

**REVISED**

as of 12/16/2016, Item 4 added, attachment revised  
**CITY OF BILLINGS**

**CITY OF BILLINGS VISION STATEMENT:**

**“THE MAGIC CITY: A DIVERSE, WELCOMING COMMUNITY WHERE PEOPLE  
PROSPER AND BUSINESS SUCCEEDS.”**

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**AGENDA**

**COUNCIL CHAMBERS**

**December 19, 2016**

**6:30 P.M.**

**CALL TO ORDER:** Mayor Hanel

**PLEDGE OF ALLEGIANCE:** Mayor Hanel

**INVOCATION:** Councilmember Friedel

**ROLL CALL:** Councilmembers present on roll call were:

**MINUTES:** December 12, 2016

**COURTESIES:**

**PROCLAMATIONS:**

**ADMINISTRATOR REPORTS - TINA VOLEK**

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 3 and 4 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign in at the cart located at the back of the council chambers or 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. **Bid Awards:**
    1. **Two 58,000 GVW 12 yard dump trucks with plows and sanders.** (Opened 12/13/2016) Recommend delay of award until January 9, 2017.
    2. **Four-Wheel Mechanical Broom High Dump Sweeper.** (Opened 12/13/16) Recommend delay of award until January 9, 2017.
  - B. **Utility Relocation Agreement** with Northwestern Energy; \$80,535.44.
  - C. **Amendment #2**, to Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc., from 523.79 square foot space in the basement of the Terminal and replacing it with a new 1,029.42 square foot space.
  - D. **Approval** of Tax Increment Financing Assistance from East Billings Urban Renewal District Tax Increment Funds to White Heating and Air Conditioning for new sidewalk and drive approaches, landscaping, architect, engineering and permit fees, storm water management, and improvements to utilities at 1125 4th Avenue North; \$21,660.
  - E. **Resolution** amending Res. #16-10529 to extend recommendation deadline of Babcock Theater Ad-Hoc Council Advisory Committee.
  - F. **Second/Final Reading Ordinance for Zone Change #950:** a zone change from Agriculture-Open Space (A-1), a County zoning district, to Residential 7,000 (R-70) on a total area of 15.107 acres of land, generally located at 4240 Central Avenue on Tract 3 of C/S 1648. Janet Bergman, owner; Marsich Investments, LLC, contract purchaser; Sanderson Stewart, agent. Approval of the zone change and adoption of the findings of the 10 criteria.
  - G. **Bills and Payroll:**
    1. November 28, 2016
    2. December 5, 2016

**REGULAR AGENDA:**

2. **PUBLIC HEARING AND APPROVAL** of Pretreatment Service Agreement with ExxonMobil Corporation without annexation. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
3. **APPROVAL** to purchase property located at Lot 4, Block 9, Sunnyside Subdivision 2nd Filing, and addressed as 2305 9th Avenue North, Billings, Montana. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
4. **APPROVAL** of Facility Management, Operation and Use Agreement with Mustangs Baseball, LLC, (Dehler Park). Staff recommends postponement of action until February 13, 2017 Council Meeting. (Action: approval or disapproval of staff recommendation.)

**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 in at the cart located at the back of the council chambers or 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 Denise R. Bohlman, City Clerk, at 657-8210.*

**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** Two (2) current Model 2017 12-Yard Dump Trucks

**PRESENTED BY:** David Mumford, Public Works Director

**Department:** Public Works

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**PROBLEM/ISSUE STATEMENT**

The Street/Traffic Division for the Public Works Department will open bids on December 13th, to purchase two new 58,000 GVW 12 yard dump trucks with plows and sanders. This purchase will replace two existing trucks that are included in the FY2017 Equipment Replacement Plan (ERP). State law requires the City Council to consider bids at the next regular meeting after they are opened. Since the agenda for the December 19 Council meeting will be published on December 12 and the bids will be opened on December 13, staff recommends that the Council table action on this item until the January 9, 2017 Council meeting.

**ALTERNATIVES ANALYZED**

There are no viable alternatives to the recommended action.

**FINANCIAL IMPACT**

The vehicle replacements are budgeted in the FY 2017 Streets budget.

**RECOMMENDATION**

Staff recommends that the City Council table purchasing the two replacement trucks until the January 9, 2017 meeting.

**APPROVED BY CITY ADMINISTRATOR**

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**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** 4 Wheel Mechanical Broom High Dump Sweeper

**PRESENTED BY:** David Mumford, Public Works Director

**Department:** Public Works

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**PROBLEM/ISSUE STATEMENT**

The Street/Traffic Division for the Public Works Department will open bids on December 13, to purchase a 4-Wheel Mechanical Broom High Dump Sweeper. The purchase will replace an existing sweeper that is included in the FY 2017 Equipment Replacement Plan (ERP). State law requires the City Council to consider bids at the next regular meeting after they are opened. Since the agenda for the December 19 Council meeting will be published on December 12 and the bids will be opened on December 13, staff recommends that the Council table action on this item until the January 9, 2017 Council meeting.

**ALTERNATIVES ANALYZED**

There are no viable alternatives to this action

**FINANCIAL IMPACT**

The FY 2017 Street Division budget contains the funds to replace the sweeper.

**RECOMMENDATION**

Staff recommends that the City Council table approving bids to replace the sweeper until the January 9, 2017 meeting.

**APPROVED BY CITY ADMINISTRATOR**

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**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** Utility Relocation Agreement with Northwestern Energy for W.O. 16-09 Grand Avenue

**PRESENTED BY:** David Mumford, Public Works Director

**Department:** Public Works

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**PROBLEM/ISSUE STATEMENT**

W.O. 16-09 will widen Grand Avenue from 52nd Street West to 58th Street West. With the widening, it becomes necessary to relocate the power poles on both sides of the street. The poles on the south side of the street are owned by Northwestern Energy. Typically, when the utilities are located in the right-of-way and need to be relocated, it is the responsibility of the utility company to relocate them. Along Grand Avenue, most of the power poles are in the right-of-way, however, there is a stretch of poles that are in an easement from 56th Street West to 58th Street West. Since they are in an easement purchased by Northwestern Energy, the cost to relocate the poles becomes the responsibility of the City. Attached is an agreement with Northwestern Energy to relocate the poles.

**ALTERNATIVES ANALYZED**

The Council may:

- Approve the agreement with Northwestern Energy; or
- Do not approve the agreement which would prevent the widening of Grand Avenue.

**FINANCIAL IMPACT**

Northwestern Energy's price to relocate the power poles is \$80,535.44. The funds for the utility relocation are budgeted into the cost for the Grand Avenue project.

**RECOMMENDATION**

Staff recommends that Council approve the agreement with Northwestern Energy to relocate the utilities for the construction of Grand Avenue.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

NWE Utility Relocation Agreement

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## UTILITY RELOCATION AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF BILLINGS, MONTANA (“City”)**, a municipal corporation, P.O. Box 1178, Billings, Montana 59103, and **Northwestern Energy Corporation, a Delaware Corporation, d/b/a NorthWestern Energy (“Utility”)**, insert address.

In consideration of the mutual covenants and agreements contained herein, the parties agree to the following:

1. **Purpose:** City agrees to hire Utility to perform the services of underground utility relocation described in the Scope of Work attached as Exhibit “A,” labeled “Customer Agreement,” and by this reference made a part hereto.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on the anticipated completion of the utility relocation by Utility which is anticipated to be June 1, 2012. The parties may extend the duration of this contract by written agreement prior to its termination.

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

4. **Payment:** City agrees to pay Utility \$80,535.44 (insert written amount) for the work described in the Scope of Work in Exhibit “A”. Any alteration or deviation from the described work that involves extra costs shall be executed only upon written request by the City to Utility and shall become an extra charge over and above the contract amount. The parties shall first agree upon any extra charges in writing.

If partial payment is requested by Utility, it shall be made upon invoice and said estimate being proportioned to the work completed by Utility. **Payment shall be due in full before any work shall begin.**

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

Utility 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.

Utility 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:** Utility 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 Utility or its agents or employees. Utility is self insured.

7. **Warranty:** Utility warrants that all services and work will be performed in a good workman-like manner. Utility acknowledges that it shall 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:** Utility agrees to comply with all federal, state, and local laws, ordinances, rules and regulations.

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

10. **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.

11. **Liaison:** City's designated liaison with Utility is Chris Hertz, P.E., and Utility's designated liaison is Mike Abbey, P.E..

12. **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.

13. **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 Utility, 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.

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

**15. Ownership of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by Utility 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 Utility are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold Utility harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by Utility 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. Utility shall preserve the confidentiality of all City documents and data accessed for use in Utility's work product.

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

**CITY OF BILLINGS, MONTANA**

**NORTHWESTERN ENERGY, Inc.  
UTILITY**

By \_\_\_\_\_  
**Thomas W. Hanel, Mayor**

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**BRENT BROOKS, City Attorney**

## Exhibit A

### Scope of Work (Private Easement)

Northwestern Energy will relocate its 100kv transmission line that is currently in private easement (west of 56<sup>th</sup> St W) as shown in the drawing below to accommodate the widening of Grand Avenue. The work includes replacing 8 existing structures with 7 new structures and replacing approximately 4000 ft of conductor.



# Cost Estimate (Private Easement)

0208C Relocate - Grand Ave (Private ROW)

2016 UNIT COST SPREADSHEET

12/5/2016

UNIT NUMBER	UNIT DESCRIPTION	TOTAL UNIT COST	ESTIMATE		FINAL BILL	
			# OF UNITS	TOTAL UNIT COST	# OF UNITS	TOTAL UNIT COST
<b>TRANSMISSION FRAMINGS</b>						
100KV & 115KV STRUCTURES						
T115-B-1	SAHPC-R	\$ 1,998.53	6.0	\$ 11,991.18		\$ -
T115-B-2	SAHPCG2	\$ 2,805.49	1.0	\$ 2,805.49		\$ -
<b>POLES</b>						
WESTERN RED CEDAR POLES						
2211651	65 FT. CLASS 1	\$ 3,942.23	6.0	\$ 23,653.38		\$ -
LAMINATED POLES						
H5-67	H5-67	\$ 10,471.97	1.0	\$ 10,471.97		\$ -
<b>CONDUCTOR - Input Circuit Feet Only. Do not multiply the line length by the number of conductors used on the line. Units are /1000'.</b>						
TRANSMISSION CONDUCTOR						
10004414	CONDUCTOR, 556.5 MCM ACSR, 26/7 STRAND, 765 LB/1000 FT, "DOVE"	\$ 9,335.94	1.3	\$ 12,136.72		\$ -
<b>OPGW FRAMINGS</b>						
FRAMINGS						
FOG / OPGW TANGENT	FOG / OPGW TANGENT MATERIAL	\$ 382.90	7.0	\$ 2,680.30		\$ -
FOG / OPGW WIRE						
FOG WIRE/OPGW	0.501" 24-Single Mode Fiber OPGW (PER 1000 FEET)	\$ 5,325.85		\$ -		\$ -
<b>MISCELLANEOUS UNITS</b>						
	Select Backfill (Cubic Yard)	\$ 80.97	5.0	\$ 404.85		\$ -
<b>SUB TOTAL</b>				\$ 64,143.89		\$ -
	Retirement (%)	9.00%	\$ 64,143.89	\$ 5,772.95	\$ -	\$ -
	Salvage (Enter Salvage Value)		\$ 2,240	\$ (2,240.00)	\$ -	\$ -
<b>UNITS TOTAL</b>				\$ 67,676.84		\$ -
CITY COST SHARE UNITS				\$ 67,676.84		\$ -
NWE COST SHARE UNITS				\$ -		\$ -
	CITY Percent of Engineering * Total	19.00%	\$ 67,676.84	\$ 12,858.60	\$ -	\$ -
	NWE Percent of Engineering * Total	0.00%	\$ 67,676.84	\$ -	\$ -	\$ -
<b>TOTAL PROJECT COST</b>				\$ 80,535.44		\$ -
<b>TOTAL CITY COST SHARE</b>				\$ 80,535.44		\$ -
<b>TOTAL NWE COST SHARE</b>				\$ -		\$ -
<b>NOTE:</b>						
ENTER PERCENTAGE OF ORIGINAL LINE ON PRIVATE RIGHT OF WAY				100.00%		
CITY COST SHARE PERCENTAGE				100.00%		
NWE COST SHARE PERCENTAGE				0.00%		
CITY ENGINEERING SHARE PERCENTAGE				19.00%		
NWE ENGINEERING SHARE PERCENTAGE				0.00%		

**Scope of Work (Public ROW)**

As part of this same project Northwestern Energy will also relocate its 100kv transmission line and distribution line that are currently in public ROW (between approximately 52<sup>nd</sup> St W and 56<sup>th</sup> St W) as shown in the drawings below. This work will be performed at NWE's cost.



**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** Amendment Two to Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc.

**PRESENTED BY:** Kevin Ploehn, Director of Aviation and Transit

**Department:** Airport

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**PROBLEM/ISSUE STATEMENT**

On August 10, 2015, the Council approved the Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc., doing business as (DBA) Big Sky Ground Support Industries (BSGS), for the 2,033.05 square feet in the IP-12 Building in the Airport Business Park, and additional 523.79 square feet of space in the basement of the Terminal Building. The new Lease commenced August 1, 2015 and expires July 31, 2017. The two-year term coincides closely with the term of Alpine Aviation's Lease on the IP-5 hangar. Amendment One was approved on November 16, 2015 removing the DBA identity. The space in the basement of the Terminal Building is needed for the restroom/concession remodel project presently underway on Concourse B. Staff has worked with Alpine Aviation, Inc. on identifying an alternative space in the Terminal basement that will be suitable for Alpine Aviation, Inc.'s operations. The change in space requires an amendment to the Lease. Amendment Two changes only the Terminal space by removing the current 523.79 square foot space in the basement of the Terminal and replacing it with a new 1,029.42 square foot space. A copy of the Amendment is on file in the City Clerk's Office.

**ALTERNATIVES ANALYZED**

City Council may:

- Approve, Amendment Two to the Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc. amending the leased spaced, or
- Disapprove Amendment Two to the Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc. amending the leased space.

**FINANCIAL IMPACT**

The initial year of this amended space will generate an additional \$5,106.63 for an annual total of \$18,098.16 of rental revenue for the Airport. The subsequent year's rental rate will be adjusted using the Department of Labor Consumer Price Index for Urban Consumers (CPI-U), published by the Bureau of Labor Statistics.

**RECOMMENDATION**

Staff recommends that City Council approve Amendment Two to the Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc.

**APPROVED BY CITY ADMINISTRATOR**

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**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** EBURD Tax Increment Assistance - White Heating and Air Condition Remodel/Addition

**PRESENTED BY:** Wyeth Friday

**Department:** Planning & Community Services

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**PROBLEM/ISSUE STATEMENT**

The Billings Industrial Revitalization District (BIRD) Board of Directors is presenting this recommendation to the City Council for allocating \$21,660 in tax increment finance district funds (TIFD) from the East Billings Urban Renewal District (EBURD) to White Heating and Air Conditioning for improvements the company made during a renovation/addition to its offices at 1125 4th Avenue North in 2016. If approved, the TIFD funds will reimburse the applicant for costs associated with new sidewalk and drive approaches, landscaping, architect, engineering and permit fees, storm water management, and improvements to utilities for the site. The renovation project was done in compliance with the East Billings Urban Revitalization District Code. The BIRD Board of Directors voted to support funding of this application at its meeting on October 18, 2016 under its authority per the Memorandum of Understanding between the City of Billings, Big Sky Economic Development, and the BIRD, Inc. approved by the City Council in February 2014.

