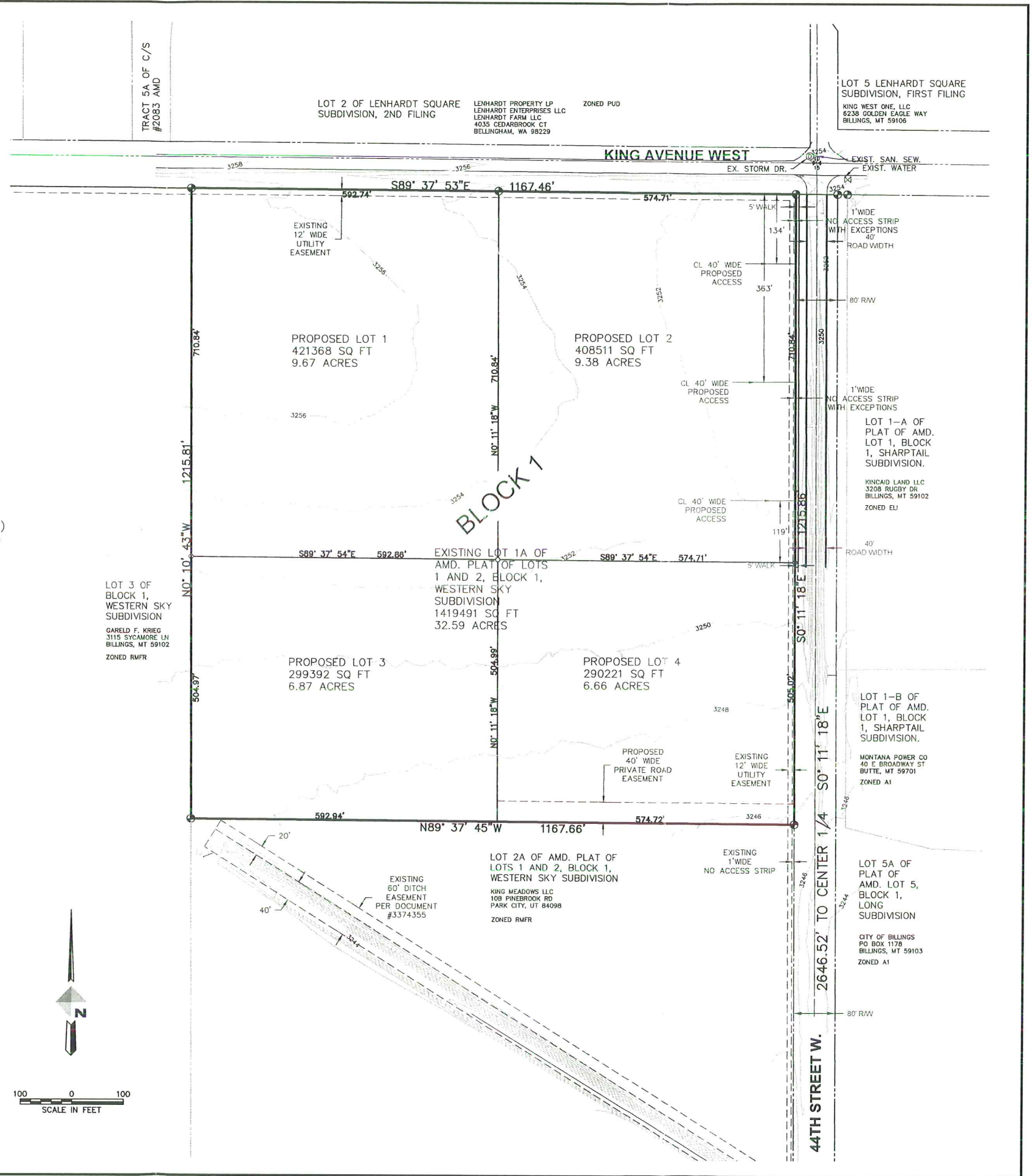
SURROUNDING ZONING

N: PUD
S: RMFR
E: ELI, A1
W: RMFR

EXISTING LAND USE: AGRICULTURAL
PROPOSED LAND USE: RESIDENTIAL



VICINITY MAP
NOT TO SCALE



TRACT 5A OF C/S
#2083 AMD

LOT 2 OF LENHARDT SQUARE
SUBDIVISION, 2ND FILING
LENHARDT PROPERTY LP
LENHARDT ENTERPRISES LLC
LENHARDT FARM LLC
4035 CEDARBROOK CT
BELLINGHAM, WA 98229

LOT 5 LENHARDT SQUARE
SUBDIVISION, FIRST FILING
KING WEST ONE, LLC
6238 GOLDEN EAGLE WAY
BILLINGS, MT 59106

LOT 3 OF
BLOCK 1,
WESTERN SKY
SUBDIVISION
GARELD F. KRIEG
3115 SYCAMORE LN
BILLINGS, MT 59102
ZONED RMFR

EXISTING LOT 1A OF
AMD. PLAT OF LOTS
1 AND 2, BLOCK 1,
WESTERN SKY
SUBDIVISION
1419491 SQ FT
32.59 ACRES

LOT 2A OF AMD. PLAT OF
LOTS 1 AND 2, BLOCK 1,
WESTERN SKY SUBDIVISION
KING MEADOWS LLC
108 PINEBROOK RD
PARK CITY, UT 84098
ZONED RMFR

LOT 1-A OF
PLAT OF AMD.
LOT 1, BLOCK
1, SHARPTAIL
SUBDIVISION.

KINCAID LAND LLC
3208 RUGBY DR
BILLINGS, MT 59102
ZONED EU

LOT 1-B OF
PLAT OF AMD.
LOT 1, BLOCK
1, SHARPTAIL
SUBDIVISION.

MONTANA POWER CO
40 E BROADWAY ST
BUTTE, MT 59701
ZONED A1

LOT 5A OF
PLAT OF
AMD. LOT 5,
BLOCK 1,
LONG
SUBDIVISION

CITY OF BILLINGS
PO BOX 1178
BILLINGS, MT 59103
ZONED A1

FINDINGS OF FACT – Western Subdivision

The Planning staff has prepared the Findings of Fact for the preliminary plat of Western Subdivision and has provided them for approval by the Billings City Council, as follows:

A. What are the effects on agriculture, local services, the natural environment, wildlife, wildlife habitat, and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-303.H.1.]

1. Effect on agriculture and agricultural water user facilities

The subject property is part of a larger 160-acre property that was annexed into the City in 2008 and master planned and rezoned for a mixed use development at that time. The property has remained as agricultural land since the annexation and zone change and is now beginning to be prepared for development. However, the original master plan of the property may not be followed as development appears to be occurring in small pieces and not under the same ownership. There is agricultural and large-lot residential property to the south and west of the subject property, commercial and multi-family development to the east, and to the north, across King Avenue West is property master planned for mixed uses as well. The subject property has been irrigated and farmed for many years. The proposed subdivision will take 32.6 acres out of agricultural production. There is a large irrigation drain ditch to the south and west of the property within a 60-foot wide easement. No changes to this or other irrigation facilities are proposed with this subdivision.

2. Effect on local services

- a. **Utilities** – Water services can be provided by the City of Billings. The subdivider will tie into the existing water main in King Avenue West, and extend the water main south along S. 44th Street West frontage. From there, internal lines will service each lot. Services will be installed in phases as development occurs in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ

Sanitary sewer service will be provided by connecting to the existing City of Billings sewer main in King Avenue West and extending it south along the S. 44th Street West frontage. From there, internal lines will service each lot. Services will be installed in phases as development occurs in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ.

NorthWestern Energy will provide electric services and MDU can provide gas services to the subdivision. Easements will need to be shown on the final plat that are acceptable to these utility providers (**Condition #1**).

- b. **Storm water** – Storm water drainage for S. 44th Street West and King Avenue West shall be provided by surface drainage via curbs and gutters to underground storm drain lines. City Public Works owns the Shiloh Conservation Area to the south at the end of S. 44th Street West, which will soon be developed as a large natural storm water management

area for Billings' west end. Storm water facilities interior to each lot shall be designed to hold the required storm water amount on site. These facilities, such as boulder pits or retention ponds will be reviewed individually during site development review. These and all other drainage 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.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** –The subject property fronts South 44th Street West and King Avenue West. South 44th St. West is classified as a Collector street, and therefore requires dedication of a 40-foot half-width right-of-way. This right-of-way dedication was provided with the original platting of this property. King Avenue West is a Principal Arterial street within the State Department of Transportation's (MDT) jurisdiction. The appropriate amount of street right-of-way was also previously dedicated for King Avenue West. Four accesses are being proposed off of South 44th Street West along the eastern boundaries of Lots 2 & 4. One new approach is proposed off of King Avenue West at or near the northwest corner of Lot 1 of the subdivision. MDT will need to approve of the King Avenue West approach. City Engineering is recommending that the Lot 2 frontage of King Avenue West be labeled with a no-access strip, and the Lot 1 frontage is labeled with a controlled access strip (**Condition #3**).

The developer will be responsible for construction of South 44th Street West where it fronts the subject property. This will be done in phases which are to be outlined in the final SIA (**Condition #2**). Street improvements for South 44th Street West will include 30 feet of pavement, curb, gutter, and boulevard-style sidewalk on the west side of the street. The remaining street width and curb/gutter/sidewalk on the east side will be constructed when the properties adjacent to the east develop in the future.

Improvements to King Avenue West will be at the discretion of MDT based on their policies and near-term improvement plans for this section of King Avenue West. The Traffic Impact Study (TIS) submitted for the first phase of this project identified the potential need for a westbound left-turn lane at King Avenue West and South 44th Street West. As MDT is still reviewing this study, City Engineering has recommended a condition of approval that the subdivider obtain approval or denial of the left turn lane on King Avenue West prior to final plat approval. If MDT requires the turn lane it will be the responsibility of the subdivider to construct it (**Condition #4**). City Engineering also indicated that depending on the traffic mitigation measures used at the intersection of King Avenue West and South 44th Street West, the City reserves the right to limit the operation of the northern-most access onto South 44th Street West (shown on the plat at 134 feet south of the intersection of King Avenue West) to a right-in/right-out intersection only. Furthermore, updates to the TIS will be required with development of each of the lots in this subdivision, based on the expected density and resulting traffic volumes. Adding notes to this effect in the final SIA is recommended as a condition of approval (**Condition #5**).

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire stations are located at 604 S. 24th St. W. (Station #5) and at 54th St. W. and Grand Ave. (Station #7). The subdivision is located within the ambulance service area of American Medical Response (AMR). With the development of the first phase, two points of access shall be provided - -- full access off of South 44th Street West, and an emergency access off of King Avenue West to meet the emergency services standards. Fire Department staff has recommended that standard language to be included in the final SIA regarding the emergency access road design and installation (**Condition #6**). Additionally, fire hydrant locations and fire sprinkler designs will be reviewed and approved with the site development plan prior to building permit issuance.