**ALTERNATIVES ANALYZED**

The City Council is the final authority in dispersing TIFD funding. The City Council may:

- Approve the recommendation from the BIRD Board for the expenditure of these TIFD funds, or;
- Disapprove the recommendation from the BIRD Board for the expenditure of these TIFD funds.

**FINANCIAL IMPACT**

The request is for a total of \$21,660 to be paid in one payment to White Heating and Air Conditioning. The funds are payable upon approval of this TIFD application by the City Council and submittal of an invoice to the City Finance Department. There is about \$182,000 available in the FY16-17 EBURD project budget for payment of this TIFD assistance. The current total cash balance for the EBURD, before tax payments are received in December, is about \$840,000.

**RECOMMENDATION**

The Billings Industrial Revitalization District (BIRD) Board of Directors recommends that the City Council approve a reimbursement totaling \$21,660 from the EBURD tax increment finance district funds to White Heating and Air Conditioning.

**APPROVED BY CITY ADMINISTRATOR**

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1413 4<sup>th</sup> Avenue North, Suite C • Billings, MT 59101

**Date of Submittal:** October 19, 2016

**Forwarded to:** City of Billings Planning and Community Services  
PO Box 1178 Billings, MT 59103-1178

**Purpose:** Request for Urban Renewal Assistance Funding

**Applicant Information:** **White Heating and Air Conditioning**  
Curt White  
1125 4<sup>th</sup> Ave. North  
Billings, MT 59101

**Project Location:** 1125 4<sup>th</sup> Ave. North  
Billings, MT 59101 Tax ID A00111A

**Project description:** Applicant is renovating and upgrading the existing property and will install new sidewalks, curb and gutter; upgrade utilities and landscape the exterior.

**Eligible improvements:** Landscaping 7-15-4288 (4)  
(With MCA number) Prepare plans to Repair & Rehabilitate Buildings 7-15-4233(m)  
Pedestrian area improvement 7-15-4288 (4)  
Architect, Engineering, Surveys & Appraisals 7-15-4233 (n)  
Sidewalks, Curbs, Gutters 7-15-4288 (4)  
Pollution reduction 7-15-4288 (12)

**Project Meets Criteria for Funding** YES  
**Funding Approved by BIRD board** YES October 18, 2016 Board approval

**Applicants Financial Ability to Complete Project:**

Review Committee endorses applicants financial ability to complete project

**Review Committee rationale for recommended funding amounts: \$21,660.00**

Funding reimbursements are awarded for projects, or parts of a project, that are tangible, visible improvements to the property and that enhance the public good. Visible progress catalyzes further development in the district and the committee recommends reimbursing.

Please review this application for compliance. If you have further questions on this submission, please contact the BIRD office at (406) 272-4321



**BILLINGS INDUSTRIAL REVITALIZATION DISTRICT**

**BILLINGS INDUSTRIAL REVITALIZATION DISTRICT, INC.  
EBURD PROCEEDS APPLICATION**

Project Name: Fireplace Showroom Expansion Date Submitted: 09/29/16

**APPLICANT INFORMATION**

1. Name: White Heating & Air Conditioning
2. Address: 1125 4<sup>th</sup> Avenue North, Billings, MT 59101
3. Telephone Number: (406)248-2162 Cell# (406)325-1824

**PROJECT INFORMATION**

1. Building Address: 1125 4<sup>th</sup> Avenue North, Billings, MT 59101
2. Legal Description: S33, T01 N, R26 E, Block 24, Lot 24A, AMD LOTS  
19,20,21,22,23,24 BLK 24
3. Ownership: Curtis J White  
Address: 2648 Lake Elmo Dr, Billings, MT 59105
4. If property is not owned by the APPLICANT, list leasehold interests (Attach evidentiary materials.)  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_
5. Existing/Proposed Business: White Heating & Air Conditioning  
Business Description: HVAC & Fireplace Sales & Installation
6. Employment: Existing FTE Jobs 26  
New Permanent FTE Jobs created by project \_\_\_\_\_ Construction FTE Jobs \_\_\_\_\_

7. Architectural Firm: A-Line Drafting and Design

Address: 725 Grand Avenue, Billings, MT 59101

Architect: Jeff Wollschlager

8. Description of Project: (Attach narrative explanation & plans.)

9. Rehabilitation/construction plans: (Attach schematics, site and landscaping plans.)

10. Project Schedule: (Attach time line or schedule through completion.)

### PROJECT COSTS

#### Land and Site Improvements (Itemized)

1. <u>Landscaping</u>	\$ <u>7,648.00</u>
2. <u>French Drain &amp; Water Lines</u>	\$ <u>6,206.97</u>
3. <u>Move Water Meter</u>	\$ <u>1,746.96</u>
4. <u>Handicap Ramp &amp; Rail</u>	\$ <u>5,311.62</u>
5. <u>Curb &amp; Gutter (Approach)</u>	\$ <u>5,230.34</u>

Subtotal \$ 26,143.89

#### Construction/Rehabilitation Costs (Use general construction trade divisions)

1. <u>Building Addition</u>	\$ <u>168,252.00</u>
2. <u>Parapet Walls</u>	\$ <u>41,000.00</u>
3. _____	\$ _____
4. _____	\$ _____
5. _____	\$ _____
6. _____	\$ _____
7. _____	\$ _____

Subtotal \$ 209,252.00

Fees

1. Architectural/Engineering	\$	<u>10,200.00</u>
2. Permits #15-6999	\$	<u>1,763.19</u>
3. Contractor Fees (4.92%)	\$	<u>492.00</u>
Subtotal	\$	<u>12,455.19</u>
Total Project Development Costs	\$	<u><b>247,785.08</b></u>

**PROJECT FINANCING**

Please complete Sources of Funds detail and summarize below.

**A. Applicant Equity**

Cash Invested	\$	<u>84,677.25</u>
Land & Buildings <small>(if value is more than State of Montana valuation then a current appraisal must be submitted)</small>	\$	<u>430,000.00</u>
Other _____	\$	<u>                    </u>
_____	\$	<u>                    </u>
A. Subtotal Applicant Equity	\$	<u>514,677.25</u>

**B. Lender Commitments** (Attach Bank Loan Commitment letter, Letters of Credit or other documentation.)

Lender	Loan Amount	Interest	Term	Payment/Period
<u>Stockman Bank</u>	\$ <u>324,000</u>	<u>5.25</u> %	<u>6.5</u> yrs	\$ <u>2,723.53</u> /Month
_____	\$ _____	_____ %	_____ yrs	\$ _____ /Month
B. Total Loan Amount				\$ _____

*committee approved funding for White Heating*

C. TIFD request for funds for eligible public improvements.

MCA Statute  
Public Use Only

<u>Landscaping</u>	\$ <u>7,648.00</u>	<u>5,353.<sup>60</sup></u>	<u>7-15-4288(4)</u>
<u>French Drain &amp; Water Lines</u>	\$ <u>6,206.97</u>	<u>2,482.79</u>	<u>7-15-4288(12)</u>
<u>Handicap Ramp &amp; Rail</u>	\$ <u>5,311.62</u>	<u>3,186.97</u>	<u>7-15-4288(4)</u>
<u>Water Meter</u>	\$ <u>1,746.96</u>	<u>698.78</u>	<u>7-15-4288(4)</u>
<u>Contractor Fees (4.92%)</u>	\$ <u>492.00</u>	<u>295.<sup>20</sup></u>	<u>7-15-4233(n)</u>
<u>Curb &amp; Gutter</u>	\$ <u>5,230.34</u>	<u>3,661.<sup>24</sup></u>	<u>7-15-4288(4)</u>
<u>Architectural Engineering</u>	\$ <u>10,200.00</u>	<u>5,100<sup>-</sup></u>	<u>7-15-4233 (n)</u>
<u>Permits</u>	\$ <u>1,763.19</u>	<u>881.<sup>60</sup></u>	<u>7-15-4233 (n)</u>
	\$		
	\$	<u>21,660<sup>18</sup></u>	
	\$		

C. Subtotal TIFD Funds Requested \$ 38,599.08

D. Other Source of Funding  
 \$ \_\_\_\_\_

Sources of Funds Summary (Post totals from above.)

A. Applicant Equity	\$ <u>514,677.25</u>
B. Lender Commitments	\$ <u>168,252.00</u>
C. TIFD Funds Request	\$ <u>38,599.08</u>
D. Other Funds	\$ <u>N/A</u>
<b>Total Project Financing</b>	<b>\$ <u>721,528.33</u></b>

APPLICANT STATEMENT OF QUALIFICATIONS  
AND FINANCIAL RESPONSIBILITY

APPLICANT

1. Name: White Heating & Air Conditioning (Curt White)

Address: 1125 4<sup>th</sup> Avenue North, Billings, MT 59101

2. If the APPLICANT is not an individual doing business under his/her own name, the APPLICANT has the status indicated below and is organized or operating under the laws of \_\_\_\_\_.

- 3.
- corporation/LLC.
- nonprofit or charitable institution
- partnership known as \_\_\_\_\_
- Other (explain): \_\_\_\_\_

Date of organization: 1999

4. Names, address, title of position (if any), and nature and extent of the interest of the officers and principal members, principal shareholders, investors, or partners of the APPLICANT.

<u>Name and Address</u>	<u>Nature and Extent of Interest</u>
Curt White 1125 4 <sup>th</sup> Avenue North Billings, MT 59101	President, 100% Owner

Financial Condition

1. Provide a current financial statement (consisting of a Balance Sheet and Profit & Loss Statement) & Current Tax Return for each private entity involved in the project. This application and all financial information become part of the public record when submitted to the BIRD and is available upon request under the State of Montana Public Information Rules.

2. Has the APPLICANT or any individual or entity affiliated with the development of this project been adjudged bankrupt, either voluntary or involuntary, within the past ten (10) years?

No  Yes \_\_\_\_\_ If yes, give date, place, and under what name

---

3. Has the APPLICANT or any individual or entity affiliated with the development of this project been indicted for or convicted of any felony within the past ten years:

No  Yes \_\_\_\_\_ if yes, give date, charge, place, court and action taken for each case.

---

---

### CONSTRUCTION CONTRACTOR

1. Identify the construction contractor or builder who will undertake this project.

Name: Dave Spitzer Construction

Address: 1875 Glen Eagles Blvd, Billings, MT 59105


2. Has named contractor or builder ever failed to qualify as a responsible bidder, refused to enter into a contract after an award has been made, or failed to complete a construction or development contract within the last ten years?  
No  Yes \_\_\_\_\_ if yes, explain.

3. Attach copies of bids to application:

4. If Applicant intends to do any of the construction themselves then APPLICANT shall provide three (3) independent contractor bids which must accompany this application for the work to be provided.

CERTIFICATION

I (we), Curtis J White  
(please print), certify that the statements and estimates within this Application as well as any and all documentation submitted as attachments to this Application or under separate cover are true and correct to the best of my (our) knowledge and belief. I/We certify that I/We will make no application for any other tax abatement that may be available for this real property or building.

Signature  Signature \_\_\_\_\_

Title President Title \_\_\_\_\_

Address 1125 4<sup>th</sup> Avenue North Address \_\_\_\_\_

Billings, MT 59101 \_\_\_\_\_

Date 09/29/2016 Date \_\_\_\_\_

Dillon Sprinkler Service LLC

LANDSCAPING

# Invoice

PO Box 50444

Billings, MT 59105

Cellular 860-7473

Home Phone 373-9252

Date	Invoice #
8/10/2016	3516

Bill To
Whit Heating and Air Conditioning 1125 4th Av. North Billings, MT 59101

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
100	Installation of Sprinkler System	2,000.00	2,000.00
	Installation Of Aluminum Edging	5.00	500.00
	Concrete Removal	1,800.00	1,800.00
2	Prep and install Sod	125.00	250.00
	Installation of rock and fabric	500.00	500.00
	Installation of Plants And Rocks	400.00	400.00
2	Parking Blocks	600.00	600.00
		50.00	100.00
<b>Total</b>			<b>\$6,150.00</b>

# absolute Vinyl

51 Holiday Circle  
Billings, MT 59101

## LANDSCAPING

\* Improvement to view from street

## Invoice

Date	Invoice #
9/16/2016	6559

Bill To
White, Kurt 1124 4th Ave N Billings, MT 59101 325-1824

*Thank you!*

Description	Price Each	Amount	Terms	Rep
			Due on receipt	JB
6ft 6ft Clay Privacy Installed	753.00	753.00		
1pc 5ft gate with steel post	700.00	700.00		
1pc concrete mount	45.00	45.00		
<b>Total</b>		<b>\$1,498.00</b>		
<b>Payments/Credits</b>		<b>\$-749.00</b>		
<b>Balance Due</b>		<b>\$749.00</b>		

Thank you for your business.

Phone #	Fax #	E-mail
406-655-4468	406-655-4678	absolutevinylmt@gmail.com



FRENCH DRAIN & WATER LINES

Invoice

Quality Foundations of Montana, Inc.

PO Box 21560

Billings, MT 59104

Fax #: E-mail:

406-534-8162

office@qfmconcrete.com

Date	Invoice #
2/1/2016	4763

Bill To
Dave Spitzer 1875 Gleneagles Billings MT 59105

LINE 4

		Job Address	Due Date
		1125 4th Ave N	10th of Month
Quantity	Description	Price Each	Amount
1	tear out and haul away asphalt	500.00	500.00
1	excavate through utilities	500.00	500.00
1	Excavate and demo water meter vault and move water meter	1,500.00	1,500.00
1	tear out existing man hole area and retention pit and move back and re-install existing man hole	1,500.00	1,500.00
1	four months fence rental from Jares starting 1/21/16	300.00	300.00
1	pick up and install fence from Jares	200.00	200.00
1	haul off excess fill material	925.33	925.33
1	two new water lines for temporary water	479.14	479.14
25% interest late penalty, with a minimum charge of \$20.00 per month.			
		<b>Total</b>	<b>\$5,904.47</b>
		<b>Payments/Credits</b>	<b>\$0.00</b>
		<b>Balance Due</b>	<b>\$5,904.47</b>

406-860-5979
Phone #:



FRENCH DRAIN & WATER LINES

# Invoice

Quality Foundations of Montana, Inc.

PO Box 21560

Billings, MT 59104

Fax #: E-mail:

406-534-8162

office@qfmconcrete.com

Date	Invoice #
7/23/2016	5227

Bill To
Dave Spitzer 1875 Glencagles Billings MT 59105

*white*

Quantity	Description	Job Address	Due Date
		1125 4th Ave N	Due on receipt
		Price Each	Amount
1	purchase and install 5 - 2" precast spacer rings for man hole	302.50	302.50
<i>LINE 4</i>			
	25% interest late penalty, with a minimum charge of \$20.00 per month.		
		<b>Total</b>	<b>\$302.50</b>
		<b>Payments/Credits</b>	<b>\$0.00</b>
		<b>Balance Due</b>	<b>\$302.50</b>

406-860-5979
Phone #:

HANDICAP RAMP & RAIL



Quality Foundations of Montana, Inc.