- f. **Schools** – The subdivision is located within School District #2. Students from the proposed subdivision will likely attend Central Heights Elementary School, Riverside Middle School and West High School. School District #2 is currently undergoing a Facilities Master Planning effort to determine appropriate capacities and district boundaries for all of its schools. Results will be available in January 2013, but for now, the affected schools appear to have adequate capacity to serve the students of this proposed subdivision. School bus access to the site will be reviewed and organized by the bussing providers.

- g. **Parks and Recreation** – In accordance with Section 23-1002.B. of the City Subdivision Regulations, this multi-family development subdivision shall provide 11% of the net land to be developed for parkland. The required parkland amount for this proposal is approximately 3 acres. The final amount will be determined by taking 11% of the net acreage being used for multi-family development. The subdivider has proposed to meet this parkland requirement by providing a park area in the southwest corner of Lot 3, which then can be expanded and added to with subsequent development of the properties to the south and west. If this ultimately occurs, the result could be a centralized park of approximately 10 acres for the residents in the neighborhood. PRPL is in favor of this proposal. The final details are still being worked out, and it is recommended that the final plat and SIA shall be updated to indicate the final parkland plan as approved by PRPL(**Condition #7**).

- h. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has requested the installation of centralized mailbox units (CBUs). The lot developers will be required to work with the USPS in locating the CBUs suitably to meet their delivery needs.

3. Effect on the natural environment

The subject property is on the western edge of the City of Billings. The generally flat property has been used for agricultural purposes for many years before it was planned for multi-family residential development. Hogan's Slough is located south of the subject property.

A preliminary geotechnical study was performed for the first phase subdivision in the summer of 2012. The study indicated the presence of high ground water to levels of 7 and 8 feet below the surface. This will necessitate de-watering at the time of underground utility installation. The study also indicated the soils are fine-grained which are compressible under the anticipated foundation loads. Additional project-specific studies will need to be completed as part of the building permit plan review process for all proposed development. A note to this effect shall be included in the final SIA (**Condition #8**).

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. There is a note in the SIA that warns future lot owners of the presence of deer and other wildlife in the area, which may cause damage to their landscaping. Since the property is near urban development and has been annually tilled for agricultural production his subdivision should have a minimal effect on wildlife and wildlife habitat.

5. Effect on the public health, safety and welfare

Fire hydrants will be constructed to meet fire department requirements and apartment buildings will have sprinkler systems installed. A temporarily emergency access road to King Avenue West will be constructed until a second permanent full-access road develops.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-303.H.4.)]

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-616, MCA.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2008 Growth Policy, the 2001 West Billings Plan, the Urban Area Transportation Plan--2009 Update, and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-303.H.3.]

1. Yellowstone County-City of Billings 2008 Growth Policy

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

- a. Goal: Contiguous development focused in and around existing population centers separated by open space. (p.6)
- b. Goal: Affordable housing for all income levels dispersed throughout the City. (p. 6)

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

- a. Goal: Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land. (p. 9)
- b. Goal: Promote public transportation options with predictable, convenient routes. (p. 12)

2. 2001 West Billings Plan

The plan to develop the property at urban densities is in line with the managed growth theme of the West Billings Plan. The proposal for development of the property includes multi-family residential uses which provide increased densities on land served by municipal water and sewer. (Theme 1, Planned Growth, Page 21). However, the Plan also encourages compact and infill development to conserve agricultural land and natural resources (Theme 1, Planned Growth, Page 15). The development proposed for this property is compact but the irrigated, agricultural property is on the fringe of the urban area and is not infill.

3. Urban Area Transportation Plan 2009 Update

The proposed subdivision adheres to the goals and objectives of the Transportation Plan 2009 Update and preserves the street network and street hierarchy specified in the plan and on the Functional Classification Map.

4. Billings Area Bikeway and Trail Master Plan (BABTMP)

The proposed subdivision lies within the jurisdiction of the BABTMP. The Plan identifies a proposed short-term bike lane along King Avenue West, and a proposed long-term bike lane along South 44th Street West at this location. No bike lane improvements are proposed along either frontage at this time; however, these facilities should be further evaluated in the future when the streets are fully developed.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-303.H.2.a.]

In order to satisfy the requirements of the Montana Subdivision and Platting Act any development project resulting in multiple buildings for rent or lease on a single lot shall either be reviewed as a 'Subdivision for Rent or Lease' (SRL) or be exempt in some way from that requirement. One such exemption from SRL review is for multiple buildings on a single lot to be established as condominium or townhouse unit ownerships. The subdivider has submitted a multi-building development proposal for Lot 1 and has indicated his intention is to establish the units as condominiums. Therefore, it is recommended as a condition of approval that the condominium ownership be established by the creation of the Homeowners Association and the filing of the applicable unit-ownership documentation with the County Clerk & Recorder prior to final plat approval. If the condominium or townhouse ownership is not desired for Lot 1 or any subsequent multi-building lots, the development shall undergo SRL review, unless otherwise exempt under state and local law (**Condition #9**). If recommended conditions of approval are met, the subdivider and the local government shall have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-303.H.2.e.]

The subject property is located within the RMF-R zoning district. All development shall comply with the applicable regulations and standards set forth in Chapter 27, BMCC. Final development

plans will be reviewed for compliance with zoning prior to master site plan approval and subsequent building permit issuance.

F. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-303.H.2.b.]

The subdivider shall provide utility easements as requested by the City, MDU and NWE on the final plat (**Condition #1**).

G. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-303.H.2.c.]

Legal and physical access is provided to the proposed Lot 1 from a single access point off of King Avenue West, and to the remaining proposed lots from four accesses of S. 44th Street West. Reciprocal access easements will likely be established for all of the lots in order to allow for shared use of the internal private road that are planned.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Western Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to some goals and policies of the 2008 Growth Policy Update, the West Billings Plan, and does not conflict with the Transportation or Bikeway and Trail Plans.
- If the recommended conditions of approval are met, the proposed subdivision will comply with state and local subdivision regulations, local zoning, and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, December 17, 2012.

Thomas W. Hanel, Mayor

Mayor's Approval Letter—Western Subdivision

December 18, 2012

Cal Kunkel
6238 Golden Eagle Way
Billings, MT 59106

American Exchange Corporation
Ted A. Lovec
1001 S. 24th St. West
Billings, MT 59102

Dear Sirs:

On December 17, 2012, the Billings City Council conditionally approved the preliminary plat of Western Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements, the subdivider shall provide utility easements on the final plat as requested by the City Engineering Division and the private utility companies.
2. To minimize effects on local services, required improvements for S. 44th Street West and the construction phasing plan shall be described in detail in the Subdivision Improvements Agreement (SIA) as recommended by City Engineering in its 11/26/12 memo to City Planning.
3. To minimize effects on local services, a 'one-foot no-access strip' shall be shown along the Lot 2 frontage of King Avenue West and a 'one-foot controlled-access strip' shall be shown along the Lot 1 King Avenue West frontage.
4. To minimize effects on local services, the subdivider shall obtain approval or denial of the left turn lane on King Avenue West prior to final plat approval. If MDT requires the turn lane it shall be the responsibility of the subdivider to construct it and updates to the final SIA shall be made to reflect this improvement.
5. To minimize effects on local services, the following notes shall be added to the final SIA: "The northern-most access on S. 44th St. West may be limited to right-in/right-out operation when a traffic signal or roundabout is constructed at the intersection of King Avenue West and South 44th Street West." Also, "Updates to the Traffic Impact Study will be required with development of each of the lots in this subdivision."
6. To minimize effects on public health and safety, Section IV. of the final SIA shall be updated to include the standard language regarding emergency access

road design and installation, and other emergency services provisions as recommended by the Fire Department in its 11/26/12 memo to City Planning.

7. To minimize effects on local services, the final plat and SIA shall be updated to reflect the parkland proposal acceptable to PRPL.
8. To minimize effects on public health and safety, a note shall be added to Sections II. and IX. of the final SIA indicating that final project-specific geotechnical studies will need to be completed and submitted at the time of the building permit plan review process.
9. To conform with the Montana Subdivision and Platting Act and the City Subdivision Regulations, the condominium or townhome ownership shall be established for the proposed multiple building project on Lot 2 by the creation of the Homeowners Association and the filing of the applicable unit-ownership documentation with the County Clerk & Recorder prior to final plat approval. If condominium or townhouse ownership is not desired for Lot 2 or any subsequent multi-building projects on the other lots within the subdivision, the development shall undergo 'Subdivision for Rent or Lease' review, unless otherwise exempt under state and local law.
10. Minor changes may be made in the Subdivision Improvements Agreement and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
11. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact the Juliet Spalding at (406) 247-8684 or by email at spaldingj@ci.billings.mt.us .

Sincerely,

Thomas W. Hanel, Mayor

Pc: Rick Selensky, PE, Dowl-HKM
Zachary Hassler, LSIT, Dowl-HKM

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Payment of Claims, November 26, 2012.

PRESENTED BY: Pat M. Weber, Finance Director

Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

Claims in the amount of \$1,737,759.34 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 26, 2012 is available in the Finance Department.

ALTERNATIVES ANALYZED

No other alternatives were analyzed.

FINANCIAL IMPACT

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

RECOMMENDATION

Staff recommends that Council approve the Payment of Claims.

APPROVED BY CITY ADMINISTRATOR

Attachments

List of claims greater than \$2500.

AP Report > \$2,500 for 11/26/2012

Check Date	Check	Name	Amount	Account	Item Desc
11/26/2012	761095	A & E Architects	8,376.40	4980-55360-409390	New Library Building - Construction Management Services
11/26/2012	761096	A & I Distributors	1,603.00	5410-31230-402310	oil and grease for landfill
11/26/2012	761096	A & I Distributors	33.32	2110-31320-402320	2239140
11/26/2012	761096	A & I Distributors	0.55	6010-15530-402650	2243646
11/26/2012	761096	A & I Distributors	1.22	5710-71440-402320	2246355
11/26/2012	761096	A & I Distributors	15.00	5710-71440-402320	144646
11/26/2012	761096	A & I Distributors	33.32	1500-21120-402320	2239140
11/26/2012	761096	A & I Distributors	1,979.23	6010-00000-141000	2239140 PO NUM 290685
11/26/2012	761096	A & I Distributors	218.90	5410-31220-402320	2241521
11/26/2012	761096	A & I Distributors	494.45	5410-31220-402320	2243645-A
11/26/2012	761096	A & I Distributors	2,670.80	6010-00000-141000	2243646 PO NUM 290685
11/26/2012	761096	A & I Distributors	988.90	5710-71440-402320	2246355
11/26/2012	761096	A & I Distributors	957.88	6010-00000-141714	2246355 PO NUM 290685
11/26/2012	761096	A & I Distributors	33.53	5410-31220-402320	2239140
11/26/2012	761096	A & I Distributors	109.45	5710-71440-402320	2246411
11/26/2012	761107	Automated Office Inc	55.47	6050-15160-403690	20680
11/26/2012	761107	Automated Office Inc	29.76	6050-15160-403690	20682
11/26/2012	761107	Automated Office Inc	58.00	1500-21500-405333	20567
11/26/2012	761107	Automated Office Inc	33.67	6050-15160-403690	20679
11/26/2012	761107	Automated Office Inc	143.57	6050-15160-403690	20683
11/26/2012	761107	Automated Office Inc	4.74	6050-15160-403690	20791
11/26/2012	761107	Automated Office Inc	2,255.00	6050-15160-403690	20794
11/26/2012	761107	Automated Office Inc	4,510.00	6050-15160-403690	20795
11/26/2012	761107	Automated Office Inc	53.00	6050-15160-403690	21015
11/26/2012	761107	Automated Office Inc	78.00	1500-21500-405333	20489
11/26/2012	761107	Automated Office Inc	14.99	5020-74000-402190	copier
11/26/2012	761107	Automated Office Inc	3.74	6700-31410-403660	copier maintenance
11/26/2012	761107	Automated Office Inc	23.36	2110-31320-403630	monthly meter read
11/26/2012	761107	Automated Office Inc	41.26	5710-71410-403630	Monthly usage for office copier.
11/26/2012	761107	Automated Office Inc	140.00	2980-65010-402190	Inv. 20825 1 black toner cartidge for HP3000
11/26/2012	761107	Automated Office Inc	776.00	2980-65010-402190	Inv 20970, 1 black toner, 2 magenta toners, 2 yellow toners for HP3000
11/26/2012	761107	Automated Office Inc	142.00	6050-15160-403690	20461

11/26/2012	761117	Billings Depot Inc	5,295.86	6600-31100-405311	depot rent
11/26/2012	761117	Billings Depot Inc	7,943.81	6700-31410-405311	depot rent
11/26/2012	761118	Billings Gazette	795.00	2600-55110-403360	October 2012 Billings Gazette Library
11/26/2012	761118	Billings Gazette	190.45	2400-43010-403310	CC Planning 3747
11/26/2012	761118	Billings Gazette	248.35	2600-55190-403380	3728 Library
11/26/2012	761118	Billings Gazette	57.14	5020-73110-402190	12285 Water Department-Belknap
11/26/2012	761118	Billings Gazette	57.14	5020-75000-402190	12285 Water Department-Belknap
11/26/2012	761118	Billings Gazette	38.09	5120-83110-402190	12285 Water Department-Belknap
11/26/2012	761118	Billings Gazette	38.08	5120-85000-402190	12285 Water Department-Belknap
11/26/2012	761118	Billings Gazette	190.45	5710-71410-403230	27006 Met Transit
11/26/2012	761118	Billings Gazette	248.35	1500-22250-403350	31894 911 Center
11/26/2012	761118	Billings Gazette	190.45	2090-44510-403390	4386 Building
11/26/2012	761118	Billings Gazette	248.35	2600-55190-403380	3450 Library
11/26/2012	761118	Billings Gazette	190.45	0100-51400-403330	3765 Cemetery
11/26/2012	761118	Billings Gazette	248.35	2600-55190-403380	18302 Sunnyside Library
11/26/2012	761118	Billings Gazette	248.35	2600-55190-403380	3451 Library
11/26/2012	761120	Bison Motors	35,956.52	9000-00000-229000	BD1202 - bid deposit refund for City vehicle bid.
11/26/2012	761121	Border States Electric	403.92	5120-85000-402360	battery
11/26/2012	761121	Border States Electric	737.00	5120-84000-402360	capacitor
11/26/2012	761121	Border States Electric	6.44	2110-31320-402430	conduit for signals
11/26/2012	761121	Border States Electric	51.23	2110-31320-402430	conduit/connectors/pvc for signal repair
11/26/2012	761121	Border States Electric	108.13	5120-84000-402360	connectors
11/26/2012	761121	Border States Electric	-87.49	5020-74000-402360	CREDIT
11/26/2012	761121	Border States Electric	-78.51	5020-74000-402360	credit
11/26/2012	761121	Border States Electric	17.93	5120-84000-402360	elec
11/26/2012	761121	Border States Electric	22.16	5020-74000-402360	elec
11/26/2012	761121	Border States Electric	33.07	5120-84000-402290	elec
11/26/2012	761121	Border States Electric	39.15	5020-74000-402360	elec
11/26/2012	761121	Border States Electric	39.58	5020-74000-402360	elec
11/26/2012	761121	Border States Electric	52.01	5120-84000-402290	elec
11/26/2012	761121	Border States Electric	103.26	5120-84000-402360	elec
11/26/2012	761121	Border States Electric	166.10	5120-84000-402360	elec
11/26/2012	761121	Border States Electric	20.16	5120-84000-402360	ELEC.
11/26/2012	761121	Border States Electric	52.51	5120-84000-402360	elec.
11/26/2012	761121	Border States Electric	86.56	5120-84000-402360	elec.
11/26/2012	761121	Border States Electric	107.94	5120-84000-402360	elec.

11/26/2012	761121	Border States Electric	126.09	5020-74000-402360	elec.
11/26/2012	761121	Border States Electric	177.56	5020-74000-402360	elec.
11/26/2012	761121	Border States Electric	180.96	5020-74000-402360	elec.
11/26/2012	761121	Border States Electric	787.84	5020-74000-402360	ELEC.
11/26/2012	761121	Border States Electric	1,102.00	5020-74000-402360	ELEC.
11/26/2012	761121	Border States Electric	219,061.00	5020-74000-402360	elec.
11/26/2012	761121	Border States Electric	459.60	2110-31320-402360	shiloh tunnel lights and fixtures
11/26/2012	761121	Border States Electric	51.40	2110-00000-141318	STREET LIGHTS PO NUM 290687
11/26/2012	761121	Border States Electric	68.80	2110-00000-141318	STREET LIGHTS PO NUM 290687
11/26/2012	761121	Border States Electric	71.96	2110-00000-141318	STREET LIGHTS PO NUM 290687
11/26/2012	761121	Border States Electric	84.98	5020-73140-402410	tool bag
11/26/2012	761121	Border States Electric	497.44	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 290926
11/26/2012	761121	Border States Electric	168.72	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 290950
11/26/2012	761121	Border States Electric	50.32	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 291022
11/26/2012	761121	Border States Electric	167.14	2110-31320-402430	wire for signal repair at 17th & grand
11/26/2012	761121	Border States Electric	167.14	2110-31320-402430	wire for traffic signals
11/26/2012	761121	Border States Electric	349.55	2110-31320-402430	wire/connectors/heat shrink for traffic signals
11/26/2012	761121	Border States Electric	639.26	2110-31320-402360	disconnect stick for street lights
11/26/2012	761121	Border States Electric	12.31	5020-74000-402360	freight
11/26/2012	761121	Border States Electric	17.14	2110-31320-402360	freight on previous shipment
11/26/2012	761121	Border States Electric	50.14	5020-74000-402320	NONSTOCKING ITEMS-P.U.D.
11/26/2012	761121	Border States Electric	234.36	5020-74000-402320	NONSTOCKING ITEMS-P.U.D.
11/26/2012	761121	Border States Electric	74.12	2110-31320-402430	pull box with lid
11/26/2012	761121	Border States Electric	219.61	5020-74000-402360	elec.
11/26/2012	761121	Border States Electric	678.25	2110-00000-141318	STREET LIGHTS PO NUM 290687
11/26/2012	761121	Border States Electric	-219,061.00	5020-74000-402360	credit
11/26/2012	761121	Border States Electric	33.07	5020-74000-402410	elec
11/26/2012	761121	Border States Electric	39.15	5120-84000-402360	elec
11/26/2012	761121	Border States Electric	52.00	5020-74000-402410	elec
11/26/2012	761121	Border States Electric	15.03	2110-00000-141318	STREET LIGHTS PO NUM 290687
11/26/2012	761121	Border States Electric	108.29	2110-00000-141318	STREET LIGHTS PO NUM 290687
11/26/2012	761122	Branch Group Inc	3,014.96	5020-74000-402360	Parts/supplies
11/26/2012	761122	Branch Group Inc	1,484.98	5120-84000-402360	Parts/supplies
11/26/2012	761123	Brenntag Pacific Inc	2,363.50	5120-84000-402220	Trans 10K FG Silicone Antifoam

11/26/2012	761123	Brenntag Pacific Inc	5,810.50	2110-31320-404720	hicothaw
11/26/2012	761123	Brenntag Pacific Inc	5,856.00	2110-31320-404720	hicothaw
11/26/2012	761123	Brenntag Pacific Inc	5,857.82	2110-31320-404720	hicothaw
11/26/2012	761123	Brenntag Pacific Inc	5,869.65	2110-31320-404720	hicothaw
11/26/2012	761123	Brenntag Pacific Inc	5,901.50	2110-31320-404720	hicothaw
11/26/2012	761123	Brenntag Pacific Inc	5,924.25	2110-31320-404720	hicothaw
11/26/2012	761123	Brenntag Pacific Inc	5,950.64	2110-31320-404720	hicothaw
11/26/2012	761123	Brenntag Pacific Inc	5,992.50	2110-31320-404720	hicothaw
11/26/2012	761123	Brenntag Pacific Inc	5,998.87	2110-31320-404720	hicothaw
11/26/2012	761123	Brenntag Pacific Inc	6,060.75	2110-31320-404720	hicothaw
11/26/2012	761124	Brewer & Associates	2,612.50	2970-65550-407275	REHAB-SIMS-115 ADAMS-STRUCTURAL
11/26/2012	761126	Business Tax Section	28.71	5130-84910-409390	WO 12-23 WWTP Headworks Backup Power;
11/26/2012	761126	Business Tax Section	9,915.35	4980-55110-409220	Construction of new Library, demolition of existing building & site development features
11/26/2012	761127	Christian Ball	5,000.00	1500-22210-403590	MEDICAL DIRECTOR STIPEND - JULY 2012 THRU JUNE 2013 - FIRE DEPT & 911 CENTER
11/26/2012	761130	Csg Systems Inc	5,681.99	5020-73110-403110	Statement mailings
11/26/2012	761130	Csg Systems Inc	3,787.99	5120-83110-403110	Statement mailings
11/26/2012	761130	Csg Systems Inc	4,478.47	5020-73110-403111	Statement mailings
11/26/2012	761130	Csg Systems Inc	2,985.64	5120-83110-403111	Statement mailings
11/26/2012	761132	Dowl Hkm	32,025.47	5130-85910-409340	WO 13-01 2013 Sanitary Sewer & Water Replacement
11/26/2012	761132	Dowl Hkm	8,207.53	5030-75910-409340	WO 13-01 2013 Sanitary Sewer & Water Replacement
11/26/2012	761135	Ebsco	4,681.73	2600-55190-403380	Inv 0359259
11/26/2012	761144	Fremont Motors	36,109.76	9000-00000-229000	BD1203 - refund for city vehicle bid
11/26/2012	761145	Galles Filter Service	137.91	6010-00000-141000	264555 PO NUM 290689
11/26/2012	761145	Galles Filter Service	71.63	5410-31230-402320	264569
11/26/2012	761145	Galles Filter Service	5.19	5710-71440-402320	264779
11/26/2012	761145	Galles Filter Service	51.14	6010-00000-141714	264779 PO NUM 290689
11/26/2012	761145	Galles Filter Service	6.04	0100-51120-402320	265301
11/26/2012	761145	Galles Filter Service	27.03	6010-00000-141000	265301 PO NUM 290689
11/26/2012	761145	Galles Filter Service	58.02	1500-22260-402320	265509
11/26/2012	761145	Galles Filter Service	52.68	0100-51120-402320	265534
11/26/2012	761145	Galles Filter Service	62.88	6010-00000-141714	265777 PO NUM 290689
11/26/2012	761145	Galles Filter Service	29.01	1500-22260-402320	265987