PO Box 21560

Billings, MT 59104

Fax #: E-mail:

406-534-8162

office@qfmconcrete.com

**Invoice**

Date	Invoice #
7/23/2016	5224

Bill To
Dave Spitzer 1875 Glencagles Billings MT 59105

		Job Address	Due Date
		1125 4th Ave N	Due on receipt
Quantity	Description	Price Each	Amount
1	30.54 tons 3/4 RDX for exterior concrete 7/11/16	362.82	362.82
85	front walk from stairs to city walk	1.50	127.50
4	4 - 5' risers at side door	250.00	1,000.00
341	thickened edge sidewalk from side door to back door	2.85	971.85
30	rub face at thickened edge	5.00	150.00
10	10 yds 4000 psi concrete for exterior concrete	109.00	1,090.00
1	wheel barrow concrete to save money on pump	305.00	305.00
1	cure	99.00	99.00
25% interest late penalty, with a minimum charge of \$20.00 per month.			
		<b>Total</b>	<b>\$4,106.17</b>
		<b>Payments/Credits</b>	<b>\$0.00</b>
		<b>Balance Due</b>	<b>\$4,106.17</b>

406-860-5979
Phone #:



3201 Grand Avenue **HANDICAP RAMP & RAIL**  
Billings, MT 59102  
Phone: 406-656-3588

ORDER NO.  
**292514**

WHEN WANTED

**SOLD TO**  
NAME: **DAVE SPITZER**  
ADDRESS:  
CITY: STATE:

**SHIP TO**  
NAME: **White Heating**  
ADDRESS:  
CITY: STATE:

CUST ORDER NO. SALESMAN **Q**  CASH  CREDIT  C.C.D.  CREDIT LOADED BY TERMS DATE **8/2/16**

ORDERED	SHIPPED	DESCRIPTION	PRICE	AMOUNT
1	5	39.5 post Flat Black Fasten	42.00	210.00
2	1	45.5 post	47.00	47.00
3	3	8' Rail	115.00	345.00
4	1	6' STAIN Rail	135.00	135.00
5	6	caps	2.00	12.00
6	3	CBOY	32.00	96.00
7	1	ADT CBOY	37.00	37.00
8				
9				
10				
11				
12				
13				
14				

PO# 53207

DELIVERED BY RECEIVED BY TOTAL \$ **882.00**

IF PAYMENT IS NOT MADE BY THE 10TH OF THE MONTH FOLLOWING MONTH OF PURCHASE, A CHARGE WILL BE ADDED PER MONTH, OR 18% ANNUAL FINANCE. THE TIME OF PICKUP OR WITHIN 48 HOURS OF DELIVERY. THIS BLIP MUST ACCOMPANY ALL RETURNS AND RETURNED GOODS SUBJECT TO RESTOCK CHARGE.

Line 29

**HANDICAP RAMP & RAIL**

**GRAND LUMBER**

3201 Grand Avenue  
Billings, MT 59102  
Phone: 406-656-3588

ORDER NO.  
**295230**

SOLD TO

NAME Dave Spitzer  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_

SHIP TO

WHEN WANTED \_\_\_\_\_  
NAME White Heating  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_

CUST ORDER NO. \_\_\_\_\_ SALESMAN [Signature]  CASH  COD  CHARGE  CREDIT LOADED BY \_\_\_\_\_ TERMS \_\_\_\_\_ DATE 9/8/10

ORDERED	SHIPPED	DESCRIPTION	PRICE	AMOUNT
1		Privacy Accent	1 29 <sup>00</sup>	29 00
2				
3	1	8' Black Sand	1 38 <sup>00</sup>	38 00
4		shaver Duty Brackets	3 40 <sup>15</sup>	120 45
5	2	Handrail Returns	2 68 <sup>00</sup>	136 00
6				
7				
8		Additional Handicap Rail, Per City		
9				
10				
11				
12				
13				
14				

DELIVERED BY \_\_\_\_\_ RECEIVED BY \_\_\_\_\_ **TOTAL \$ 373 45**

IF PAYMENT IS NOT MADE BY THE 10TH OF THE MONTH FOLLOWING MONTH OF PURCHASE, A CHARGE WILL BE ADDED. CLAIMS FOR SHORT DELIVERY, THIS SLIP MUST ACCOMPANY ALL MONTHS WILL NOT BE ALLOWED UNLESS MADE AT CLAIMS AND RETURNED GOODS SUBJECT TO 1-1/2% PER MONTH, OR 18% ANNUAL FINANCE THE TIME OF PICKUP OR WITHIN 48 HOURS OF RESTOCK CHARGE.

White

WATER METER

**Subject:** Invoice Kurt White  
**From:** Joan Stockfish <sharkbate65@aol.com>  
**Date:** 3/1/2016 11:06 PM  
**To:** dterspitzer@bresnan.net  
**CC:** friscofan65@aol.com

S & J PLUMBING  
MARCH /1/2016  
449 Orchard Ln  
Billings, MT 59101

Move water meter from meter box to inside building for Kurt White.

Scott -  
839-3984

Line # 9 - \$1000  
Line # 18 - 746.96

Total Due: \$ 1,746.96

**CONTRACTOR FEES**

White Heating & Air  
 Loan #: 4340241016  
 FMT B-35117

	PROJECT BUDGET	Draw #1	Balance to Disburse	Draw#2	Balance to Disburse	Draw#3	Balance to Disburse	Draw#4	Balance to Disburse
2	Plans/Specs		\$4,500.00		\$4,500.00		\$4,500.00		\$4,500.00
3	Permits		\$4,000.00		\$4,000.00		\$4,000.00		\$4,000.00
4	Backfill		\$42,336.00	\$31,710.63	\$10,625.37		\$10,625.37		\$10,625.37
9	Water Connection(Move Meter)		\$1,000.00	\$1,000.00	\$0.00		\$0.00		\$0.00
10	Lumber (Frame/Truss)		\$5,250.00	\$5,250.00	\$0.00		\$0.00		\$0.00
11	Labor (Rough Carpenter)		\$8,000.00	\$8,000.00	\$0.00		\$0.00		\$0.00
12	Roofing(Materials/Labor)		\$2,610.00	\$340.00	\$2,270.00	\$2,610.00	(\$340.00)		(\$340.00)
13	Siding (Materials/Labor)		\$16,710.00	\$16,710.00	\$16,710.00	\$25,000.00	\$25,000.00		(\$8,290.00)
14	Windows		\$600.00		\$600.00		\$600.00	\$672.31	(\$72.31)
17	Gutters/Downspouts		\$1,500.00		\$1,500.00		\$1,500.00		\$1,500.00
18	Plumbing (Rough-in)		\$4,000.00	\$746.96	\$3,253.04		\$3,253.04		\$3,253.04
19	Electrical (Rough-in)		\$5,000.00		\$5,000.00		\$5,000.00		\$5,000.00
20	Insulation		\$5,800.00		\$5,800.00		\$5,800.00		\$5,800.00
22	Drywall		\$5,500.00		\$5,500.00	\$4,229.90	\$1,570.10	\$387.37	\$1,182.73
23	Garage/ Exterior Doors		\$4,736.00		\$4,736.00	\$2,016.00	\$3,484.00	\$3,484.00	\$0.00
24	Ceilings		\$1,500.00		\$1,500.00		\$4,736.00	\$4,736.00	\$0.00
26	Painting (Interior)		\$4,000.00		\$4,000.00		\$1,500.00		\$1,500.00
27	Interior Doors/Trim		\$1,600.00		\$1,600.00		\$4,000.00	\$4,000.00	\$0.00
28	Cabinets/Mantles		\$8,000.00		\$8,000.00		\$1,600.00	\$3,666.79	(\$2,066.79)
29	Rail		\$2,500.00		\$2,500.00		\$8,000.00	\$8,668.46	(\$668.46)
33	Finished Floors/Carpet		\$15,360.00		\$15,360.00		\$2,500.00		\$2,500.00
35	Front Door		\$2,500.00		\$2,500.00		\$15,360.00		\$15,360.00
36	Flat Concrete		\$4,500.00		\$4,500.00		\$2,500.00	\$2,500.00	\$0.00
39	Asphalt		\$1,500.00		\$1,500.00		\$4,500.00	\$1,050.00	\$3,450.00
40	Fence		\$650.00		\$650.00		\$1,500.00		\$1,500.00
41	Contingency		\$2,000.00		\$2,000.00		\$650.00		\$650.00
43	Misc. Materials		\$600.00		\$600.00		\$2,000.00		\$2,000.00
44	Misc. Labor/ Clean Up		\$2,000.00		\$2,000.00	\$859.42	\$600.00		\$600.00
45	Contractor's Fee		\$10,000.00		\$10,000.00	\$5,000.00	\$685.94	\$75.00	\$610.94
46	Loan Fees						\$5,000.00	\$5,000.00	\$0.00
	<b>Total</b>		<b>\$168,252.00</b>	<b>\$33,457.59</b>	<b>\$134,794.41</b>	<b>\$19,449.42</b>	<b>\$115,344.99</b>	<b>\$67,223.93</b>	<b>\$38,810.52</b>
	Borrower Cash		\$75,000.00		\$75,000.00		\$75,000.00		\$75,000.00
	<b>Loan #: 4340241016</b>		<b>\$93,252.00</b>						<b>\$75,000.00</b>



CURB & GUTTER

# Invoice

Quality Foundations of Montana, Inc.

PO Box 21560

Billings, MT 59104

Fax #: E-mail:

406-534-8162

office@qfmconcrete.com

Date	Invoice #
7/29/2016	5257

Bill To
Dave Spitzer 1875 Gleneagles Billings MT 59105

*whites*

Quantity	Description	Job Address	Due Date
		Price Each	Amount
		1125 4th Ave N	Due on receipt
1	remove existing city approach and curb	1,500.00	1,500.00
1	tear out and haul off extra slab	250.00	250.00
1	replace city sidewalk	900.00	900.00
1	replace curb and gutter	900.00	900.00
1	cure	99.00	99.00
1	green pins for city work	28.00	28.00
1	8 yds 4000 psi concrete for city sidewalk and gutter	880.00	880.00
1	15 tons 3/4 RDX for city sidewalk and gutter	173.40	173.40
25% interest late penalty, with a minimum charge of \$20.00 per month.			
<b>Total</b>			<b>\$4,730.40</b>
<b>Payments/Credits</b>			<b>\$0.00</b>
<b>Balance Due</b>			<b>\$4,730.40</b>

*LINE 1*

406-860-5979
Phone #:

**CURB & GUTTER**



Quality Foundations of Montana, Inc  
 PO Box 21560  
 Billings, MT 59104

Fax # 406-534-8162 E-mail office@qfmi-concrete.com

Bill To
Dave Spitzer 1875 Glencroft Billings MT 59105

**Invoice**

Date	Invoice #
8/27/2016	5288

Quantity	Description	Job Address	Due Date
		1125 4th Ave N	Due on receipt
		Price Each	Amount
	remove, return temporary fence and remaining rental fee	252.50	252.50
	pick up, rent and return signs and safety cones for city sidewalk work	247.44	247.44
25% interest late penalty, with a minimum charge of \$20.00 per month			
<b>Total</b>			<b>\$499.94</b>
Payments/Credits			<b>\$0.00</b>
<b>Balance Due</b>			<b>\$499.94</b>

406-860-5979
Phone #

# A-LINE

DRAFTING AND DESIGN

Invoice  
4215-1

Jeff Wollschlager 725 Grand Ave  
Billings, MT 59101 (406) 321-2280

**CUSTOMER:**

White Heating and Air Conditioning  
Curt White

**PROJECT:**

Fireplace showroom and office addition.

Date	Job description	Hours	Total
11-1-15	-Construction Documents for commercial addition. -Client coordination -Engineering coordination -City review comment corrections and coordination	53x\$75	\$3975
11-1-15	City review fee		\$430
11-1-15	Architect review and stamp		\$1000

**Total due to date: \$5405**

Please feel free to call or email with any questions or concerns.

Thanks,



Jeff Wollschlager  
A-Line Drafting and Design

PAID  
11-2-15  
CK 22068

3-9-16



**Invoice**  
00816-1

Jeff Wollschlager    725 Grand Ave  
Billings, MT 59101    (406) 321-2280

**CUSTOMER:**

White Heating and Air Conditioning  
Curt White

**PROJECT:**

Parapet Design

Date	Job description	Hours	Total
3-9-16	Parapet wall design and coordination w/ engineering.	7x\$75	\$525

**Total due to date: \$525**

Please feel free to call or email with any questions or concerns.

Thanks,

A handwritten signature in black ink, appearing to read 'Jeff Wollschlager', is written over a light blue horizontal line.

Jeff Wollschlager  
A-Line Drafting and Design

PAID  
3-11-16  
ck 22770

**ARCHITECTURAL / ENGINEERING**

**Krivonen Associates, Inc.**

1004 Division St, 3rd Floor  
Billings, MT 59101

(406) 259-1184



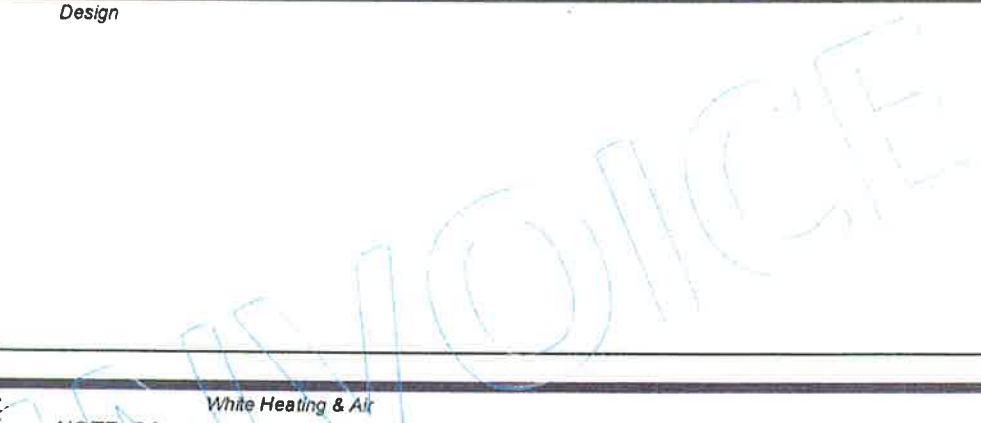
**INVOICE for  
Engineering  
Services**

Project number: 15418  
Project name: White Heating & Air  
Client: A-Line  
725 Grand Ave  
Billings, MT 59101  
Attn: Jeff

Invoice number: 16-092  
Date: 2/19/2016

**BILLING STATEMENT FOR SERVICES COMPLETED**

EMPLOYEE	SERVICE	TOTAL
Sam	Design	\$500.00



This Billing: \$500.00

**ACCOUNT HISTORY:** White Heating & Air  
(This project only)

NOTE: CA amounts are not included in design costs & are billed as a separate project

Invoice	Date	Amount	Payment	Received	Check #	Remainder

**PREVIOUS BALANCE REMAINING:** \$500.00  
**TOTAL AMOUNT DUE AT THIS TIME:** (CA amount billed separate from design cost) \$500.00

All accounts not paid in 90 DAYS will be subject to a 1% per month FINANCE CHARGE and all work will be stopped until paid.

**KEEP UPPER PORTION FOR YOUR RECORDS.**

To ensure proper credit, please CUT AT DOTTED LINE AND RETURN LOWER PORTION WITH YOUR PAYMENT



DATE: 2/19/2016  
PROJECT NUMBER: 15418  
PROJECT NAME: White Heating & Air  
CLIENT: A-Line

INVOICE No: 16-092  
TOTAL DUE: \$500.00

TO ENSURE PROPER CREDIT, INDICATE AMOUNT PAID FOR THIS INVOICE: \_\_\_\_\_

Please select card type:

MasterCard   
  VISA   
  DISCOVER NOVUS   
  AMERICAN EXPRESS   
  American Express

Card number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_ Signature Code: \_\_\_\_\_ Amount: \$ \_\_\_\_\_

Address (associated with the card) including Zip code: \_\_\_\_\_

Signature: \_\_\_\_\_

**PAID**  
3-11-16  
ck 22771

You can also call in your information  
or stop by and we can swipe your card.  
Thanks!!