11/26/2012	761145	Galles Filter Service	219.17	6010-00000-141000	266070 PO NUM 290689
11/26/2012	761145	Galles Filter Service	10.38	5710-71440-402320	266282
11/26/2012	761145	Galles Filter Service	149.23	6010-00000-141714	266282 PO NUM 290689
11/26/2012	761145	Galles Filter Service	370.52	6010-00000-141000	266283 PO NUM 290689
11/26/2012	761145	Galles Filter Service	98.65	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 290993
11/26/2012	761145	Galles Filter Service	310.52	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 290930
11/26/2012	761145	Galles Filter Service	111.66	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 290756
11/26/2012	761145	Galles Filter Service	110.40	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 290837
11/26/2012	761145	Galles Filter Service	39.00	6010-00000-141000	265235 PO NUM 290689
11/26/2012	761145	Galles Filter Service	6.90	6010-00000-141000	265382 PO NUM 290689
11/26/2012	761145	Galles Filter Service	31.75	0100-51120-402320	265671
11/26/2012	761145	Galles Filter Service	137.68	6010-00000-141000	265771 PO NUM 290689
11/26/2012	761145	Galles Filter Service	3.46	5710-71440-402320	265777
11/26/2012	761145	Galles Filter Service	5.76	1500-21120-402320	266159
11/26/2012	761145	Galles Filter Service	-14.01	6010-15530-402650	264673
11/26/2012	761145	Galles Filter Service	163.62	6010-00000-141000	264778 PO NUM 290689
11/26/2012	761145	Galles Filter Service	251.89	6010-00000-141000	265115 PO NUM 290689
11/26/2012	761145	Galles Filter Service	12.64	5210-15220-402320	265301
11/26/2012	761145	Galles Filter Service	31.75	0100-51120-402320	265554
11/26/2012	761145	Galles Filter Service	223.46	6010-00000-141000	265565 PO NUM 290689
11/26/2012	761145	Galles Filter Service	-7.36	0100-51120-402320	265566
11/26/2012	761145	Galles Filter Service	24.83	1500-22260-402320	265999
11/26/2012	761145	Galles Filter Service	176.74	6010-00000-141000	266623 PO NUM 290689
11/26/2012	761145	Galles Filter Service	5.32	1500-21120-402320	266127
11/26/2012	761145	Galles Filter Service	104.53	6010-00000-141000	265302 PO NUM 290689
11/26/2012	761145	Galles Filter Service	26.30	5710-71440-402320	265777
11/26/2012	761145	Galles Filter Service	52.26	5410-31220-402320	266404
11/26/2012	761145	Galles Filter Service	11.17	0100-51120-402320	266726
11/26/2012	761152	Hdr Inc	564.08	8400-31840-403590	WO 12-13 IWPI Reuse and Reclamation Study
11/26/2012	761152	Hdr Inc	1,128.17	5020-72110-403540	WO 12-13 IWPI Reuse and Reclamation Study
11/26/2012	761152	Hdr Inc	2,068.30	5120-82110-403540	WO 12-13 IWPI Reuse and Reclamation Study
11/26/2012	761157	Jackson Contractor Group Inc	981,619.65	4980-55110-409220	Construction of new Library, demolition of existing building & site development features.

11/26/2012	761162	Knife River	2,484.90	2110-31320-404710	asphalt
11/26/2012	761162	Knife River	2,822.05	2110-31320-404710	asphalt
11/26/2012	761162	Knife River	3,552.45	2110-31320-404710	asphalt
11/26/2012	761162	Knife River	29.27	2110-31320-404520	1 1/2" crushed base
11/26/2012	761162	Knife River	90.00	5020-75000-403680	Dump tickets
11/26/2012	761162	Knife River	60.00	5120-85000-403680	Dump tickets
11/26/2012	761163	Kois Brothers Equipment Co	224.00	6010-00000-141000	95232 PO NUM 290690
11/26/2012	761163	Kois Brothers Equipment Co	986.00	5410-31220-402320	95264
11/26/2012	761163	Kois Brothers Equipment Co	299.16	5020-75000-402410	LADDER
11/26/2012	761163	Kois Brothers Equipment Co	874.00	6010-00000-141000	95153 PO NUM 290690
11/26/2012	761163	Kois Brothers Equipment Co	116.76	2110-31320-402320	95203
11/26/2012	761163	Kois Brothers Equipment Co	288.26	5410-31220-402320	95232
11/26/2012	761163	Kois Brothers Equipment Co	17.20	6010-00000-141000	95233 PO NUM 290690
11/26/2012	761167	Mahoney Associates Consulting	2,833.00	0100-15120-403590	12-DRAFT FY12 cost allocation consultant services
11/26/2012	761168	Mailing Technical Services	534.95	2600-55110-403110	Mail Service October 2012
11/26/2012	761168	Mailing Technical Services	189.21	5210-15210-403110	parking - special inserts only
11/26/2012	761168	Mailing Technical Services	4,651.01	6050-15150-403110	Finance
11/26/2012	761176	Montana Hardwood Floor Co. INC	2,527.50	0100-51220-402450	Refinish gym floor and paint all game lines.
11/26/2012	761177	Montana Peterbilt	8,561.21	6300-17530-407310	Inv. #223140038 MET Paratransit #1897
11/26/2012	761188	Northwestern Energy	11,649.82	2110-31320-403410	Signal Bills
11/26/2012	761188	Northwestern Energy	464.86	8100-31830-403410	SILMD 008 ACCT# 0712544-6
11/26/2012	761188	Northwestern Energy	504.64	8100-31830-403410	SILMD 172 ACCT# 0712611-3
11/26/2012	761188	Northwestern Energy	13.91	8100-31830-403410	SILMD 238 ACCT# 0712672-5
11/26/2012	761188	Northwestern Energy	2,473.66	8100-31830-403410	SILMD 100 ACCT# 0712559-4
11/26/2012	761188	Northwestern Energy	354.42	8100-31830-403410	SILMD 184 ACCT# 0712622-0
11/26/2012	761188	Northwestern Energy	2,564.23	8100-31830-403410	SILMD 249 ACCT# 0718734-7
11/26/2012	761188	Northwestern Energy	1,631.77	8100-31830-403410	SILMD 107 ACCT# 0712560-2
11/26/2012	761188	Northwestern Energy	132.91	8100-31830-403410	SILMD 185 ACCT# 0712623-8

11/26/2012	761188	Northwestern Energy	9.69	8100-31830-403410	SILMD 250 ACCT# 1301786-8
11/26/2012	761188	Northwestern Energy	4,092.41	8100-31830-403410	SILMD 109 ACCT# 0712561-0
11/26/2012	761188	Northwestern Energy	577.08	8100-31830-403410	SILMD 186 ACCT# 0712624-6
11/26/2012	761188	Northwestern Energy	181.51	8100-31830-403410	SILMD 250 ACCT# 0719001-00
11/26/2012	761188	Northwestern Energy	169.08	8100-31830-403410	SILMD 113 ACCT# 0712562-8
11/26/2012	761188	Northwestern Energy	221.52	8100-31830-403410	SILMD 187 ACCT# 0712625-3
11/26/2012	761188	Northwestern Energy	3,681.48	8100-31830-403410	SILMD 251 ACCT# 0718801-4
11/26/2012	761188	Northwestern Energy	880.64	8100-31830-403410	SILMD 114 ACCT# 0712563-6
11/26/2012	761188	Northwestern Energy	265.80	8100-31830-403410	SILMD 188 ACCT# 0712626-1
11/26/2012	761188	Northwestern Energy	518.02	8100-31830-403410	SILMD 252 ACCT# 0719162-0
11/26/2012	761188	Northwestern Energy	207.21	8100-31830-403410	SILMD 115 ACCT# 0712564-4
11/26/2012	761188	Northwestern Energy	221.52	8100-31830-403410	SILMD 189 ACCT# 0712627-9
11/26/2012	761188	Northwestern Energy	1,813.31	8100-31830-403410	SILMD 253 ACCT# 0719644-7
11/26/2012	761188	Northwestern Energy	543.92	8100-31830-403410	SILMD 116 ACCT# 0712565-1
11/26/2012	761188	Northwestern Energy	1,151.86	8100-31830-403410	SILMD 190 ACCT# 0712628-7
11/26/2012	761188	Northwestern Energy	134.74	8100-31830-403410	SILMD 254 ACCT# 0719763-5
11/26/2012	761188	Northwestern Energy	3,003.71	8100-31830-403410	SILMD 117 ACCT# 0712566-9
11/26/2012	761188	Northwestern Energy	395.77	8100-31830-403410	SILMD 191 ACCT# 0712629-5
11/26/2012	761188	Northwestern Energy	139.84	8100-31830-403410	SILMD 255 ACCT# 0720813-5
11/26/2012	761188	Northwestern Energy	217.39	8100-31830-403410	SILMD 118 ACCT# 0712567-7
11/26/2012	761188	Northwestern Energy	287.97	8100-31830-403410	SILMD 192 ACCT# 0712630-3
11/26/2012	761188	Northwestern Energy	785.84	8100-31830-403410	SILMD 257 ACCT# 0720360-7
11/26/2012	761188	Northwestern Energy	143.32	8100-31830-403410	SILMD 119 ACCT# 0712568-5
11/26/2012	761188	Northwestern Energy	708.84	8100-31830-403410	SILMD 193 ACCT# 0712631-1
11/26/2012	761188	Northwestern Energy	2,444.76	8100-31830-403410	SILMD 258 ACCT# 0720606-3
11/26/2012	761188	Northwestern Energy	2,331.12	8100-31830-403410	SILMD 121 ACCT# 0712570-1
11/26/2012	761188	Northwestern Energy	238.80	8100-31830-403410	SILMD 194 ACCT# 0712632-9
11/26/2012	761188	Northwestern Energy	8.95	8100-31830-403410	SILMD 259 ACCT# 1301786-8
11/26/2012	761188	Northwestern Energy	177.21	8100-31830-403410	SILMD 122 ACCT# 0712571-9
11/26/2012	761188	Northwestern Energy	199.01	8100-31830-403410	SILMD 195 ACCT# 0712633-7
11/26/2012	761188	Northwestern Energy	1,096.28	8100-31830-403410	SILMD 259 ACCT# 0720810-1
11/26/2012	761188	Northwestern Energy	310.80	8100-31830-403410	SILMD 123 ACCT# 0712572-7
11/26/2012	761188	Northwestern Energy	63.92	8100-31830-403410	SILMD 196 ACCT# 0712634-5
11/26/2012	761188	Northwestern Energy	466.23	8100-31830-403410	SILMD 261 ACCT# 0720705-3
11/26/2012	761188	Northwestern Energy	906.56	8100-31830-403410	SILMD 124 ACCT# 0712573-5
11/26/2012	761188	Northwestern Energy	63.92	8100-31830-403410	SILMD 197 ACCT# 0712635-2
11/26/2012	761188	Northwestern Energy	2,940.97	8100-31830-403410	SILMD 262 ACCT# 0720937-2

11/26/2012	761188	Northwestern Energy	362.62	8100-31830-403410	SILMD 125 ACCT# 0712574-3
11/26/2012	761188	Northwestern Energy	110.74	8100-31830-403410	SILMD 198 ACCT# 0712636-0
11/26/2012	761188	Northwestern Energy	842.79	8100-31830-403410	SILMD 263 ACCT# 0720716-0
11/26/2012	761188	Northwestern Energy	181.30	8100-31830-403410	SILMD 126 ACCT# 0712575-0
11/26/2012	761188	Northwestern Energy	68.18	8100-31830-403410	SILMD 200 ACCT# 0712637-8
11/26/2012	761188	Northwestern Energy	146.99	8100-31830-403410	SILMD 264 ACCT# 0721427-3
11/26/2012	761188	Northwestern Energy	664.54	8100-31830-403410	SILMD 127 ACCT# 0712576-8
11/26/2012	761188	Northwestern Energy	465.17	8100-31830-403410	SILMD 201 ACCT# 0712638-6
11/26/2012	761188	Northwestern Energy	327.77	8100-31830-403410	SILMD 265 ACCT# 0721556-9
11/26/2012	761188	Northwestern Energy	465.17	8100-31830-403410	SILMD 128 ACCT# 0712577-6
11/26/2012	761188	Northwestern Energy	734.71	8100-31830-403410	SILMD 202 INV# 0712639-4
11/26/2012	761188	Northwestern Energy	54.19	8100-31830-403410	SILMD 266 ACCT# 0721684-9
11/26/2012	761188	Northwestern Energy	310.80	8100-31830-403410	SILMD 129 ACCT# 0712578-4
11/26/2012	761188	Northwestern Energy	17.04	8100-31830-403410	SILMD 203 ACCT# 0712640-2
11/26/2012	761188	Northwestern Energy	69.65	8100-31830-403410	SILMD 269 ACCT# 0833098-7
11/26/2012	761188	Northwestern Energy	117.74	8100-31830-403410	SILMD 130 ACCT# 0712579-2
11/26/2012	761188	Northwestern Energy	337.42	8100-31830-403410	SILMD 204 ACCT# 0712641-0
11/26/2012	761188	Northwestern Energy	391.99	8100-31830-403410	SILMD 270 ACCT# 0906944-4
11/26/2012	761188	Northwestern Energy	802.94	8100-31830-403410	SILMD 131 ACCT# 0712580-0
11/26/2012	761188	Northwestern Energy	32.52	8100-31830-403410	SILMD 205 ACCT# 0712642-8
11/26/2012	761188	Northwestern Energy	935.76	8100-31830-403410	SILMD 271 ACCT# 0995095-7
11/26/2012	761188	Northwestern Energy	218.68	8100-31830-403410	SILMD 133 ACCT# 0712581-8
11/26/2012	761188	Northwestern Energy	310.12	8100-31830-403410	SILMD 206 ACCT# 0712643-6
11/26/2012	761188	Northwestern Energy	2,630.80	8100-31830-403410	SILMD 272 ACCT# 0905005-5
11/26/2012	761188	Northwestern Energy	504.64	8100-31830-403410	SILMD 134 ACCT# 0712582-6
11/26/2012	761188	Northwestern Energy	354.42	8100-31830-403410	SILMD 207 ACCT# 0712644-4
11/26/2012	761188	Northwestern Energy	188.77	8100-31830-403410	SILMD 273 ACCT# 0926386-4
11/26/2012	761188	Northwestern Energy	487.33	8100-31830-403410	SILMD 135 ACCT# 0712583-4
11/26/2012	761188	Northwestern Energy	229.03	8100-31830-403410	SILMD 208 ACCT# 0712645-1
11/26/2012	761188	Northwestern Energy	59.69	8100-31830-403410	SILMD 274 ACCT# 0907926-0
11/26/2012	761188	Northwestern Energy	431.24	8100-31830-403410	SILMD 136 ACCT# 0712584-2
11/26/2012	761188	Northwestern Energy	509.47	8100-31830-403410	SILMD 209 ACCT# 0712646-9
11/26/2012	761188	Northwestern Energy	425.86	8100-31830-403410	SILMD 276 ACCT# 0961926-3
11/26/2012	761188	Northwestern Energy	349.79	8100-31830-403410	SILMD 137 ACCT# 0712585-9
11/26/2012	761188	Northwestern Energy	76.71	8100-31830-403410	SILMD 210 ACCT# 0712647-7
11/26/2012	761188	Northwestern Energy	772.82	8100-31830-403410	SILMD 277 ACCT# 1058710-3
11/26/2012	761188	Northwestern Energy	699.33	8100-31830-403410	SILMD 138 ACCT# 0712586-7

11/26/2012	761188	Northwestern Energy	42.62	8100-31830-403410	SILMD 211 ACCT# 0712648-5
11/26/2012	761188	Northwestern Energy	208.96	8100-31830-403410	SILMD 278 ACCT# 1087619-1
11/26/2012	761188	Northwestern Energy	233.10	8100-31830-403410	SILMD 139 ACCT# 0712587-5
11/26/2012	761188	Northwestern Energy	42.62	8100-31830-403410	SILMD 212 ACCT# 0712649-3
11/26/2012	761188	Northwestern Energy	57.58	8100-31830-403410	SILMD 279 ACCT# 1124127-0
11/26/2012	761188	Northwestern Energy	543.22	8100-31830-403410	SILMD 143 ACCT# 0712588-3
11/26/2012	761188	Northwestern Energy	25.57	8100-31830-403410	SILMD 213 ACCT# 0712650-1
11/26/2012	761188	Northwestern Energy	646.76	8100-31830-403410	SILMD 280 ACCT# 1045653-1
11/26/2012	761188	Northwestern Energy	25.87	8100-31830-403410	SILMD 144 ACCT# 0712589-1
11/26/2012	761188	Northwestern Energy	444.34	8100-31830-403410	SILMD 214 ACCT# 0712651-9
11/26/2012	761188	Northwestern Energy	59.69	8100-31830-403410	SILMD 281 ACCT# 1079722-3
11/26/2012	761188	Northwestern Energy	443.02	8100-31830-403410	SILMD 145 ACCT# 0712590-9
11/26/2012	761188	Northwestern Energy	132.91	8100-31830-403410	SILMD 216 ACCT# 0712652-7
11/26/2012	761188	Northwestern Energy	338.28	8100-31830-403410	SILMD 283 ACCT# 1172743-5
11/26/2012	761188	Northwestern Energy	336.72	8100-31830-403410	SILMD 146 ACCT# 0712591-7
11/26/2012	761188	Northwestern Energy	354.83	8100-31830-403410	SILMD 217 ACCT# 0712653-5
11/26/2012	761188	Northwestern Energy	317.31	8100-31830-403410	SILMD 285 ACCT# 1206985-2
11/26/2012	761188	Northwestern Energy	436.81	8100-31830-403410	SILMD 147 ACCT# 0712592-5
11/26/2012	761188	Northwestern Energy	236.57	8100-31830-403410	SILMD 220 ACCT# 0712654-3
11/26/2012	761188	Northwestern Energy	222.52	8100-31830-403410	SILMD 286 ACCT# 1296582-8
11/26/2012	761188	Northwestern Energy	1,365.21	8100-31830-403410	SILMD 149 ACCT# 0712593-3
11/26/2012	761188	Northwestern Energy	8.13	8100-31830-403410	SILMD 221 ACCT# 0712655-0
11/26/2012	761188	Northwestern Energy	112.54	8100-31830-403410	SILMD 287 ACCT# 1246537-3
11/26/2012	761188	Northwestern Energy	708.84	8100-31830-403410	SILMD 150 ACCT# 0712594-1
11/26/2012	761188	Northwestern Energy	67.36	8100-31830-403410	SILMD 222 ACCT# 0712656-8
11/26/2012	761188	Northwestern Energy	1,671.39	8100-31830-403410	SILMD 288 ACCT# 1303978-9
11/26/2012	761188	Northwestern Energy	595.72	8100-31830-403410	SILMD 151 ACCT# 0712595-8
11/26/2012	761188	Northwestern Energy	102.27	8100-31830-403410	SILMD 223 ACCT# 0712657-6
11/26/2012	761188	Northwestern Energy	314.00	8100-31830-403410	SILMD 289 ACCT# 1685375-6
11/26/2012	761188	Northwestern Energy	4,055.34	8100-31830-403410	SILMD 152 ACCT# 0712596-6
11/26/2012	761188	Northwestern Energy	1,708.24	8100-31830-403410	SILMD 224 ACCT# 0712658-4
11/26/2012	761188	Northwestern Energy	132.16	8100-31830-403410	SILMD 290 ACCT# 1433921-2
11/26/2012	761188	Northwestern Energy	509.47	8100-31830-403410	SILMD 153 ACCT# 0712597-4
11/26/2012	761188	Northwestern Energy	343.48	8100-31830-403410	SILMD 225 ACCT# 0712659-2
11/26/2012	761188	Northwestern Energy	569.83	8100-31830-403410	SILMD 292 ACCT# 1481532-8
11/26/2012	761188	Northwestern Energy	1,151.86	8100-31830-403410	SILMD 154 ACCT# 0712598-2
11/26/2012	761188	Northwestern Energy	274.19	8100-31830-403410	SILMD 226 ACCT# 0712660-0