Make check or money order payable to:

Krivonen Associates, Inc.    1004 Division St, 3rd Floor    Billings, MT 59101    (406) 259-1184

**Krivonen Associates, Inc.**

1004 Division St, 3rd Floor  
Billings, MT 59101

**ARCHITECTURAL / ENGINEERING**

(406) 259-1184



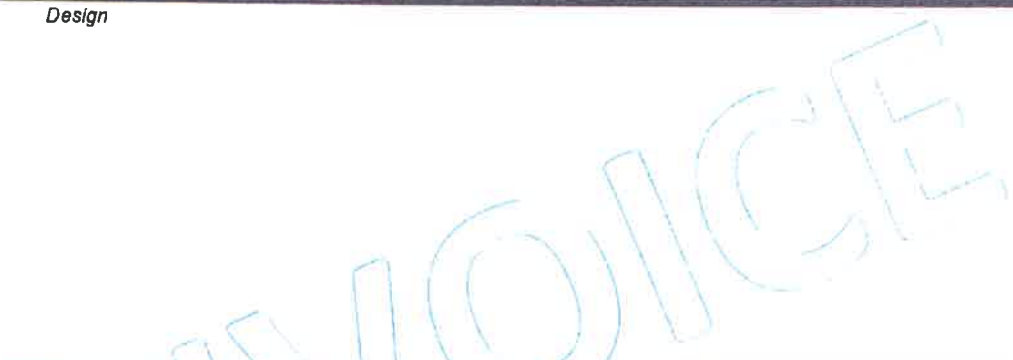
**INVOICE for  
Engineering  
Services**

Project number: 15418  
Project name: White Heating & AC Addition  
Client: A-line  
725 Grand Ave  
Billings, MT 59101  
Attn: Jeff

Invoice number: 15-505  
Date: 9/29/2015

**BILLING STATEMENT FOR SERVICES COMPLETED**

EMPLOYEE	SERVICE	TOTAL
Sam	Design	\$600.00



This Billing: \$600.00

ACCOUNT HISTORY: White Heating & AC Addition  
(This project only)

NOTE: CA amounts are not included in design costs & are billed as a separate project

Invoice	Date	Amount	Payment	Received	Check #	Remainder

PREVIOUS BALANCE REMAINING: \$0.00  
**TOTAL AMOUNT DUE AT THIS TIME:** (CA amount billed separate from design cost) **\$600.00**

All accounts not paid in 90 DAYS will be subject to a 1% per month FINANCE CHARGE and all work will be stopped until paid.

**KEEP UPPER PORTION FOR YOUR RECORDS.**

To ensure proper credit, please CUT AT DOTTED LINE AND RETURN LOWER PORTION WITH YOUR PAYMENT

DATE: 9/29/2015  
PROJECT NUMBER: 15418  
PROJECT NAME: White Heating & AC Addition  
CLIENT: A-line

INVOICE No: 15-505  
TOTAL DUE: \$600.00

TO ENSURE PROPER CREDIT, INDICATE AMOUNT PAID FOR THIS INVOICE: \_\_\_\_\_

Please select card type:

MasterCard  VISA  Discover  AMERICAN EXPRESS American Express

Card number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_ Signature Code: \_\_\_\_\_ Amount: \$ \_\_\_\_\_

Address (associated with the card) including Zip code: \_\_\_\_\_

Signature: \_\_\_\_\_

You can also call in your information or stop by and we can swipe your card.  
Thanks!!

Make check or money order payable to:

Krivonen Associates, Inc. 1004 Division St, 3rd Floor Billings, MT 59101 (406) 259-1184

**PAID**  
11-2-15  
ck 22067

ARCHITECTURAL / ENGINEERING

*Invoice*

**GEOSCIENCE, PLLP.**

2728 Gregory Drive North  
Billings, MT 59102

Office: 406-656-5028  
Fax: 406-656-5029

Date	Invoice #
11/24/2016	1034

Bill To
A-Line Drafting & Design 801 15th Street W. Billings, MT

Project Description
Whites Heating & Air Cond. 1125 4th Avenue North Billings, MT

Quantity	Description	Rate	Amount
	Geotechnical Investigation - as email	3,000.00	3,000.00
	Last Call Locating - No markup	170.00	170.00
		<b>Total</b>	<b>\$3,170.00</b>
All Accounts Due and Payable Upon Receipt Service Charge of 1.5% Per Month Past Due			

**PAID**  
12-3-16  
ck 22220

**PERMITS**

CITY OF BILLINGS  
BUILDING DIVISION  
2825 3RD AVENUE NORTH, 4TH FLOOR  
BILLINGS, MT 59101  
Office: (406) - 657-8270  
Fax: (406) - 657-8252

PERMIT # BP-15-06999

Type: COM ADDITION

Date Issued: 12/02/2015  
Job Address: 1125 4 AVE N  
Legal Description: BILLINGS ORIGINAL TOWNSITE, S3 3, T01 N, R26 E, BLOCK 24, Lot 24A, AMD LOTS 19,20,21,22,23, 24 BLK 24

Owner: WHITE, CURTIS J  
Contractor:  
Description of Work: ADDITION TO EXISTING OFFICE/SHOWROOM

Information:

Const. Type: V-B  
Occupancy: B  
Sq. Ft. Main: 3522  
Occ. Load Main Use: 41

Stories: 1  
Sprinklers: None

Special Conditions: Addition is less than 50% increase of GFA - requirements for site improvements to meet EBURD code not required as per Sec. 27-1804(c) of BMCC.

Fees:

BUILDING PERMIT FEE-COM:	\$723.75
ENG - PLAN REVIEW FEE - COMM/MULTI (< 1 ACRE):	\$200.00
PLAN CHECK-COM:	\$470.44
ZONING COMPLIANCE FEE COM:	\$19.00
Total Fees:	\$1,413.19

Valuation Used (may be higher or lower than actual): 120000

COMPLIANCE WITH THE REQUIREMENTS OF THE STATE BUILDING CODE FOR PHYSICAL ACCESSIBILITY TO PERSONS WITH DISABILITIES DOES NOT NECESSARILY GUARANTEE COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, THE REHABILITATION ACT OF 1973, THE FAIR HOUSING AMENDMENTS ACT OF 1988, TITLE 49, CHAPTER 2, COMMONLY KNOWN AS THE MONTANA HUMAN RIGHTS ACT, OR OTHER SIMILAR FEDERAL, STATE, OR LOCAL LAWS THAT MANDATE ACCESSIBILITY TO COMMERCIAL CONSTRUCTION OR MULTIFAMILY HOUSING

SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING, HEATING, VENTILATION OR AIR CONDITIONING, AND ENGINEERING  
THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 180 DAYS, OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 180 DAYS AT ANY TIME AFTER WORK IS COMMENCED. ALL EXTERIOR WORK MUST BE COMPLETED WITHIN 18 MONTHS.

THE APPLICANT HEREBY AGREES THAT THE PROPOSED WORK SHALL BE DONE IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS AND STATEMENT HEREWITH SUBMITTED AND IN CONFORMITY WITH THE PROVISIONS OF THE CITY ORDINANCE PERTAINING TO THE ERECTION OF BUILDINGS IN THE CITY OF BILLINGS. CURB, GUTTER AND SIDEWALK WILL BE INSTALLED.

**PERMITS**

**CITY OF BILLINGS**  
2224 MONTANA AVENUE  
BILLINGS, MT 59101  
Office: (406) - 657-8307  
Fax: (406) - 237-6291

**ENG - CONCRETE - CURB & GUTTER -  
STANDARD  
PERMIT # BP-15-06999-01**

**Service Number: 3003900  
Route Number: 039533  
Location ID: 000009148  
Tax ID: A00111A**

**Date Issued: 12/02/2015  
Job Address: 1125 4 AVE N  
Subdivision Name: BLG BILLINGS ORIGINAL TOWNSITE  
Subdivision/Block/Lot: BLG/024/024A**

**Owner: WHITE, CURTIS J  
Contractor: WHITE HEATING & AIR CONDITIONI**

**Water Meter Size: 5/8" METER  
Water Service Line Size: WA SVC LINE 3/4"**

**Water Service Line Type: WA LINE COPPER  
Water House Line Size: HOUSE LINE 3/4"**

**Project Name: White Heating & Cooling**

**Description of Work: Remove Existing approach & install Standard curb & gutter & curb walk sidewalk**

**ENGINEERING NATURE OF WORK: VALID FOR 365 DAYS - CALL 24 HOURS IN ADVANCE FOR INSPECTION**

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Sidewalk - Curb Walk	30
Sidewalk Width	5
Curb & Gutter - Standard	30

**UTILITIES NATURE OF WORK: VALID FOR 90 DAYS - CALL 2 HOURS IN ADVANCE FOR INSPECTION**

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<b>FEES:</b>	
ENG - CURB & GUTTER - STANDARD:	\$175.00
ENG - SIDEWALK - CURB WALK:	\$175.00
<b>Total Fees:</b>	<b>\$350.00</b>

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**Special Conditions:**  
A traffic plan is required

Dated \_\_\_\_\_ Name of Company \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_

*committee approved funding for White Heating*

C. TIFD request for funds for eligible public improvements.

MCA Statute  
(office use only)

Landscaping	\$ 7,648.00	5,353. <sup>60</sup>	7-15-4288(4)
French Drain & Water Lines	\$ 6,206.97	2,482.79	7-15-4288(12)
Handicap Ramp & Rail	\$ 5,311.62	3,186.97	7-15-4288(4)
Water Meter	\$ 1,746.96	698.78	7-15-4288(4)
Contractor Fees (4.92%)	\$ 492.00	295. <sup>20</sup>	7-15-4233(n)
Curb & Gutter	\$ 5,230.34	3,661. <sup>24</sup>	7-15-4288(4)
Architectural Engineering	\$ 10,200.00	5,100-	7-15-4233 (n)
Permits	\$ 1,763.19	881. <sup>60</sup>	7-15-4233 (n)
	\$		
	\$	21,660 <sup>18</sup>	
	\$		

C. Subtotal TIFD Funds Requested \$ 38,599.08

D. Other Source of Funding \_\_\_\_\_  
\$ \_\_\_\_\_

Sources of Funds Summary (Post totals from above.)

A. Applicant Equity	\$ <u>514,677.25</u>
B. Lender Commitments	\$ <u>168,252.00</u>
C. TIFD Funds Request	\$ <u>38,599.08</u>
D. Other Funds	\$ <u>N/A</u>
<b>Total Project Financing</b>	<b>\$ <u>721,528.33</u></b>

SY  
DIR OF  
DIR OF

HITE, CURTIS J & GRETA D B -  
CONDITIONING

TH AVE N  
E SECTION: 33

SIGNAL TOWNSITE BLOCK: 24 LOT:

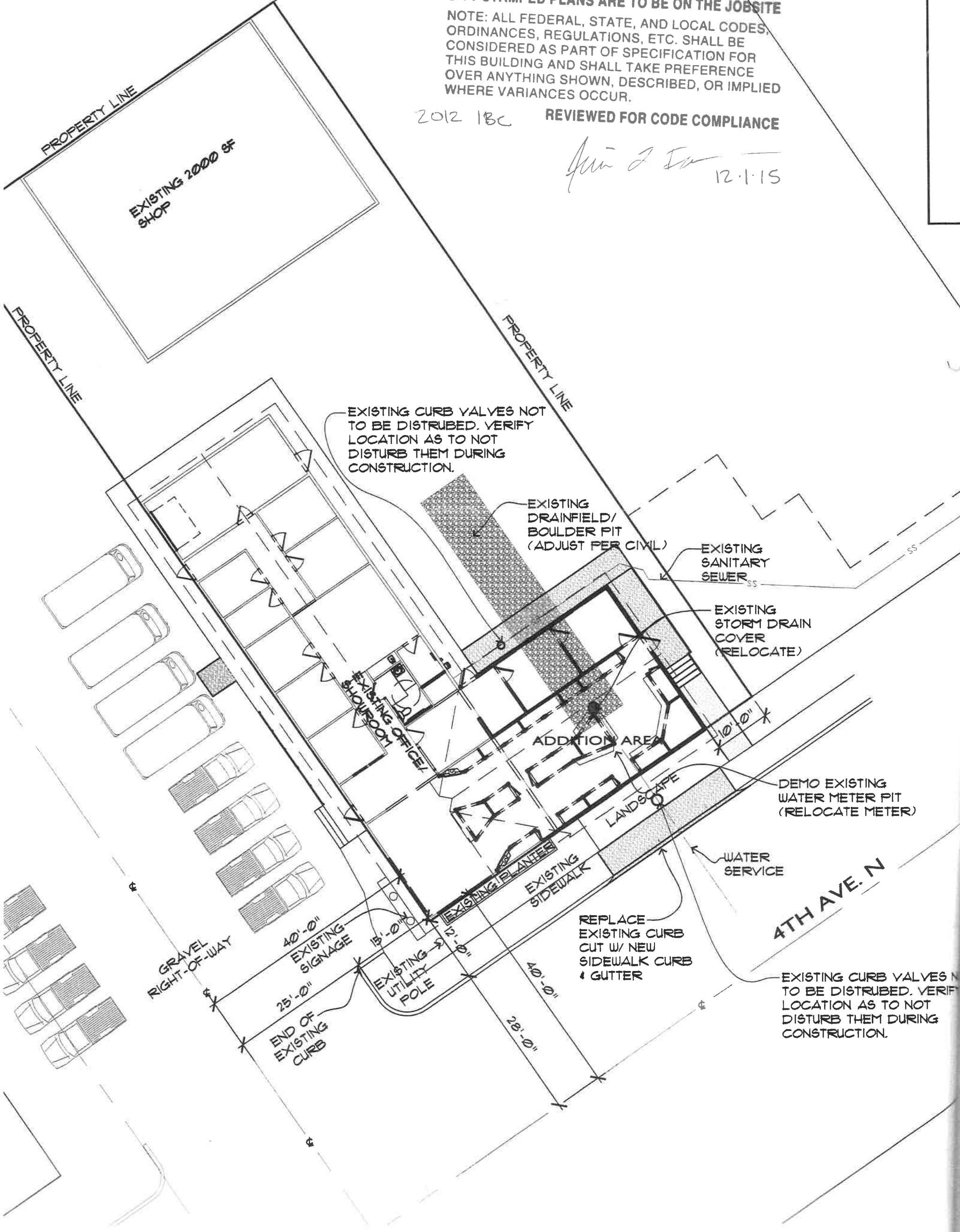
NAL TOWNSITE, S33, T01 N, R26 E,  
OTS 19,20,21,22,23,24 BLK 24

### PROPERTY OF BUILDING DIVISION

**CITY STAMPED PLANS ARE TO BE ON THE JOBSITE**  
NOTE: ALL FEDERAL, STATE, AND LOCAL CODES,  
ORDINANCES, REGULATIONS, ETC. SHALL BE  
CONSIDERED AS PART OF SPECIFICATION FOR  
THIS BUILDING AND SHALL TAKE PREFERENCE  
OVER ANYTHING SHOWN, DESCRIBED, OR IMPLIED  
WHERE VARIANCES OCCUR.

2012 IBC REVIEWED FOR CODE COMPLIANCE

*Jim J. [Signature]* 12.1.15



**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** Resolution Amending Res. #16-10529 to Extend Recommendation  
Deadline of Babcock Theater Ad-Hoc Council Advisory Committee

**PRESENTED BY:** Tina Volek, City Administrator

**Department:** City Hall Administration

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**PROBLEM/ISSUE STATEMENT**

The City of Billings is scheduled to accept or assign ownership of the Babcock Theater by March 15, 2017, as part of a 2008 development agreement with Babcock, LLC, and the Downtown Billings Partnership to purchase and restore the Babcock retail building, which contains the theater. The City Council approved Res. 16-10529 on March 14, 2016, creating an Ad-Hoc Advisory Committee on the Babcock Theater. The resolution called for a committee report to the City Council by Dec. 31, 2016, on who should own and operate the theater,

The 11-member committee, which includes four Council members, has been meeting and continues to investigate private and public options for developing the Babcock Theater. The committee requests that the City Council allow that process to continue and extend the deadline to February 27, 2017.

**ALTERNATIVES ANALYZED**

City Council may:

- Approve the resolution, allowing the committee to investigate as many options as possible, or;
- Disapprove the resolution, which potentially would result in the transfer of the Babcock to the City without a viable plan for its operation and management.

**FINANCIAL IMPACT**

There are no costs to operating the committee at this time. The costs of future theater operation will depend on the outcomes of the committee's investigations.

**RECOMMENDATION**

Staff recommends approving the resolution, and extending the reporting deadline to Feb. 27, 2017.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

**Resolution No. 16-\_\_\_\_\_**

**A RESOLUTION OF THE BILLINGS CITY COUNCIL EXTENDING THE REPORTING DEADLINE FOR THE AD HOC CITY COUNCIL ADVISORY COMMITTEE ON THE FUTURE USES AND MANAGEMENT OF THE BABCOCK THEATER**

**WHEREAS**, on March 14, 2016, the City Council created an Ad-Hoc Council Advisory Committee on Future Uses and Management of the Babcock Theater, which will be returned to the City on March 15, 2017, by an agreement with Babcock, LLC; and

**WHEREAS**, the City Council requested that the Committee report no later than Dec. 31, 2016, on who should own and manage the theater; and

**WHEREAS**, the Committee is continuing to investigate partnerships both locally and nationally for the theater's operation, but is not prepared to conclude those discussion by Dec. 31, 2016; and

**WHEREAS**, the Committee believes that it may have more direction on both the short- and long-range operating prospects for the theater by Feb. 27, 2017.

**NOW, THEREFORE, THE CITY COUNCIL RESOLVES** to extend the deadline for the Committee's report to no later than Feb. 27, 2017.

**APPROVED**, this 19<sup>th</sup> day of December, 2016.

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Denise Bohlman, City Clerk

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Thomas W. Hanel, Mayor

**Regular City Council Meeting**

**Meeting Date:** 12/19/2016  
**TITLE:** Zone Change 950 - 2nd reading  
**PRESENTED BY:** Nicole Cromwell  
**Department:** Planning & Community Services

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**PROBLEM/ISSUE STATEMENT**

This is a zone change request for property generally located at 4240 Central Avenue from Agriculture-Open Space (A-1), a County zoning district, to Residential 7,000 (R-70) on Tract 3 of C/S 1648, a total area of 15.107 acres of land. A concurrent annexation petition was approved by the City Council at its November 28 meeting prior to its first reading action on this zone change application. A pre-application neighborhood meeting was held on September 26, 2016, at the offices of Sanderson Stewart, 1300 N. Transtech Way. The City Zoning Commission held a public hearing on November 1, 2016, and is forwarding a recommendation of approval and adoption of the findings of the 10 criteria on a 5-0 vote. The City Council approved the zone change on first reading on November 28, 2016.

Zone Change applications are reviewed using statutory criteria referenced in the Alternatives Analyzed section of this memo. Zone Changes require approval through an ordinance. Zone Changes allow the change from one type of zoning district to another type of zoning – e.g. residential single family to residential multi-family or residential to commercial. A Zone Change cannot have conditions of approval and if approved, permits the owner to use the land for any purpose allowed within the zoning district.

**ALTERNATIVES ANALYZED**

City Council may:

- Approve the zone change and adopt the findings of the 10 criteria as recommended by the Zoning Commission;
- Deny the zone change and adopt different findings of the 10 criteria;
- Allow the applicant to withdraw the zone change; or
- Delay action on the zone change request for up to 30 days.

The Planning Division reviewed the application and recommended approval to the Zoning Commission based on the proposed findings of the 10 criteria. The Zoning Commission concurred with the recommendation. The 2016 Growth Policy for the City supports the proposed zoning at this location and supports the 2016 Growth Policy statement: "*The city will manage its growth by encouraging development within and adjacent to the existing City limits, but preference will be given to areas where City infrastructure exists or can be extended within a fiscally constrained budget and with consideration given to increased tax revenue from development. The City will prosper with strong neighborhoods with their own unique character that are clean, safe, and provide a choice of housing and transportation options.*" Guidelines were also adopted to support this statement including supporting mobility and access, safe neighborhoods, availability of housing options, attractive street-scapes and access to daily necessities. The proposed zoning will allow a variety of housing choices, is adjacent to the existing City limits, and is close to an area with access to transportation options including bus

service and bicycle paths. The proposed zoning is identical to the adjacent zoning of property annexed in 2002 for the Legends West Subdivision.

Prior to making a decision on the requested zone change, the City Council shall consider the following:

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following guidelines of the 2016 Growth Policy:

**Home Base:** A mix of housing types that meet the needs of a diverse population is important. The proposed zoning would allow this developer to offer single family and two family dwellings in either a unit ownership development or in a traditional subdivision.

**Strong Neighborhoods:** Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, good will and social interaction.

The proposed zoning will allow a progression of development in this area and will connect to neighborhood services, public gathering spaces and open space.

**Strong Neighborhoods:** Implementation of the Infill Policy is important to encourage development of underutilized properties.

The property is currently outside the city limits but is within the limits of annexation. The proposed zoning of the property is a more efficient use of property for the extension of city services, and supports a variety of housing choices.

**Strong Neighborhoods:** Public safety and emergency service response are critical to the well-being of Billings' residents and businesses.

The proposed zoning and annexation is directly adjacent to the existing city limits where city public safety services are already provided. This incremental expansion will allow these services to be extended with limited impact to its current capacity.

**Home Base:** Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe.

The proposed zoning and development will allow the opportunity to provide affordable housing choices in a high-demand area of West Billings.

**Mobility and Access:** Connecting people to places with transportation choices is vital to the well-being of Billings' residents, businesses and visitors.

The proposed zoning and development are within ¼-mile of the Shiloh Road Corridor that provides a continuous and connect bike trail, access to public transit as well as transportation by private vehicle in and around the City of Billings.

**Prosperity:** Predictable, reasonable City taxes and assessments are important to Billings' taxpayers.

The proposed zoning and development will provide an incremental expansion of the City, at a more efficient density. This will encourage and stabilize the cost of services in this area and will allow the City to set predictable and reasonable rates for taxes and assessments city-wide.

2. Is the new zoning designed to secure from fire and other dangers?

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations

and density limits to provide security from fire and other dangers.

3. Whether the new zoning will promote public health, public safety and general welfare?

Public health and public safety will be promoted by the proposed zoning. The existing parcel is outside the city limits and used for irrigated farmland. New infrastructure for roads, utilities and sidewalks will need to be installed prior to building the proposed dwellings. The proposed zoning would allow the developer to market these housing units to a broad range of buyers.

4. Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?

Transportation: The proposed zoning and subsequent development will require a traffic study prior to development. The study will identify the required improvements to the surrounding transportation systems.

Water and Sewer: The City will provide water and sewer to the property. The developer will be responsible for the installation of these improvements. There will be no additional impacts to the system from the proposed zoning.

Schools and Parks: Schools and parks may be significantly affected by the proposed zone change. Eighty to ninety additional dwelling units will add students to schools depending on the market for these new homes. Recent new school facilities should be able to absorb these new students. There are no public parks within the general area of the subject property with the exception of the neighborhood park dedicated for the Shiloh Estates Subdivision. The Shiloh Estates Park is essentially undeveloped except for 3 trail connections between the dead-end of Wells Place and Shiloh Road bikeway. Emmanuel Baptist Church to the south maintains a baseball field and a playground. The closest semi-developed City park is Centennial Park more than 1 mile from the subject property.

Fire and Police: The subject property will be served by City public safety services. The Police and Fire Departments had no concerns with the zone change.

5. Will the new zoning provide adequate light and air?

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning effect motorized and non-motorized transportation?

The new zoning will have an impact on vehicle and pedestrian traffic. The City Engineering Division will determine the required street, utility and sidewalk improvements required for the development of these lots based on a traffic study prepared when a development plan has been finalized. At the maximum proposed development of 90 dwelling units, this could add up to 900+ new vehicle trips to the surrounding streets. Safe pedestrian access to and from the development will need to be developed. It is likely most pedestrian access out of the development will occur to the south along Bell Avenue and to the north along Central Avenue. While there is no sidewalk from Shiloh Road along the frontage of the first property to the west, there is sidewalk in place along Central Avenue in front of Legends West directly west of the subject property and so sidewalk will be constructed along Central Avenue on the frontage of the subject property as well. The costs of these improvements will be the responsibility of the developer.

7. Will the new zoning promote compatible urban growth?

The new zoning does promote compatibility with urban growth. The proposed zoning will allow a

greater variety of housing choices in this growing area of West Billings.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?

The proposed zoning does consider the character of the district and the suitability of the property for the proposed use. The proposed zoning is identical to the zoning in the adjacent City subdivision and the homes will likely be similar in style.

9. Will the new zoning conserve the value of buildings?

The property is currently un-developed. The value of existing buildings should not be affected by the proposed zoning and development.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?

The proposed zoning will allow a more efficient density of development so extension of City services will be effective. The arterial street frontage will allow ready vehicle access to and from the new development without impacting adjacent land uses.

## **FINANCIAL IMPACT**

The proposed annexation and zoning of this 15.107 acre parcel of land will increase the City's tax base. Services will be provided when development occurs and residences are constructed. Prior to development, the City will ensure the proposed development meets the standards for all City developments.

## **RECOMMENDATION**

The Zoning Commission recommends approval and adoption of the findings of the 10 criteria on a 5-0 vote.

## **APPROVED BY CITY ADMINISTRATOR**

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### **Attachments**

Ordinance

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**ORDINANCE NO. 16-\_\_\_\_\_**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Tract 3 of C/S 1648, a 15.107 acre parcel of land, generally located at 4240 Central Avenue

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

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC*, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.

2. DESCRIPTION That Tract 3 od C/S 1648, a 15.107 acre parcel of land, generally located at 4240 Central Avenue is presently zoned **Agriculture-Open Space (A-1)** and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Agriculture-Open Space (A-1) to Residential 7,000 (R-70)** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 7,000 (R-70)** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading November 28, 2016

PASSED, ADOPTED AND APPROVED on second reading December 12, 2016.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Thomas W. Hanel, Mayor

ATTEST:

BY: Denise Bohlman, City Clerk  
Zone Change 950 – 4240 Central Avenue

**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** Payment of Claims November 28, 2016

**PRESENTED BY:** Patrick M. Weber, Finance Director

**Department:** City Hall Administration

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**PROBLEM/ISSUE STATEMENT**

Claims in the amount of \$2,890,386.24 have been audited and are presented for City Council payment approval. A complete listing of the claims dated November 28, 2016, 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**

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**Attachments**

councilmemo\_11.28.2016

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Check Date	Check	Name	Amount	Account	Item Desc
11/28/2016	799906	Alpine Plumbing, Heating & Cooling	\$ 4,100.00	5610-71170-402450	Invoice #73737. Water Heater and Gas Line
11/28/2016	799921	Billings Depot Inc	\$ 5,648.67	6600-31100-405310	Rent
11/28/2016	799921	Billings Depot Inc	\$ 8,473.00	6700-31410-405310	Rent
11/28/2016	799923	Boulder Blimp Company Inc	\$ 3,497.50	2190-22500-402280	STD INFLATABLE FIRE SAFETY HOUSE
11/28/2016	799923	Boulder Blimp Company Inc	\$ 187.50	2190-22500-402280	ESTIMATED SHIPPING
11/28/2016	799923	Boulder Blimp Company Inc	\$ 230.00	2190-22500-402280	ADDED A SECONE BLOWER AT TIME OF
11/28/2016	799926	Business Tax Section	\$ 1,328.64	4070-71280-409397	PFC Pond D Storm Water Detention
11/28/2016	799926	Business Tax Section	\$ 946.23	8400-31840-409310	WO 16-17 2016 Misc Storm Trouble Spots
11/28/2016	799926	Business Tax Section	\$ 2,687.31	4050-71250-409691	AIP-54 West Taxilane & Ramp Construction
11/28/2016	799926	Business Tax Section	\$ 298.59	4050-71250-409692	AIP-54 West Taxilane & Ramp Construction
11/28/2016	799926	Business Tax Section	\$ 491.23	4050-71250-409691	AIP-54 Access Road - Federal Share
11/28/2016	799926	Business Tax Section	\$ 54.58	4050-71250-409692	AIP-54 Access Road - Local Share
11/28/2016	799926	Business Tax Section	\$ 264.54	4050-00000-201100	Retainage Release
11/28/2016	799926	Business Tax Section	\$ 17.75	4050-00000-201100	Retainage Release
11/28/2016	799926	Business Tax Section	\$ 6,103.27	4050-71250-409687	AIP 52 Pond D Storm Water Detention
11/28/2016	799926	Business Tax Section	\$ 678.14	4050-71250-409689	AIP 52 Pond D Storm Water Detention
11/28/2016	799926	Business Tax Section	\$ 586.54	5030-00000-201100	WO 16-01 Schedule I - Will James Area Water
11/28/2016	799926	Business Tax Section	\$ 981.26	2050-31310-409310	WO1603 Contract #2 City Overlay
11/28/2016	799926	Business Tax Section	\$ 129.07	8450-31860-409310	WO1603 Contract #2 City Overlay
11/28/2016	799926	Business Tax Section	\$ 40.00	2050-00000-201100	WO 16-04 2016 ADA Ramp Replacement
11/28/2016	799929	Cop Construction Co	\$ 131,535.96	4070-71280-409397	PFC - Pond D Storm Water Detention
11/28/2016	799929	Cop Construction Co	\$ 604,223.84	4050-71250-409687	AIP 52 Pond D Storm Water Detention
11/28/2016	799929	Cop Construction Co	\$ 67,135.98	4050-71250-409689	AIP 52 Pond D Storm Water Detention
11/28/2016	799933	Cross Match Technologies Inc	\$ 3,921.78	5610-71140-402925	Airport Police Fingerprint Equipment
11/28/2016	799936	CTA Inc	\$ 3,960.00	4240-51110-409370	Design aspects of the Rose Pool
11/28/2016	799936	CTA Inc	\$ 36,065.92	4240-51110-409370	Design aspects of the Rose Pool building
11/28/2016	799936	CTA Inc	\$ 13.86	4240-51110-409370	Design aspects of the Rose Pool building
11/28/2016	799937	Curb Box Specialists Inc.	\$ 3,500.00	5050-75150-403671	230 234 Alderson
11/28/2016	799939	Department of the Treasury	\$ 8,109.96	0100-17500-408126	Penalty for late submission of Form 941, March
11/28/2016	799942	DOWL	\$ 6,000.00	8730-51990-409370	Soil borings and soils report for the Rose Park
11/28/2016	799942	DOWL	\$ 6,021.06	1990-00000-201100	WO 16-06 SBURD Sanitary Sewer - Phase II
11/28/2016	799942	DOWL	\$ 11,382.50	8400-31840-409310	WO 16-14 West Billings Stormwater Development
11/28/2016	799943	EBSCO Industries, Inc.	\$ 4,158.33	2600-55190-403380	Invoice 0401343
11/28/2016	799945	Ed Bartlett, LLC	\$ 2,800.71	0100-14110-403950	Lobbyist contract November 2016
11/28/2016	799950	First Montana Title Co	\$ 10,000.00	2920-66800-407275	FTHB Chad Christopherson 4447 Murphy Avenue
11/28/2016	799959	HDR, Inc.	\$ 40,000.00	5030-00000-201100	WO 15-10 WTP Chemical Building/Disinfection
11/28/2016	799959	HDR, Inc.	\$ 23,779.92	8400-31840-403590	MS4 General Permit - Manual
11/28/2016	799959	HDR, Inc.	\$ 320,868.29	5130-84910-409390	WO 14-11 WWTP Nutrient Upgrade Expansion
11/28/2016	799959	HDR, Inc.	\$ 250,008.53	5130-00000-201100	WO 14-11 WWTP Nutrient Upgrade Expansion
11/28/2016	799963	laff	\$ 4,176.81	9000-00000-209920	Payroll Summary