11/26/2012	761188	Northwestern Energy	221.52	8100-31830-403410	SILMD 293 ACCT# 1481534-4
11/26/2012	761188	Northwestern Energy	466.23	8100-31830-403410	SILMD 155 ACCT# 0712599-0
11/26/2012	761188	Northwestern Energy	554.70	8100-31830-403410	SILMD 227 ACCT# 0712661-8
11/26/2012	761188	Northwestern Energy	443.02	8100-31830-403410	SILMD 294 ACCT# 1481535-1
11/26/2012	761188	Northwestern Energy	863.90	8100-31830-403410	SILMD 157 ACCT# 0712600-6
11/26/2012	761188	Northwestern Energy	751.14	8100-31830-403410	SILMD 228 ACCT# 0712662-6
11/26/2012	761188	Northwestern Energy	103.60	8100-31830-403410	SILMD 295 ACCT# 1481536-9
11/26/2012	761188	Northwestern Energy	751.14	8100-31830-403410	SILMD 158 ACCT# 0712601-4
11/26/2012	761188	Northwestern Energy	388.52	8100-31830-403410	SILMD 229 ACCT# 0712663-4
11/26/2012	761188	Northwestern Energy	1,191.14	8100-31830-403410	SILMD 296 ACCT# 1481537-7
11/26/2012	761188	Northwestern Energy	1,024.54	8100-31830-403410	SILMD 159 ACCT# 0712602-2
11/26/2012	761188	Northwestern Energy	906.54	8100-31830-403410	SILMD 230 ACCT# 0712664-2
11/26/2012	761188	Northwestern Energy	199.35	8100-31830-403410	SILMD 297 ACCT# 1481539-3
11/26/2012	761188	Northwestern Energy	673.43	8100-31830-403410	SILMD 160 ACCT# 0712603-0
11/26/2012	761188	Northwestern Energy	543.92	8100-31830-403410	SILMD 231 ACCT# 0712665-9
11/26/2012	761188	Northwestern Energy	177.21	8100-31830-403410	SILMD 298 ACCT# 1481540-1
11/26/2012	761188	Northwestern Energy	996.80	8100-31830-403410	SILMD 161 ACCT# 0712604-8
11/26/2012	761188	Northwestern Energy	2,357.03	8100-31830-403410	SILMD 232 ACCT# 0712666-7
11/26/2012	761188	Northwestern Energy	377.16	8100-31830-403410	SILMD 300 ACCT# 1662840-6
11/26/2012	761188	Northwestern Energy	56.91	8100-31830-403410	SILMD 162 ACCT# 0712605-5
11/26/2012	761188	Northwestern Energy	745.04	8100-31830-403410	SILMD 233 ACCT# 0712667-5
11/26/2012	761188	Northwestern Energy	1,669.09	8100-31830-403410	SILMD 301 ACCT# 1687005-7
11/26/2012	761188	Northwestern Energy	616.91	8100-31830-403410	SILMD 163 ACCT# 0712606-3
11/26/2012	761188	Northwestern Energy	439.24	8100-31830-403410	SILMD 234 ACCT# 0712668-3
11/26/2012	761188	Northwestern Energy	239.55	8100-31830-403410	SILMD 302 ACCT# 1607534-3
11/26/2012	761188	Northwestern Energy	354.42	8100-31830-403410	SILMD 164 ACCT# 0712607-1
11/26/2012	761188	Northwestern Energy	469.06	8100-31830-403410	SILMD 235 ACCT# 0712669-1
11/26/2012	761188	Northwestern Energy	906.22	8100-31830-403410	SILMD 305 ACCT# 1695873-8
11/26/2012	761188	Northwestern Energy	828.84	8100-31830-403410	SILMD 165 ACCT# 0712608-9
11/26/2012	761188	Northwestern Energy	149.25	8100-31830-403410	SILMD 236 ACCT# 0712670-9
11/26/2012	761188	Northwestern Energy	195.79	8100-31830-403410	SILMD 306 ACCT# 1740353-6
11/26/2012	761188	Northwestern Energy	221.52	8100-31830-403410	SILMD 167 ACCT# 0712609-7
11/26/2012	761188	Northwestern Energy	376.58	8100-31830-403410	SILMD 237 ACCT# 0712671-7
11/26/2012	761188	Northwestern Energy	2,573.49	8100-31830-403410	SILMD 307 ACCT# 2049005-8
11/26/2012	761188	Northwestern Energy	531.63	8100-31830-403410	SILMD 171 ACCT# 0712610-5
11/26/2012	761188	Northwestern Energy	247.25	8100-31830-403410	SILMD 308 ACCT# 2072459-7
11/26/2012	761188	Northwestern Energy	317.87	8100-31830-403410	SILMD 309 ACCT# 2001311-6

11/26/2012	761188	Northwestern Energy	334.27	8100-31830-403410	SILMD 310 ACCT# 2060519-2
11/26/2012	761188	Northwestern Energy	49.34	8100-31830-403410	SILMD 320 ACCT# 0712569-3
11/26/2012	761188	Northwestern Energy	476.64	8100-31830-403410	SILMD 009 ACCT# 0712545-3
11/26/2012	761188	Northwestern Energy	1,107.57	8100-31830-403410	SILMD 173 ACCT# 0712612-1
11/26/2012	761188	Northwestern Energy	88.60	8100-31830-403410	SILMD 239 ACCT# 0712673-3
11/26/2012	761188	Northwestern Energy	3,879.67	8100-31830-403410	SILMD 013 ACCT# 0721276-4
11/26/2012	761188	Northwestern Energy	310.12	8100-31830-403410	SILMD 175 ACCT# 0712614-7
11/26/2012	761188	Northwestern Energy	581.07	8100-31830-403410	SILMD 241 ACCT# 0712675-8
11/26/2012	761188	Northwestern Energy	1,903.03	8100-31830-403410	SILMD 014 ACCT# 0721277-2
11/26/2012	761188	Northwestern Energy	40.64	8100-31830-403410	SILMD 176 ACCT# 0712615-4
11/26/2012	761188	Northwestern Energy	77.71	8100-31830-403410	SILMD 242 ACCT# 0712676-6
11/26/2012	761188	Northwestern Energy	1,310.70	8100-31830-403410	SILMD 010 ACCT# 0712546-1
11/26/2012	761188	Northwestern Energy	930.35	8100-31830-403410	SILMD 174 ACCT# 0712613-9
11/26/2012	761188	Northwestern Energy	358.19	8100-31830-403410	SILMD 240 ACCT# 0712674-1
11/26/2012	761188	Northwestern Energy	1,147.72	8100-31830-403410	SILMD 017 ACCT# 0712553-7
11/26/2012	761188	Northwestern Energy	243.67	8100-31830-403410	SILMD 178 ACCT# 0712616-2
11/26/2012	761188	Northwestern Energy	103.60	8100-31830-403410	SILMD 244 ACCT# 0712677-4
11/26/2012	761188	Northwestern Energy	89.55	8100-31830-403410	SILMD 018 ACCT# 0712554-5
11/26/2012	761188	Northwestern Energy	332.27	8100-31830-403410	SILMD 180 ACCT# 0712618-8
11/26/2012	761188	Northwestern Energy	80.72	8100-31830-403410	SILMD 245 ACCT# 0712678-2
11/26/2012	761188	Northwestern Energy	448.05	8100-31830-403410	SILMD 095 ACCT# 0712556-0
11/26/2012	761188	Northwestern Energy	1,579.96	8100-31830-403410	SILMD 181 ACCT# 0712619-6
11/26/2012	761188	Northwestern Energy	310.80	8100-31830-403410	SILMD 246 ACCT# 0712679-0
11/26/2012	761188	Northwestern Energy	12,408.43	8100-31830-403410	SILMD 097 ACCT# 0712557-8
11/26/2012	761188	Northwestern Energy	553.78	8100-31830-403410	SILMD 182 ACCT# 0712620-4
11/26/2012	761188	Northwestern Energy	1,085.34	8100-31830-403410	SILMD 247 ACCT# 0712680-8
11/26/2012	761188	Northwestern Energy	1,511.81	8100-31830-403410	SILMD 099 ACCT# 0712558-6
11/26/2012	761188	Northwestern Energy	1,107.58	8100-31830-403410	SILMD 183 ACCT# 0712621-2
11/26/2012	761188	Northwestern Energy	2,300.47	8100-31830-403410	SILMD 248 ACCT# 0712681-6
11/26/2012	761189	Northwestern Energy	2,414.80	5020-73140-403410	2251 Belknap Ave
11/26/2012	761189	Northwestern Energy	804.93	5120-83140-403410	2251 Belknap Ave
11/26/2012	761189	Northwestern Energy	48,296.01	5020-74000-403410	2251 Belknap Ave
11/26/2012	761189	Northwestern Energy	12,878.94	5020-74000-403410	2251 Belknap Ave
11/26/2012	761189	Northwestern Energy	50,469.09	5120-84000-403410	725 Hwy 87 East
11/26/2012	761189	Northwestern Energy	140.27	5120-85000-403410	822 Shiloh Crossing
11/26/2012	761189	Northwestern Energy	551.67	5020-74000-403410	Airport Rd/17th West/Hwy 3/Waldo

11/26/2012	761190	NPC Research	3,507.82	7380-12640-403510	Evaluation for October 2012.carryover.Invoices 10 and 11
11/26/2012	761191	OAC Services Inc	35,901.24	2030-15130-409224	OAC - Empire Parking Garage Project Management Services
11/26/2012	761193	One Eighty Communications	40.60	5610-71100-403450	Airport 2948370 Airport Alarm
11/26/2012	761193	One Eighty Communications	195.67	6060-19310-403450	Main Bill T-1 Account 00018768
11/26/2012	761193	One Eighty Communications	39.00	1500-21110-403450	CPC line 247-8592 Account 00018768
11/26/2012	761193	One Eighty Communications	3,537.80	6060-19310-403450	Main Bill Acct 00001906
11/26/2012	761193	One Eighty Communications	330.00	1500-22250-403450	Integra charges to port numbers back at Comm Center due to Century Link error
11/26/2012	761193	One Eighty Communications	46.00	0100-51120-403450	Dehler Park line 867-7275
11/26/2012	761193	One Eighty Communications	5.00	1500-22250-403450	Comm Center Long Distance Charges
11/26/2012	761193	One Eighty Communications	79.95	6200-19110-403452	IT Internet Connection
11/26/2012	761193	One Eighty Communications	259.00	2600-55180-403590	Library Internet Connection
11/26/2012	761193	One Eighty Communications	326.56	6600-31100-403450	Depot 60% 6700 31410 403450
11/26/2012	761193	One Eighty Communications	489.86	6700-31410-403450	Depot 40% 6600 31100 403450
11/26/2012	761193	One Eighty Communications			Depot 60% 6700 31410 403450
11/26/2012	761193	One Eighty Communications			Depot 40% 6600 31100 403450
11/26/2012	761196	Polydyne Inc	3,484.00	5120-84000-402220	Flosperser 30/Clarifloc
11/26/2012	761198	Prorover	9,600.00	0100-51140-403990	Tree trimming in Pioneer Park and Rose.
11/26/2012	761212	Rocky Mountain Welding & Fab Inc	6,420.00	5410-31220-404270	front load containers total of 12 per attached
11/26/2012	761212	Rocky Mountain Welding & Fab Inc	7,358.00	5410-31220-404270	4 8yd front load containers 4 4 yd rear load containers see attachment
11/26/2012	761215	Sanderson Stewart	64,267.68	5030-75910-409340	WO 12-01 2012 Water & Sewer Replacement Sch 1
11/26/2012	761218	Solid Waste Systems Inc	4,862.00	5410-31220-402320	super track bottom wear strip and back up lights

11/26/2012	761218	Solid Waste Systems Inc	1,300.00	5410-31220-409420	2- 7 inch monitor 1 channel for continual hopper monitoring
11/26/2012	761221	Sunset Excavation	3,800.00	5050-75150-403671	1116 Princeton Ave
11/26/2012	761221	Sunset Excavation	2,300.00	5050-75150-403671	4129 Sedgewick
11/26/2012	761229	Town & Country Supply Association	6,071.80	6010-00000-141714	100344 PO NUM 291196
11/26/2012	761229	Town & Country Supply Association	681.04	1500-22260-402310	101707:FIRE6 - #1 DYED DIESEL DELIVERED 11/5/2012
11/26/2012	761229	Town & Country Supply Association	13,004.07	6010-00000-141000	101777 PO NUM 291195
11/26/2012	761229	Town & Country Supply Association	514.46	1500-22260-402310	101708:FIRE1 #1 BLENDED DYED DIESEL DELIVERED 11/5/2012
11/26/2012	761229	Town & Country Supply Association	304.45	1500-22260-402310	101709FIRE1: UNLEADED FUEL DELIVERED 11/5/2012
11/26/2012	761229	Town & Country Supply Association	709.02	1500-22260-402310	101710:FIRE3 #1 DYED DIESEL DELIVERED 11/5/2012
11/26/2012	761229	Town & Country Supply Association	0.01	1500-22260-402310	DECIMAL POINT CORRECTION: FUEL DELIVERED ON 11/5/2012
11/26/2012	761230	Tractor & Equipment	799.56	5410-31230-402320	misc parts for landfill
11/26/2012	761230	Tractor & Equipment	5,306.42	5410-31230-402320	BLW00135115
11/26/2012	761238	Yellowstone County Treasurer	70.00	2050-31310-405410	PW/Eng/PUD - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	390.88	5020-74000-405410	PW/Eng/PUD - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	40.00	5120-85000-405410	PW/Eng/PUD - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	401.48	8400-31840-405410	PW/Eng/PUD - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	560.19	2950-66980-407275	Com Dev - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	283.68	0100-51120-405410	Parks - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	20.00	8720-51980-405410	Parks - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	45.00	8720-51980-405410	Parks - 2012 taxes

11/26/2012	761238	Yellowstone County Treasurer	15.00	8720-51980-405410	Parks - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	33.75	8720-51980-405410	Parks - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	30.00	8720-51980-405410	Parks - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	6,789.17	5210-15950-405410	Parking - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	80.37	0100-14110-405410	Finance - 2012 taxes
11/26/2012	761238	Yellowstone County Treasurer	2,159.79	1500-21110-405410	Police - 2012 taxes

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: Proposed legislation to amend the Special District protest process

PRESENTED BY: Bruce McCandless, Asst City Administrator

Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

When the City of Billings created Park Maintenance District No. 1, Councilmembers heard several complaints about the protest process. Residents said that the process is too difficult to understand and too difficult to mount a successful protest that would stop the District's creation. The special district protest process is specified in Title 7, Chapter 12, Part 41 and the City accurately followed the law. Several legislators spoke at the hearings and indicated their intention to change the law in the 2013 Legislature. City Councilmembers and staff have continued their dialog with legislators and it is apparent that the Legislature will consider changing the special district law.

The Montana Association of Counties (MACO) drafted legislation that would require a public vote with a low protest rate. That needlessly complicates the process and increases expenses. Some legislators have indicated they want to repeal the law that the 2009 Legislature created, which would make it more difficult and expensive for cities and counties to create special districts. Staff and Ed Bartlett, the City's lobbyist, have produced an alternative to MACO's and legislators' proposals. Before promoting the proposal with legislators or other local governments, staff is requesting that the City Council endorse it, which will allow Mr. Bartlett and staff to find a sponsor and promote the bill. The bill would require local governments to provide a protest letter to residents, give a longer time to obtain protests, allow any owner to sign the protest and give protesters more flexibility in meeting the protest threshold. A more complete description of the present and proposed process is contained in an attachment to this report.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the recommendation to promote a change to the special district law that makes it easier for property owners to successfully protest a special district creation
- Not approve the recommendation and support or oppose legislation drafted by others as bills are introduced and heard in the 2013 Legislature.

FINANCIAL IMPACT

There is no direct financial impact from this action. Staff and lobbyist time will be committed to promoting the proposal, but they will spend equal or more time opposing legislation that will probably be introduced in 2013.

RECOMMENDATION

Staff recommends that the City Council approve the attached proposal to change the special district law's protest process and make it easier for property owners to successfully protest a district's creation.

APPROVED BY CITY ADMINISTRATOR

Attachments

Special district protest proposal

Proposed Special District protest procedures 12-6-12

Current law:

Proposed change:

Protest must be filed within 30 days from first publication of the notice of passage of the resolution of intent to create the district

Protest must be filed within 45 days from first publication of the notice of passage of the resolution of intent to create the district

Written protest

Protest form must be prepared by the local government and accompany the notice of passage of the resolution of intent to create the special district

Protest form must describe the protest method and contain the property address or tax or geo code, a statement that the owner is protesting creation of the special district and a signature line

Identify the property

No change

Signed by all owners

Signed by any owner or owner representative with physical (original/paper) or electronic signature

Record owner of fee simple title or recorded contract buyer

No change

Does not include tenant or leasehold

No change

Condo association must sign if unit owners have undivided interest in common area(s)

Unit owner, including the owner's undivided interest in common areas, or a condo association

Delivered to the City/County Clerk

Delivered to the City/County Clerk in person, by US Mail, by tele-facsimile or by email

Date stamped

Date stamped or printed copy of email showing the delivery date

Protests are weighted in proportion to the amount of assessment levied against the lot or parcel

Strike

Protest is successful if owners represent properties being assessed for more than 50% of the cost of the proposed program or improvements

Protest is successful if:

- a) Signed by owners of properties being assessed for more than 50% of the district's cost
- b) Signed by owners of properties that equal more than 50% of the district's total area
- c) Signed by owners of properties that equal more than 50% of the lots or parcels in the district
- d) Signed by more than 50% of the property owners within the district

Further action barred for 12 months

No change

Government owned property has equal protest rights

No change

Regular City Council Meeting

Meeting Date: 12/17/2012

TITLE: City Administrator Employment Agreement Renewal 2010-2012

PRESENTED BY: Bruce McCandless, Assistant City Administrator

Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

The Mayor and City Council recently conducted the annual performance evaluation of the City Administrator. If the Council wishes to extend a two year employment agreement with City Administrator Tina Volek, it could do so at this meeting. The employment agreement would be for the term of October, 2012 through September, 2014. The 2010-2012 agreement is attached for reference.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the proposed employment agreement renewal
- Delay action on the proposed employment agreement
- Propose amendments to the employment agreement
- Disapprove the employment agreement

FINANCIAL IMPACT

It has been customary to increase the City Administrator's salary by a similar amount as other City employees. The FY 13 salary cost of living adjustment is 2.5%. The FY 14 adjustment has not been determined. There is sufficient authority in the City Administrator's budget to pay for an increase in salary and benefits.

RECOMMENDATION

Staff recommends that the City Council consider the proposed employment agreement renewal with City Administrator Tina Volek for the period October 2012 through September, 2014.

APPROVED BY CITY ADMINISTRATOR

Attachments

2010-2012 Employment Agreement

Employment Agreement

Introduction

This Agreement, made and entered into retroactive to October 1, 2010, by and between the City of Billings, Montana, a municipal corporation, (hereinafter called "Employer") and Christina F. Volek (hereinafter called "Employee"), an individual who has the education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

Section 1: Term

The term of this agreement shall be for an initial period of two years, from October 1, 2010 to September 30, 2012. This Agreement shall automatically be renewed on its anniversary date for an additional 2-year year term unless notice is given by the Employer at least twelve (12) months before the expiration date that the Agreement shall be terminated. If the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns. If Employee is terminated, as defined in Section 9 of this agreement, Employee shall be entitled to all compensation including salary, accrued vacation and sick leave, car allowance paid in lump sum plus continuation of all benefits for the remainder of the term of this agreement.

Section 2: Duties and Authority

Employer agrees to employ Christina F. Volek as City Administrator to perform the functions and duties specified in Section 4.03 of the City Charter of the City of Billings, Montana.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee in the first year of this Agreement an annual base salary of \$117,653.39, payable in biweekly installments at the same time that the other management employees of the Employer are paid. This amount reflects a 2.9% increase from Employee's previous base salary and this percentage is the same amount that most city employees are receiving for cost of living allowance (COLA) for the current fiscal year.

Section 4: Health, Disability and Life Insurance Benefits

- A. Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and her dependents equal to that which is provided to other employees of the City of Billings, Montana
- B. Employer shall pay the amount of premium due for term life insurance in the amount of the Employee's two-year annual base salary. The Employee shall name the beneficiary of the life insurance policy.
- C. Should Employee die while on travel for the Employer, the Employer shall cover the full cost of retrieving and transporting the Employee's remains back to the custody of the Employee's family.

Section 5: Vacation and Sick Leave

- A. On the effective date of this agreement, Employee shall be credited with her existing sick and vacation leave earned to date. The Employee shall then accrue sick and vacation leave on an annual basis at the highest rate provided to any other employees.
- B. Employee is entitled to accrue all unused leave, up to 500 hours, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, and other benefits to date.

Section 6: Automobile

Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$4,800 per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The amount of the vehicle allowance may be increased in the future by mutual consent of the parties. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee on the basis of gasoline receipts for any business use of the vehicle beyond the greater Billings area. For purposes of this Section, use of the car within the greater Billings area is defined as travel to locations within a 50-mile radius of Billings.

Section 7: Retirement

- A. Employer agrees to contribute the statutorily required percentage of the Employee's annual salary into the Montana Public Employees' Retirement System (MPERS) or its successor. Employee will contribute the statutorily required percentage of her annual salary to MPERS.
- B. In addition to Employer's payment to MPERS as referenced above, Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation [ICMA-RC] or

other Section 457 deferred compensation plan for Employee's continued participation in said supplementary retirement plan and, in addition to the base salary paid by the Employer to Employee, Employer agrees to contribute on behalf of Employee by paying the selected Section 457 plan administrator an amount equal to 10.8% of Employee's salary from October 1, 2010, through September 30, 2012. Said contributions shall occur at any frequency directed by Employee, but not more frequently than the bi-weekly payroll period that is presently used by Employer. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

Section 8: General Business Expenses

A. Employer agrees to budget for and to pay for:

1. Professional dues and subscriptions of the Employee for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
2. Reasonable travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue official functions for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
3. Reasonable travel and subsistence expenses of Employee for short courses, institutes, and seminars for the Employee's professional development and for the good of the Employer.

B. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations reasonably related to Employee's duties. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

Section 9: Termination

For the purpose of this agreement, termination shall occur when:

- A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.
- B. If the Employer, citizens or legislature acts to amend any provisions of the City Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

C. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the majority of the governing body, then the Employee may declare a termination as of the date of the suggestion.

Section 10: Severance Compensation

A. Severance compensation shall be paid to the Employee if employment is terminated as defined in Section 9.

B. If the Employee is terminated, the Employer shall provide a minimum severance compensation payment equal to one year salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

C. The Employee shall also be compensated for all accrued vacation leave and $\frac{1}{4}$ of accrued sick leave. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.

D. For a minimum period of one year following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance for the employee and all dependents as provided in Section 4A;
2. Life insurance as provided in Section 4B;
3. Out-placement services should the employee desire them in an amount to be negotiated at time of separation.
4. Any other benefits as negotiated at the time of separation.

E. If the Employee is terminated for cause, the Employer is not obligated to pay severance under this section.

Section 11: Resignation

If the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

Section 12: Performance Evaluation

Employer shall meet with Employee semi-annually to review the performance of the Employee using the attached Exhibits A and B as the performance evaluation criteria for the reviews or using another process for the evaluation which shall be mutually agreed upon by the Employer and Employee.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 14: Residency

Employee agrees to maintain residence within the corporate boundaries of the City of Billings.

Section 15: Indemnification

Employer shall defend, save harmless and indemnify Employee as provided in the current version of Montana Code Annotated Section 2-9-305(2009) which is set forth in its entirety below. This obligation shall survive and extend beyond the Employee's separation from Employer and Employee shall be indemnified and held harmless for any post-separation costs or expenses incurred in connection with the investigation or defense of any claim related to her employment.

1. It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.
2. In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.
3. Upon receiving service of a summons and complaint in a noncriminal action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee having no supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

4. In any noncriminal action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection 6.
5. Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of subsection (6).
6. In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:
 - (a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;
 - (b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;
 - (c) the employee compromised or settled the claim without the consent of the government entity employer; or
 - (d) the employee failed or refused to cooperate reasonably in the defense of the case.
7. If no judicial determination has been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

Section 16: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 17: Other Terms and Conditions of Employment

A. Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other exempt employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 18: Notices

Notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 19: General Provisions

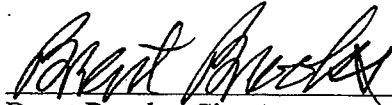
A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become retroactively effective as of October 1, 2010.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not effect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

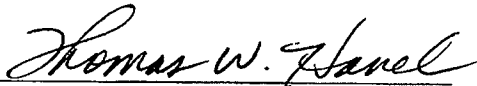
Approved as to Form:


Brent Brooks, City Attorney


Approved this 20th day of Dec., 2010

The City of Billings

By:


Thomas W. Hanel, Mayor

Attest:


Cari Martin, City Clerk


Christina F. Volek, Employee

Exhibit A

CITY OF BILLINGS

CITY ADMINISTRATOR PERFORMANCE EVALUATION

This form shall be completed by each member of the Council to evaluate the City Administrator's performance in each of the areas noted below. Performance levels can be noted based on the following scale:

- 1 – Poor (rarely meets expectations).
- 2 – Below average (usually does not meet expectations).
- 3 – Satisfactory (meets performance expectations).
- 4 – Above average (generally exceed performance expectations).
- 5 – Excellent (almost always exceeds expectations and performs at very high standard).

Each member of the Council should sign the form and forward it to the Mayor, who will be responsible for compiling the comments.

EVALUATION PERIOD: _____ TO _____

1. PERSONAL

- _____ Invests sufficient effort toward being diligent and thorough in the discharge of duties.
- _____ Composure, appearance, and attitude fitting for an individual in her executive position.

2. INTERPERSONAL SKILLS

- _____ Has a genuine interest and a desire to assist and supervise others.
 - _____ Treats people as she would like to be treated and handles their problems in a manner that shows sensitivity to their needs and circumstances.
 - _____ Is effective in dealing with people without arousing antagonism and demonstrates understanding of situations.
 - _____ Is cooperative in dealing with others and functions as part of the "team".
 - _____ Is capable of treating others in a fair, consistent and impartial manner.
 - _____ Remains calm in difficult and/or pressure situation.
 - _____ Maintains an open and approachable manner.
 - _____ Controls feelings and emotions so that they do not influence her
-

judgment and performance; maintains composure and self-control.

3. PROFESSIONAL SKILLS AND STATUS

- _____ Knowledgeable of current developments affecting the management field and affecting city governments.
- _____ Respected in management profession.
- _____ Has a capacity for and encourages innovation.
- _____ Anticipates problems and develops effective approaches for solving them.
- _____ Willing to try new ideas proposed by Councilmembers or staff.

4. LEADERSHIP

- _____ Demonstrates assertive initiative in perceiving and dealing with problems.
- _____ Is able to elicit respect from those she comes in contact with and in particular those whom she supervises.
- _____ Is effective in motivating others and firm in handling problems.
- _____ Is sensitive to opportunities to improve the quality, customer service, efficiency and effectiveness of City services.
- _____ Accepts responsibility for the behavior of those she supervises.
- _____ Is assertive and self-confident.
- _____ Maintains an effective manner and demeanor and sets an example for subordinates.
- _____ Presents a positive outlook and is willing to devote the time and effort necessary to get the job done.
- _____ Demonstrates the initiative to learn new procedures and to accept new challenges.
- _____ Elicits and encourages new ideas, processes and procedures.
- _____ Instills and maintains a spirit of teamwork.

5. RELATIONS WITH MAYOR/CITY COUNCIL

- _____ Carries out directives of the Council as a whole rather than those of any one Councilmember.
- _____ Assists the Council in resolving problems at the administrative level to avoid unnecessary board action.
- _____ Assists the Council in establishing policy, while acknowledging the ultimate authority of the Council.
- _____ Responds to requests for information or assistance by the Council.
- _____ Informs the Council of administrative developments.
- _____ Receptive to constructive criticism and advice.

6. POLICY EXECUTION

- _____ Implements Council action in accordance with the intent of the Board.
- _____ Supports the actions of the Council after a decision has been reached.
- _____ Enforces city policies.
- _____ Understands city's laws and ordinances.
- _____ Reviews enforcement procedures periodically to improve effectiveness.
- _____ Offers workable alternatives to the Council for changes in the law when an ordinance or policy proves impractical in actual administrations.

7. REPORTING

- _____ Provides the Council with reports concerning matters of importance to the City.
- _____ Reports are accurate and comprehensive.
- _____ Reports are generally produced through own initiative rather than when requested by the Council.

_____ Prepares a sound agenda which prevents trivial administrative matters from being reviewed by the Council.

8. CITIZEN RELATIONS

_____ Responsive to complaints from citizens.
_____ Dedicated to the community and its citizens.
_____ Skillful with the news media, avoiding political positions and partisanship.
_____ Has the capacity to listen to others and to recognize their interests –works well with others.
_____ Willing to meet with members of the community to discuss their real concerns.
_____ Cooperates with neighboring communities.
_____ Cooperates with the County, State and Federal governments.
_____ Cooperates with other organizations within the City, such as Chamber, School District and BSEDA.

9. STAFFING

_____ Recruits and retains competent personnel for City positions.
_____ Aware of staff weaknesses and works to improve their performance.
_____ Accurately informed and concerned about employee relations.
_____ Professionally administers the merit system.

10. PERSONNEL MANAGEMENT

_____ Encourages Department Heads to make decisions within their own jurisdictions without City Administrator approval, yet maintains general control of administrative operations.
_____ Instills confidence and initiative in subordinates and emphasizes support rather than restrictive controls for their programs.
_____ Has developed a friendly and informal relationship with the work force as a whole, yet maintains the prestige and dignity of the City Administrator's office.
_____ Evaluates personnel periodically and points out management weaknesses and strengths.

11. MANAGEMENT CONTROL

_____ Delegates authority and responsibility appropriately.
_____ Establishes or uses existing procedures to monitor or to regulate processes, tasks or activities of consultants and job responsibilities.
_____ Takes action to monitor and follow-up the results of delegated assignments or projects.
_____ Evaluates performance on an effective and timely basis.
_____ Allows for follow-up by employees on delegated projects.

12. FISCAL MANAGEMENT

_____ Prepares a balanced budget to provide services at a level directed by the Council.
_____ Makes the best possible use of available funds, conscious of the need to operate the City efficiently and effectively.
_____ Prepared budget is in an intelligent but readable format.
_____ Possesses awareness of the importance of financial planning and control.

13. GOALS AND OBJECTIVES

_____ Develops challenging goals and objectives which correspond with overall City of Billings goals and objectives.
_____ Is able to develop qualitative measurement criteria and standards in order to achieve goals and objectives.
_____ Effectively implements ongoing revisions in order to meet changing needs and directions.

14. What would you identify as the results achieved during the evaluation period as representative of strengths of the City Administrator?

15. What performance areas would you identify as needing improvement? Why? What constructive, positive ideas can you offer the City Administrator to improve these areas?

16. Other comments?

Name (Optional) _____

Date: _____

EXHIBIT B

City of Billings City Administrator 2010 – 2012 Goal & Performance Plan

PERFORMANCE AREA	PERFORMANCE GOALS & EXPECTED OUTCOMES	SEMI-ANNUAL EVALUATION RESULTS	RATING E - Exceeds Expectation M - Meets Expectation B – Below Expectation
Relations with Mayor and City Council	<ol style="list-style-type: none"> 1. Continue improvement of timeliness and processing of requests for information or assistance by the Council 2. Continue to resolve problems at the administrative level when at all possible to avoid unnecessary Council action 		
Personnel Management	<ol style="list-style-type: none"> 3. Develop and implement Performance Improvement Plans for City Departments 4. Plan a City Administrator & Department Directors Session on Business Improvement & Team Building 5. Develop an internal staff investigation policy that emphasizes objectivity and independent review 6. Encourage higher expectations for Department Directors to be fully prepared for City Council presentations 		
Management Control	<ol style="list-style-type: none"> 7. Continue more delegation of authority and responsibility to Departments Directors and less micromanagement 8. Continue to improve effective evaluation of staff performance 		

Goals & Objectives	9. Investigate possibility of an independent expert/consultant to do all collective bargaining negotiations		
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DATE Tina Volek
Billings City Administrator

DATE Tom Hanel
Mayor – City of Billings

City Council approved 11/13/10