Check Date	Check	Name	Amount	Account	Item Desc
11/28/2016	799965	Inland Truck Parts Co	\$ 1,889.68	5410-31220-402320 43946	
11/28/2016	799965	Inland Truck Parts Co	\$ 359.26	5410-31220-402320 43977	
11/28/2016	799965	Inland Truck Parts Co	\$ 617.62	5120-85000-402320 43983	
11/28/2016	799967	J & J Concrete Inc.	\$ 3,960.00	2050-00000-201100	WO 16-04 2016 ADA Ramp Replacement
11/28/2016	799967	J & J Concrete Inc.	\$ 93,676.77	8400-31840-409310	WO 16-17 2016 Misc Storm Trouble Spots
11/28/2016	799970	Johnson Controls Inc.	\$ 2,697.40	5610-71140-402290	Invoice #1-41686094161. ID Cards/Security & Fire
11/28/2016	799972	Kemira Water Solutions, Inc	\$ 74,615.43	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 301883
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 589.38	2110-31320-404710	asphalt
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 866.97	2110-31320-404710	asphalt
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 349.98	2110-31320-404710	asphalt
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 453.15	2110-31320-404710	asphalt
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 864.28	2110-31320-404520	1 1/2" crushed base
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 90.00	2110-31320-402475	concrete sand/6+ boulders for the SCA
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 266,043.93	4050-71250-409691	AIP-54 West Taxilane & Ramp Construction
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 29,560.44	4050-71250-409692	AIP-54 West Taxilane & Ramp Construction
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 48,630.69	4050-71250-409691	AIP-54 Access Road - Federal Share
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 5,403.41	4050-71250-409692	AIP-54 Access Road - Local Share
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 26,190.82	4050-00000-201100	Retainage Release
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 1,756.84	4050-00000-201100	Retainage Release
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 793.44	2110-31320-404710	asphalt
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 3,144.12	2110-31320-404710	asphalt
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 331.17	2110-31320-404710	asphalt
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 458.22	2110-31320-404520	1 1/2" crushed base
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 97,145.08	2050-31310-409310	WO1603 Contract #2 City Overlay
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 12,777.59	8450-31860-409310	WO1603 Contract #2 City Overlay
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 299.82	2110-31320-404710	asphalt
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 61.68	2110-31320-404520	1 1/2" crushed base
11/28/2016	799975	Knife River (JTL Group Inc.)	\$ 64.65	2110-31320-404520	1 1/2" crushed base
11/28/2016	799981	MES-NW	\$ 2,537.50	1500-22290-402490	90545 SURVIVOR ALKALINE RIGHT ANGLE
11/28/2016	799986	Montana CSED	\$ 4,162.40	9000-00000-209926	Payroll Summary
11/28/2016	799987	Montana Dakota Utilities Co	\$ 13.34	1500-21150-403410	062 907 9494 7
11/28/2016	799987	Montana Dakota Utilities Co	\$ 465.40	1500-21710-403440	169 233 1000 3
11/28/2016	799987	Montana Dakota Utilities Co	\$ 1,284.07	2600-55120-403440	219 924 4851 0
11/28/2016	799987	Montana Dakota Utilities Co	\$ 2,798.64	5120-84000-403440	293 780 1000 2
11/28/2016	799987	Montana Dakota Utilities Co	\$ 5,597.28	5120-84000-403440	293 780 1000 2
11/28/2016	799987	Montana Dakota Utilities Co	\$ 2,798.64	5120-84000-403440	293 780 1000 2
11/28/2016	799987	Montana Dakota Utilities Co	\$ 125.93	0100-51270-403440	437 780 1000 9
11/28/2016	799987	Montana Dakota Utilities Co	\$ 13.34	1500-21150-403410	514 117 0478 9
11/28/2016	799987	Montana Dakota Utilities Co	\$ 123.75	1500-22210-403440	533 653 1000 1
11/28/2016	799987	Montana Dakota Utilities Co	\$ 30.86	6600-31100-403440	595 373 1000 1

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11/28/2016	799987	Montana Dakota Utilities Co	\$ 46.29	6700-31410-403440	595 373 1000 1
11/28/2016	799987	Montana Dakota Utilities Co	\$ 13.89	5210-15920-403440	717 353 1000 6
11/28/2016	799987	Montana Dakota Utilities Co	\$ 27.79	5120-85000-403440	735 453 1000 2
11/28/2016	799987	Montana Dakota Utilities Co	\$ 48.84	5210-15950-403440	799 152 1209 0
11/28/2016	799987	Montana Dakota Utilities Co	\$ 238.56	1500-22210-403440	885 880 1000 4
11/28/2016	799987	Montana Dakota Utilities Co	\$ 1,524.24	6500-15670-403440	929 780 1000 4
11/28/2016	799987	Montana Dakota Utilities Co	\$ 634.57	5710-71430-403440	962 880 1000 0
11/28/2016	799990	Montana State Fireman's Assoc	\$ 3,867.42	9000-00000-209924	Payroll Summary
11/28/2016	799991	Morrison Maierle Inc	\$ 12,113.44	4050-71250-409691	AIP 54 Taxilane West Construction Project
11/28/2016	799991	Morrison Maierle Inc	\$ 1,345.94	4050-71250-409692	AIP 54 Taxilane West Construction Project
11/28/2016	799991	Morrison Maierle Inc	\$ 40,504.50	4050-71250-409687	AIP 52 Pond D Storm Water System
11/28/2016	799991	Morrison Maierle Inc	\$ 4,500.50	4050-71250-409689	AIP 52 Pond D Storm Water System
11/28/2016	799994	MPPA Montana Police Protective Association	\$ 2,542.31	9000-00000-209923	Payroll Summary
11/28/2016	799995	MT Waterworks	\$ 3,364.38	5120-85000-402920	sewage comb air vac five mile
11/28/2016	799999	North Lake County Public Library District	\$ 3,043.32	2600-55190-403381	World Book e-resource
11/28/2016	800002	NorthWestern Energy	\$ 63.13	0100-51120-403410	Monthly electrical charges for Pioneer Park tennis
11/28/2016	800002	NorthWestern Energy	\$ 28.95	5610-71130-403410	1647695-4. De Icer. November 2016
11/28/2016	800002	NorthWestern Energy	\$ 62.47	5610-71130-403410	0719616-5. ARFF Facility Lights
11/28/2016	800002	NorthWestern Energy	\$ 298.28	5610-71170-403410	0712792-1. IP-7. November 2016
11/28/2016	800002	NorthWestern Energy	\$ 1,248.80	5610-71170-403410	0712800-2. IP-9. November 2016
11/28/2016	800002	NorthWestern Energy	\$ 319.14	5610-71170-403410	0712809-3. IP-11/12 Alpine. November 2016
11/28/2016	800002	NorthWestern Energy	\$ 95.63	5610-71170-403410	0712817-6. IP-House. November 2016
11/28/2016	800002	NorthWestern Energy	\$ 1,383.17	5020-74000-403410	3116 17th st w
11/28/2016	800002	NorthWestern Energy	\$ 1,383.16	5020-74000-403410	3116 17th st w
11/28/2016	800002	NorthWestern Energy	\$ 52.65	5610-71170-403410	0712799-6. IP-8. November 2016
11/28/2016	800002	NorthWestern Energy	\$ 3,008.74	5020-73140-403410	2251 Belknap
11/28/2016	800002	NorthWestern Energy	\$ 16,046.64	5020-74000-403410	2251 Belknap
11/28/2016	800002	NorthWestern Energy	\$ 60,174.88	5020-74000-403410	2251 Belknap
11/28/2016	800002	NorthWestern Energy	\$ 1,002.91	5120-83140-403410	2251 Belknap
11/28/2016	800002	NorthWestern Energy	\$ 58,902.11	5120-84000-403410	725 Hwy 87 E
11/28/2016	800002	NorthWestern Energy	\$ 344.93	5120-85000-403410	822 Shiloh crossing lift
11/28/2016	800002	NorthWestern Energy	\$ 479.64	5020-74000-403410	Waldo airport rd
11/28/2016	800002	NorthWestern Energy	\$ 2,739.36	1500-22210-403410	0100476-1: FIRE STATION #1 / MONTHLY
11/28/2016	800002	NorthWestern Energy	\$ 1,219.48	0100-51270-403410	Monthly electrical charges.
11/28/2016	800002	NorthWestern Energy	\$ 1,588.91	5210-15920-403410	0720834-1
11/28/2016	800002	NorthWestern Energy	\$ 142.48	6070-22350-403410	0721580-9
11/28/2016	800002	NorthWestern Energy	\$ 35.41	0100-51120-403410	0722237-5
11/28/2016	800002	NorthWestern Energy	\$ 7.55	0100-51120-403410	0722247-4
11/28/2016	800002	NorthWestern Energy	\$ 0.10	0100-51120-403410	0722254-0

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11/28/2016	800002	NorthWestern Energy	\$ 95.30	0100-51120-403410	0722255-7
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0723038-6
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0723041-0
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0723048-5
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0723050-1
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0723051-9
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0723052-7
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0722262-3
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0722263-1
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0722265-6
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0722268-0
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0722285-4
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0723027-9
11/28/2016	800002	NorthWestern Energy	\$ 54.41	8720-51980-403410	1059093-3
11/28/2016	800002	NorthWestern Energy	\$ 1,132.45	5210-15920-403410	1594282-4
11/28/2016	800002	NorthWestern Energy	\$ 319.19	6600-31100-403410	1741314-7
11/28/2016	800002	NorthWestern Energy	\$ 478.80	6700-31410-403410	1741314-7
11/28/2016	800002	NorthWestern Energy	\$ 221.31	5710-71480-403410	1784756-7
11/28/2016	800002	NorthWestern Energy	\$ -	0100-51120-403410	0722261-5
11/28/2016	800002	NorthWestern Energy	\$ 9.40	0100-51120-403410	0723090-7
11/28/2016	800002	NorthWestern Energy	\$ 7.55	0100-51120-403410	0723162-4
11/28/2016	800002	NorthWestern Energy	\$ 58.62	0100-51120-403410	0723170-7
11/28/2016	800002	NorthWestern Energy	\$ 7.55	0100-51120-403410	0723644-1
11/28/2016	800002	NorthWestern Energy	\$ 7.55	0100-51120-403410	0723645-8
11/28/2016	800002	NorthWestern Energy	\$ 111.93	0100-51120-403410	0789437-1
11/28/2016	800002	NorthWestern Energy	\$ 12.62	0100-51120-403410	0723044-4
11/28/2016	800002	NorthWestern Energy	\$ 12.70	0100-51120-403410	0723054-3
11/28/2016	800002	NorthWestern Energy	\$ 13.74	0100-51120-403410	0723055-0
11/28/2016	800002	NorthWestern Energy	\$ 73.49	0100-51120-403410	0723056-8
11/28/2016	800002	NorthWestern Energy	\$ 9.58	0100-51120-403410	0723057-6
11/28/2016	800002	NorthWestern Energy	\$ 24.45	0100-51120-403410	0723058-4
11/28/2016	800002	NorthWestern Energy	\$ 11.37	0100-51120-403410	0722905-7
11/28/2016	800002	NorthWestern Energy	\$ 146.69	0100-51120-403410	0722933-9
11/28/2016	800002	NorthWestern Energy	\$ 136.85	0100-51120-403410	0723035-2
11/28/2016	800002	NorthWestern Energy	\$ 8.99	0100-51120-403410	0723036-0
11/28/2016	800002	NorthWestern Energy	\$ 203.32	0100-51120-403410	0723037-8
11/28/2016	800002	NorthWestern Energy	\$ 48.85	0100-51120-403410	0723042-8
11/28/2016	800002	NorthWestern Energy	\$ 26.05	0100-51120-403410	0722257-3
11/28/2016	800002	NorthWestern Energy	\$ 1.22	0100-51120-403410	0722260-7
11/28/2016	800002	NorthWestern Energy	\$ 42.66	0100-51120-403410	0722266-4

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11/28/2016	800002	NorthWestern Energy	\$ 22.68	0100-51120-403410	0722269-8
11/28/2016	800002	NorthWestern Energy	\$ 12.30	0100-51120-403410	0722292-0
11/28/2016	800002	NorthWestern Energy	\$ 31.64	0100-51120-403410	0722293-8
11/28/2016	800002	NorthWestern Energy	\$ 2,043.70	4050-71250-409687	Invoice #90210140. Power outage created
11/28/2016	800002	NorthWestern Energy	\$ 227.08	4050-71250-409689	Invoice #90210140. Power outage created
11/28/2016	800020	Sherwin Williams	\$ 2,127.20	2110-31320-402340	white paint 5 gal buckets
11/28/2016	800020	Sherwin Williams	\$ 1,493.60	2110-31320-402340	yellow paint 5 gal buckets
11/28/2016	800021	Sign Pro	\$ 4,970.00	5620-71200-409310	Invoice #65102. Terminal Sign Project
11/28/2016	800026	Stewart Title Company	\$ 15,000.00	2850-65810-407277	FTHB Pamela Aning 1151 Ponderosa Drive
11/28/2016	800031	Town & Country Supply Association	\$ 11,935.17	6010-00000-141000	220255 PO NUM 301921
11/28/2016	800031	Town & Country Supply Association	\$ 6,324.35	6010-00000-141000	240358 PO NUM 301922
11/28/2016	800031	Town & Country Supply Association	\$ 3,202.84	5710-00000-141000	BUS MET PO NUM 301916
11/28/2016	800031	Town & Country Supply Association	\$ 9,120.52	5710-00000-141000	BUS MET PO NUM 301929
11/28/2016	800033	Tristan Sophia PSYD	\$ 6,500.00	1500-21120-403590	Pre-Employment Evaluations
11/28/2016	800035	TTT Environmental LLC	\$ 1,540.00	1500-22290-402410	RAE QRAE 3, 02/LEL/CO/H2S
11/28/2016	800035	TTT Environmental LLC	\$ 1,800.00	1500-22290-402410	QRAE 2 PUMPED CSA LEL / O2/CO/HCN LI-ION
11/28/2016	800035	TTT Environmental LLC	\$ 1,572.00	1500-22290-402410	RAE, TRUCK MOUNT CHARGER FOR QRAE 3
11/28/2016	800035	TTT Environmental LLC	\$ 75.00	1500-22290-402410	SHIPPING
11/28/2016	800036	Tyler Technologies Inc	\$ 30,248.00	2250-22320-403553	CAD Annual New World Maintenance
11/28/2016	800036	Tyler Technologies Inc	\$ 2,362.00	2250-22320-403553	9-1-1 Center Annual New World Maintenance
11/28/2016	800036	Tyler Technologies Inc	\$ 44,280.00	1500-21500-403553	Police Annual New World Maintenance
11/28/2016	800036	Tyler Technologies Inc	\$ 94,008.00	1500-21500-403553	Police Mobile Annual New World Maintenance
11/28/2016	800036	Tyler Technologies Inc	\$ 16,504.00	1500-22210-403553	Fire Records Annual New World Maintenance
11/28/2016	800036	Tyler Technologies Inc	\$ 6,468.00	1500-22270-403553	Fire Mobile Annual New World Maintenance
11/28/2016	800036	Tyler Technologies Inc	\$ 21,917.00	6200-19110-405370	Yellowstone County Jail Annual New World
11/28/2016	800036	Tyler Technologies Inc	\$ 24,744.00	6200-19110-405370	Sheriff Mobile Annual New World Maintenance
11/28/2016	800042	Verizon Wireless	\$ 200.09	1500-21700-403450	Animal Shelter MDT
11/28/2016	800042	Verizon Wireless	\$ 816.96	7170-21660-403450	CCSIU Cell/PTT
11/28/2016	800042	Verizon Wireless	\$ (10.32)	7170-21660-403450	CCSIU Air Card
11/28/2016	800042	Verizon Wireless	\$ 80.02	7170-21660-403450	CCSIU RAVEN
11/28/2016	800042	Verizon Wireless	\$ (105.57)	0100-43210-403450	Code Enforcement Air Cards
11/28/2016	800042	Verizon Wireless	\$ 40.01	6200-19110-403450	ITD
11/28/2016	800042	Verizon Wireless	\$ 80.02	2600-55170-403450	Library Outreach Air Cards
11/28/2016	800042	Verizon Wireless	\$ 3,630.90	1500-21110-403450	MDT Toughbooks
11/28/2016	800042	Verizon Wireless	\$ 500.28	5710-71470-403160	MET Transit Tablets
11/28/2016	800042	Verizon Wireless	\$ 40.01	1500-21110-403450	Police ICAC 406-690-7347
11/28/2016	800042	Verizon Wireless	\$ 40.01	1500-21110-403450	Police MiFi 406-633-0820
11/28/2016	800042	Verizon Wireless	\$ 40.01	1500-21110-403450	Police US Marshall Toughbooks
11/28/2016	800042	Verizon Wireless	\$ 40.01	0100-51120-403450	PRPL-PARKS PMD Air Card 406-794-6977
11/28/2016	800042	Verizon Wireless	\$ 288.07	5020-75000-403450	PW-Distribution Collection Tablets

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11/28/2016	800042	Verizon Wireless	\$ 192.05	5120-85000-403450	PW-Distribution Collection Tablets
11/28/2016	800042	Verizon Wireless	\$ 140.06	6700-31410-403450	PW-Engineering
11/28/2016	800042	Verizon Wireless	\$ 70.03	2110-31320-403450	PW-Streets 406-697-0361 iPad
11/28/2016	800042	Verizon Wireless	\$ 18.02	5020-75000-403450	PWBELKNAP-AIR
11/28/2016	800042	Verizon Wireless	\$ 12.00	5120-85000-403450	PWBELKNAP-AIR
11/28/2016	800042	Verizon Wireless	\$ 200.11	7170-21660-403450	CCSIU MDT
11/28/2016	800042	Verizon Wireless	\$ 192.04	5020-75000-403450	PW-DIS-COLL CITYWORKS
11/28/2016	800042	Verizon Wireless	\$ 128.04	5120-85000-403450	PW-DIS-COLL CITYWORKS
11/28/2016	800042	Verizon Wireless	\$ 80.02	1500-21110-403450	POLICE IPAD ST JOHN
11/28/2016	800042	Verizon Wireless	\$ 240.06	2110-31320-403450	PW-STREETS CITY WORKS
11/28/2016	800042	Verizon Wireless	\$ 40.01	5210-15210-403450	PARKING 406-690-5822 5210-15210-403450
11/28/2016	800042	Verizon Wireless	\$ 280.07	5020-73120-403450	PWBLNP COMM-METER CityWorks/Neptune
11/28/2016	800042	Verizon Wireless	\$ 40.03	2510-21870-403450	POLICE Forensics Tim West
11/28/2016	800042	Verizon Wireless	\$ 480.36	5020-73120-403450	PWBLKNP METER SHOP 5020-73120-403450
11/28/2016	800042	Verizon Wireless	\$ 40.01	0100-15120-403450	Finance 406-698-9127 Pat Weber iPad
11/28/2016	800042	Verizon Wireless	\$ 80.02	0100-51210-403450	PRPL-RECREATION 406-696-1528
11/28/2016	800042	Verizon Wireless	\$ 452.48	5020-74000-402450	PWBLKNP WATER TREATMENT
11/28/2016	800042	Verizon Wireless	\$ 42.61	5020-74000-403450	PWBLKNP WATER TREATMENT
11/28/2016	800043	Verizon Wireless	\$ 531.37	5610-71100-403450	Airport
11/28/2016	800043	Verizon Wireless	\$ 443.29	1500-21700-403450	Animal Shelter
11/28/2016	800043	Verizon Wireless	\$ 179.78	7170-21660-403450	CCSIU
11/28/2016	800043	Verizon Wireless	\$ 56.64	0100-16110-403450	City Attorney
11/28/2016	800043	Verizon Wireless	\$ 120.38	1500-22250-403450	Comm Center 911
11/28/2016	800043	Verizon Wireless	\$ 86.36	6500-15650-403450	Facilities BOC Plus 70% of 406-672-3027
11/28/2016	800043	Verizon Wireless	\$ 91.53	6500-15670-403450	Facilities City Hall Plus 30% of 406-672-3027
11/28/2016	800043	Verizon Wireless	\$ 81.52	0100-15120-403450	Finance Pat Weber
11/28/2016	800043	Verizon Wireless	\$ 2,786.88	1500-22210-403450	Fire Department
11/28/2016	800043	Verizon Wireless	\$ 13.21	6200-19110-403450	ITD
11/28/2016	800043	Verizon Wireless	\$ 13.45	2600-55170-403450	LBRY OTRCH Library Outreach
11/28/2016	800043	Verizon Wireless	\$ 374.35	2600-55120-403450	Library
11/28/2016	800043	Verizon Wireless	\$ 44.19	0100-11000-403450	Mayor
11/28/2016	800043	Verizon Wireless	\$ 53.61	6010-15500-403450	Motor Pool
11/28/2016	800043	Verizon Wireless	\$ 209.25	0100-12200-403450	Muni Court Drug Court
11/28/2016	800043	Verizon Wireless	\$ 90.13	0100-12120-403450	Municipal Court Judge
11/28/2016	800043	Verizon Wireless	\$ 13.21	2400-43010-403450	Planning
11/28/2016	800043	Verizon Wireless	\$ 3,720.08	1500-21110-403450	Police
11/28/2016	800043	Verizon Wireless	\$ 130.60	2510-21870-403450	Police Forensic
11/28/2016	800043	Verizon Wireless	\$ 509.81	1500-21110-403450	Police Resource Officers
11/28/2016	800043	Verizon Wireless	\$ 28.14	2490-21960-403450	Police-DOM VIOL 406-698-1391
11/28/2016	800043	Verizon Wireless	\$ 117.68	5210-15210-403450	PRKING ENFORCEMENT (Parking)

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11/28/2016	800043	Verizon Wireless	\$ 203.96	0100-51100-403450	PRPL - Director Admin
11/28/2016	800043	Verizon Wireless	\$ 283.14	0100-51210-403450	PRPL - Recreation Division
11/28/2016	800043	Verizon Wireless	\$ 443.46	0100-51400-403450	PRPL-Cemetery
11/28/2016	800043	Verizon Wireless	\$ 44.06	0100-51120-403450	PRPL-PARK SHOPS
11/28/2016	800043	Verizon Wireless	\$ 986.58	0100-51120-403450	PRPL-PARKS
11/28/2016	800043	Verizon Wireless	\$ 61.84	6600-31100-403450	Public Works Admin
11/28/2016	800043	Verizon Wireless	\$ 699.93	2090-44510-402120	PW-Building (PLANNING)
11/28/2016	800043	Verizon Wireless	\$ 208.64	2090-44510-403450	PW-Building (PLANNING)
11/28/2016	800043	Verizon Wireless	\$ 233.48	6700-31410-403450	PW-Engineering
11/28/2016	800043	Verizon Wireless	\$ 118.48	5410-31210-403450	PW-Solid Waste
11/28/2016	800043	Verizon Wireless	\$ 341.43	2110-31320-403450	PW-STRT TRFC Streets
11/28/2016	800043	Verizon Wireless	\$ 264.36	5410-31230-403450	PW-SW-ON CALL Solid Waste On Call
11/28/2016	800043	Verizon Wireless	\$ 439.50	5020-75000-403450	PWBELKNAP-DIST COLL Distribution
11/28/2016	800043	Verizon Wireless	\$ 293.00	5120-85000-403450	PWBELKNAP-DIST COLL
11/28/2016	800043	Verizon Wireless	\$ 904.79	5020-74000-403450	PWBELKNAP-WT Water Treatment PWBelknap
11/28/2016	800043	Verizon Wireless	\$ 443.22	5020-73120-403450	PWBLKNP MTRSHOP
11/28/2016	800043	Verizon Wireless	\$ 69.98	5020-73110-403450	PWBLKNP OFFICE Belknap Office
11/28/2016	800043	Verizon Wireless	\$ 46.65	5120-83110-403450	PWBLKNP OFFICE Belknap Office
11/28/2016	800043	Verizon Wireless	\$ 58.32	5020-73140-403450	PWBLKNP STORES
11/28/2016	800043	Verizon Wireless	\$ 19.44	5120-83140-403450	PWBLKNP STORES
11/28/2016	800043	Verizon Wireless	\$ 976.72	5120-84000-403450	PWBLNP-WWTRMNT1 Wastewater Treatment
11/28/2016	800043	Verizon Wireless	\$ 23.37	6060-19310-403450	TeleComm Manager
11/28/2016	800043	Verizon Wireless	\$ 93.04	5710-71420-403160	Trans-On Call MET
11/28/2016	800043	Verizon Wireless	\$ 94.91	5710-71410-403450	Transit MET
11/28/2016	800043	Verizon Wireless	\$ 131.97	0100-43210-403450	Code Enforcement
11/28/2016	800043	Verizon Wireless	\$ 110.51	5120-87000-403450	PWBLNP-ENVIRONMENTAL
11/28/2016	800043	Verizon Wireless	\$ 1,186.24	0100-51120-403450	PRPL-PARKS-SEASONAL
11/28/2016	800043	Verizon Wireless	\$ 599.08	5120-84300-403450	PWBLKNP ELECTRICIANS 5120-84000-403450
11/28/2016	800044	Verizon Wireless	\$ 2,069.91	2090-44510-402120	BUILDING 765496097-00005
11/28/2016	800044	Verizon Wireless	\$ 471.81	2090-44510-403450	BUILDING 765496097-00005
11/28/2016	800044	Verizon Wireless	\$ 33.41	2090-44510-403450	BUILDING 765496097-00004
11/28/2016	800045	Wesco Distribution Inc	\$ 137.98	5120-85000-402360	5 MILE PUMP SHIPPING
11/28/2016	800045	Wesco Distribution Inc	\$ 3,635.06	5120-85000-402360	REPLACEMENT PUMP FOR 5 MILE
11/28/2016	800046	Western Municipal Construction Inc	\$ 58,068.29	5030-00000-201100	WO 16-01 Schedule I - Will James Area Water

**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** Payment of Claims December 5, 2016

**PRESENTED BY:** Patrick M. Weber, Finance Director

**Department:** City Hall Administration

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**PROBLEM/ISSUE STATEMENT**

Claims in the amount of \$2,380,472.02 have been audited and are presented for City Council payment approval. A complete listing of the claims dated December 5, 2016, 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**

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**Attachments**

councilmemo\_12.5.2016

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Check Date	Check	Name	Amount	Account	Item Desc
12/05/2016	800060	Air Controls-Billings Inc	\$ 4,865.00	6300-17530-407310	Inv. #124255 Repairs to exhaust hoods, vent hoods and A/C units at Community Center
12/05/2016	800060	Air Controls-Billings Inc	\$ 1,684.42	5120-84000-403660	furnace repairs wwtp
12/05/2016	800067	Beartooth Fire Protection Services	\$ 24,600.00	1500-22290-402640	LION V-FORCE COAT (PBI MAX OUTER SHELL) BLACK
12/05/2016	800067	Beartooth Fire Protection Services	\$ 24,900.00	1500-22290-402640	LION V-FORCE PANT W/BELT (PBI MAX OUTER SHELL) BLACK
12/05/2016	800078	Bruco Inc	\$ 560.30	6500-15670-402240	Inv. 355251
12/05/2016	800078	Bruco Inc	\$ 97.20	6500-15660-402240	Inv. 355772
12/05/2016	800078	Bruco Inc	\$ 34.33	6500-15670-403690	Inv. 355577
12/05/2016	800078	Bruco Inc	\$ 1,821.00	5120-84000-402220	supplies
12/05/2016	800080	Business Tax Section	\$ 366.60	5020-74000-403660	Service Agreement Preventative Maintenance
12/05/2016	800080	Business Tax Section	\$ 14,815.30	5030-74910-409390	WO 15-10 WTP Chemical Bldg/Disinfection
12/05/2016	800080	Business Tax Section	\$ 284.79	8450-31860-409310	WO 17-08 Poly & Virginia Landscaping Improvements
12/05/2016	800080	Business Tax Section	\$ 75.84	5120-85000-403660	Colton Blvd Sewer Service Repair
12/05/2016	800080	Business Tax Section	\$ 30.00	8400-00000-201100	WO1617 2016 Misc Storm Trouble Spots
12/05/2016	800080	Business Tax Section	\$ 121.50	5050-75150-403671	Water Repair List 09 02 2016
12/05/2016	800080	Business Tax Section	\$ 92.79	6500-15670-409291	Inv. 1336661 Access add to Admin and IT
12/05/2016	800085	Community Seven	\$ 16,742.25	0100-00000-229150	Peg Fees - 2nd Qtr 2017
12/05/2016	800086	Cop Construction Co	\$ 1,466,714.00	5030-74910-409390	WO 15-10 WTP Chemical Bldg/Disinfection
12/05/2016	800086	Cop Construction Co	\$ 7,507.71	5120-85000-403660	Colton Blvd Sewer Repair
12/05/2016	800088	Crowley Fleck Pplp	\$ 6,774.00	0100-16110-403560	Advice on MPERA and 125 Plan
12/05/2016	800089	CTA Inc	\$ 1,481.55	4060-71190-409310	Amendment #6 LED Lights Installed at North Rental Car Parking Lot
12/05/2016	800089	CTA Inc	\$ 1,391.74	1500-22260-409250	Fire Station #5 Roof Replacement Inv. #125797
12/05/2016	800090	Cummins Rocky Mountain LLC	\$ 134.28	6010-00000-141000	004-34774 PO NUM 301984
12/05/2016	800090	Cummins Rocky Mountain LLC	\$ 290.04	6010-00000-141000	004-34841 PO NUM 301984
12/05/2016	800090	Cummins Rocky Mountain LLC	\$ 37.73	5410-31230-402320	004-34857
12/05/2016	800090	Cummins Rocky Mountain LLC	\$ 24.83	5410-31220-402320	004-34888
12/05/2016	800090	Cummins Rocky Mountain LLC	\$ 35,727.39	5710-71440-403690	AUTO &TRUCK MAINT.ITEMS
12/05/2016	800090	Cummins Rocky Mountain LLC	\$ (4,032.03)	5710-71440-403690	AUTO &TRUCK MAINT.ITEMS
12/05/2016	800097	DOWL	\$ 3,098.75	1990-15050-409310	WO 15-07 Orchard Lane
12/05/2016	800097	DOWL	\$ 422.50	2050-31310-409310	WO1603 2016 City Overlay materials testing
12/05/2016	800097	DOWL	\$ 7,616.25	1990-15050-409310	WO 15-07 Orchard Lane
12/05/2016	800102	Energy Laboratories Inc	\$ 75.00	5020-74000-403590	Compliance Monitoring
12/05/2016	800102	Energy Laboratories Inc	\$ 2,730.00	5020-74000-403590	SDWA Monitoring DBP
12/05/2016	800102	Energy Laboratories Inc	\$ 2,830.00	5120-87000-403590	Local limits testing
12/05/2016	800110	Filters and More LLC	\$ 250,000.00	7230-65950-405930	DRLF - Filters and More LLC
12/05/2016	800117	Galles Filter Service	\$ 20.34	5710-00000-141714	BUS MET PO NUM 301636

Check Date	Check	Name	Amount	Account	Item Desc
12/05/2016	800117	Galles Filter Service	\$ 92.07	6010-00000-141000	P-64150-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 48.72	5410-31220-402320	T-63668
12/05/2016	800117	Galles Filter Service	\$ 16.12	5410-31220-402320	T-63669
12/05/2016	800117	Galles Filter Service	\$ 15.90	2110-31320-402320	T-63671
12/05/2016	800117	Galles Filter Service	\$ 71.94	5410-31230-402320	Filters for Landfill equipment
12/05/2016	800117	Galles Filter Service	\$ 956.06	5410-31230-402320	Filters for Landfill equipment
12/05/2016	800117	Galles Filter Service	\$ 240.80	6010-00000-141000	P-64231-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 97.44	6010-00000-141000	P-64283-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 110.97	6010-00000-141000	P-64307-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 251.24	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 301723
12/05/2016	800117	Galles Filter Service	\$ 313.03	5710-00000-141714	BUS MET PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 169.12	5710-71440-402320	AUTO &TRUCK MAINT.ITEMS
12/05/2016	800117	Galles Filter Service	\$ 452.13	5410-31230-402320	Filters for Landfill equipment
12/05/2016	800117	Galles Filter Service	\$ 153.77	6010-00000-141000	P-63872-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 142.45	6010-00000-141000	P-63988-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 140.34	6010-00000-141000	P-64118-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 77.13	1500-22260-402320	P-63874-01
12/05/2016	800117	Galles Filter Service	\$ 77.13	1500-22260-402320	T-63617
12/05/2016	800117	Galles Filter Service	\$ 144.37	5710-00000-141714	BUS MET PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 166.80	5120-84000-402450	Gaskets for blowers
12/05/2016	800117	Galles Filter Service	\$ 122.72	5410-31230-402320	Filters for Landfill Equipment
12/05/2016	800117	Galles Filter Service	\$ 499.01	5410-31230-402320	Filters for Landfill equipment
12/05/2016	800117	Galles Filter Service	\$ 156.15	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 301711
12/05/2016	800117	Galles Filter Service	\$ 198.09	5710-71440-402320	AUTO &TRUCK MAINT.ITEMS
12/05/2016	800117	Galles Filter Service	\$ 361.41	5710-00000-141714	BUS MET PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 46.12	2110-31320-402320	P-64320-01
12/05/2016	800117	Galles Filter Service	\$ 828.11	5410-31230-402320	Filters for Landfill equipment
12/05/2016	800117	Galles Filter Service	\$ 115.25	6010-00000-141000	P-64392-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 95.97	6010-00000-141000	P-64430-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 73.31	6010-00000-141000	P-64470-01 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 5.80	6010-00000-141000	T-63935 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 31.13	6010-00000-141000	T-64003 PO NUM 301636
12/05/2016	800117	Galles Filter Service	\$ 52.93	5410-31230-402320	P-64393-01
12/05/2016	800117	Galles Filter Service	\$ 3.44	0100-51120-402320	P-64395-01
12/05/2016	800117	Galles Filter Service	\$ 8.90	5410-31230-402320	T-63984
12/05/2016	800119	Goetz Baldwin & Geddes PC	\$ 32,745.14	0100-16110-403560	Watters et al
12/05/2016	800120	Good Earth Works Co Inc The	\$ 28,194.21	8450-31860-409310	WO 17-08 Poly & Virginia Landscape Improvements
12/05/2016	800124	Guardian Security Inc	\$ 8,553.75	2600-55120-403574	Invoice 114
12/05/2016	800126	Harris Systems USA Inc	\$ 813.75	5020-73110-403553	Harris Add effective date edit on usage adjustments
12/05/2016	800126	Harris Systems USA Inc	\$ 542.50	5120-83110-403553	Harris Add effective date edit on usage adjustments

Check Date	Check	Name	Amount	Account	Item Desc
12/05/2016	800126	Harris Systems USA Inc	\$ 236.25	5020-73110-403553	Harris Add effective date edit on usage adjustments
12/05/2016	800126	Harris Systems USA Inc	\$ 157.50	5120-83110-403553	Harris Add effective date edit on usage adjustments
12/05/2016	800126	Harris Systems USA Inc	\$ 306.25	5410-31230-403660	Addition to WasteWorks modification
12/05/2016	800126	Harris Systems USA Inc	\$ 175.00	5410-31230-403660	Modification to style sheet
12/05/2016	800126	Harris Systems USA Inc	\$ 337.50	5410-31220-409480	CIS Web Services (2) for Integration with Route Ware
12/05/2016	800127	Hauf Industries LLC	\$ 135.00	1500-22290-402120	1138: ENGINE 5 - VENT SAW REPAIRED
12/05/2016	800127	Hauf Industries LLC	\$ 50.00	1500-22290-402120	1139: ENGINE 3 - K12 SAW INITIAL SET UP
12/05/2016	800127	Hauf Industries LLC	\$ 135.00	1500-22290-402120	1140: ENGINE 4 - PPV FAN REPAIR (BROKEN WIRE ON/OFF SWIT CH)
12/05/2016	800127	Hauf Industries LLC	\$ 190.00	1500-22260-402450	1141: FIRE 2 - FALL INSPECTIONS AND WINTERIZATION OF K12 & VENT SAW, PLUS LAWN EQUIPMENT
12/05/2016	800127	Hauf Industries LLC	\$ 250.00	1500-22290-402120	1141: FIRE 2 - FALL INSPECTIONS AND WINTERIZATION OF K12 & VENT SAW, PLUS LAWN EQUIPMENT
12/05/2016	800127	Hauf Industries LLC	\$ 192.50	1500-22260-402450	1142: FIRE4: FALL INSPECTION/WINTERIZATION K12 & VENT SAWS, PLUS TORO MOWER, STIHL TRIMMER
12/05/2016	800127	Hauf Industries LLC	\$ 100.00	1500-22290-402120	1142: FIRE4: FALL INSPECTION/WINTERIZATION K12 & VENT SAWS, PLUS TORO MOWER, STIHL TRIMMER
12/05/2016	800127	Hauf Industries LLC	\$ 202.00	1500-22260-402450	1143: FIRE5 FALL INSPECTIONS/WINTERIZATIONS
12/05/2016	800127	Hauf Industries LLC	\$ 100.00	1500-22290-402120	1143: FIRE5 FALL INSPECTIONS/WINTERIZATIONS.
12/05/2016	800127	Hauf Industries LLC	\$ 130.00	1500-22260-402450	1144: FIRE7 - FALLINSPECTIONS/WINTERIZATIONS.
12/05/2016	800127	Hauf Industries LLC	\$ 150.00	1500-22290-402120	1144: FIRE7 - FALL NSPECTIONS/WINTERIZATIONS.
12/05/2016	800127	Hauf Industries LLC	\$ 150.00	1500-22240-402120	1145: FIRE1 FALL INSPECTIONS/WINTERIZATIONS K12 & VENT SAWS, LAWN MOWERS STIHL TRIMMERS
12/05/2016	800127	Hauf Industries LLC	\$ 50.00	1500-22260-402450	1145: FIRE1 FALL INSPECTIONS/WINTERIZATIONS K12 & VENT SAWS, LAWN MOWERS STIHL TRIMMERS
12/05/2016	800127	Hauf Industries LLC	\$ 250.00	1500-22290-402120	1145: FIRE1 FALL INSPECTIONS/WINTERIZATIONS K12 & VENT SAWS, LAWN MOWERS STIHL TRIMMERS
12/05/2016	800127	Hauf Industries LLC	\$ 55.00	1500-22290-402120	1146: ENGINE 1 - RAM FAN REPAIR / WOULDN'T START
12/05/2016	800127	Hauf Industries LLC	\$ 232.00	1500-22260-402450	1147: FIRE6 - K12 & VENT SAW MAINT, PLUS JACOBSEN & TORO MOWER SERVICE, STIHL TRIMMER

Check Date	Check	Name	Amount	Account	Item Desc
12/05/2016	800127	Hauf Industries LLC	\$ 100.00	1500-22290-402120	1147: FIRE6 - K12 & VENT SAW MAINT, PLUS JACOBSEN & TORO MOWER SERVICE, STIHL TRIMMER
12/05/2016	800127	Hauf Industries LLC	\$ 92.50	1500-22260-402450	1148: FIRE3 - FALL INSPECTIONS/MAINT - TORO MOWER, HUSQVARNA TRIMMER
12/05/2016	800128	HDR, Inc.	\$ 9,190.07	5030-74910-409390	WO 16-98 2016 Integrated Water Plan (IWP)
12/05/2016	800132	InfoSend Inc	\$ 1,890.00	5020-73110-403111	Snipe Go paperless-2 months
12/05/2016	800132	InfoSend Inc	\$ 1,260.00	5120-83110-403111	Snipe Go paperless-2 months
12/05/2016	800133	Ingram Library Services Inc.	\$ 64.23	2600-55190-403227	95637934
12/05/2016	800133	Ingram Library Services Inc.	\$ 13.78	2600-55190-403241	95637934
12/05/2016	800133	Ingram Library Services Inc.	\$ 22.98	2600-55190-403242	95637934
12/05/2016	800133	Ingram Library Services Inc.	\$ 11.37	2600-55190-403227	95637935
12/05/2016	800133	Ingram Library Services Inc.	\$ 10.15	2600-55190-403333	95637935
12/05/2016	800133	Ingram Library Services Inc.	\$ 53.34	2600-55190-403226	95637936
12/05/2016	800133	Ingram Library Services Inc.	\$ 34.57	2600-55190-403227	95637936
12/05/2016	800133	Ingram Library Services Inc.	\$ 16.00	2600-55190-403255	95637936
12/05/2016	800133	Ingram Library Services Inc.	\$ 330.85	2600-55190-403333	95637936
12/05/2016	800133	Ingram Library Services Inc.	\$ 10.99	2600-55190-403334	95637936
12/05/2016	800133	Ingram Library Services Inc.	\$ 72.68	2600-55190-403227	95637937
12/05/2016	800133	Ingram Library Services Inc.	\$ 9.19	2600-55190-403255	95637937
12/05/2016	800133	Ingram Library Services Inc.	\$ 68.94	2600-55190-403242	95637938
12/05/2016	800133	Ingram Library Services Inc.	\$ 40.10	2600-55110-402190	95637939
12/05/2016	800133	Ingram Library Services Inc.	\$ (20.64)	2600-55190-403226	95689412 CR
12/05/2016	800133	Ingram Library Services Inc.	\$ 17.60	2600-55190-403222	95692131
12/05/2016	800133	Ingram Library Services Inc.	\$ 201.84	2600-55190-403226	95692131
12/05/2016	800133	Ingram Library Services Inc.	\$ 14.99	2600-55190-403227	95692132
12/05/2016	800133	Ingram Library Services Inc.	\$ 7.79	2600-55190-403226	95692133
12/05/2016	800133	Ingram Library Services Inc.	\$ 10.02	2600-55190-403333	95692134
12/05/2016	800133	Ingram Library Services Inc.	\$ 43.98	2600-55190-403222	95692135
12/05/2016	800133	Ingram Library Services Inc.	\$ 266.41	2600-55190-403226	95692135
12/05/2016	800133	Ingram Library Services Inc.	\$ 861.80	2600-55190-403227	95692135
12/05/2016	800133	Ingram Library Services Inc.	\$ 175.29	2600-55190-403241	95692135
12/05/2016	800133	Ingram Library Services Inc.	\$ 22.00	2600-55190-403242	95692135
12/05/2016	800133	Ingram Library Services Inc.	\$ 1,922.14	2600-55190-403333	95692135
12/05/2016	800133	Ingram Library Services Inc.	\$ 15.34	2600-55190-403227	95692136
12/05/2016	800133	Ingram Library Services Inc.	\$ 16.80	2600-55190-403241	95692136
12/05/2016	800133	Ingram Library Services Inc.	\$ 7.77	2600-55190-403226	956921137
12/05/2016	800133	Ingram Library Services Inc.	\$ 7.18	2600-55190-403333	95692138
12/05/2016	800133	Ingram Library Services Inc.	\$ 10.02	2600-55190-403241	95692139
12/05/2016	800133	Ingram Library Services Inc.	\$ 20.65	2600-55190-403227	95692140

Check Date	Check	Name	Amount	Account	Item Desc
12/05/2016	800133	Ingram Library Services Inc.	\$ 30.64	2600-55190-403226	95731396
12/05/2016	800133	Ingram Library Services Inc.	\$ 4.79	2600-55190-403226	95731397
12/05/2016	800133	Ingram Library Services Inc.	\$ 15.90	2600-55190-403226	95731398
12/05/2016	800133	Ingram Library Services Inc.	\$ 15.33	2600-55190-403226	95731399
12/05/2016	800133	Ingram Library Services Inc.	\$ 66.00	2600-55190-403222	95731400
12/05/2016	800133	Ingram Library Services Inc.	\$ 547.13	2600-55190-403226	95731400
12/05/2016	800133	Ingram Library Services Inc.	\$ 156.36	2600-55190-403227	95731400
12/05/2016	800133	Ingram Library Services Inc.	\$ 88.02	2600-55190-403255	95731400
12/05/2016	800133	Ingram Library Services Inc.	\$ 22.65	2600-55190-403333	95731400
12/05/2016	800133	Ingram Library Services Inc.	\$ 28.80	2600-55190-403226	95731401
12/05/2016	800133	Ingram Library Services Inc.	\$ 29.47	2600-55190-403227	95731401
12/05/2016	800133	Ingram Library Services Inc.	\$ 39.49	2600-55190-403226	95732639
12/05/2016	800133	Ingram Library Services Inc.	\$ 11.95	2600-55190-403255	95732639
12/05/2016	800137	J & J Concrete Inc.	\$ 2,970.00	8400-00000-201100	WO 16-17 2016 Misc Storm Trouble Spots
12/05/2016	800143	Kadrmas Lee & Jackson	\$ 8,535.72	1990-15050-409310	WO 15-07 Orchard Lane; CO#1 01/25/2016
12/05/2016	800147	Kenco Enterprises Inc.	\$ 2,755.55	2600-55120-403690	Supply and install key pad/FOB reader
12/05/2016	800147	Kenco Enterprises Inc.	\$ 9,185.77	6500-15670-409291	Inv. 1336661 Access add for Administration and IT
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 661.20	2110-31320-404710	asphalt
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 581.40	2110-31320-404710	asphalt
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 544.91	2110-31320-404520	1 1/2" crushed base
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 60.00	2110-31320-402475	6"+ boulders for landscape areas
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 260.71	2110-31320-404520	1 1/2" crushed base
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 3,400.10	2110-31320-404520	winter sand/salt material
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 196.02	2110-31320-404520	1 1/2" crushed base
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 196.48	2110-31320-404520	1 1/2" crushed base
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 3,950.10	2110-31320-404520	winter sand/salt material
12/05/2016	800148	Knife River (JTL Group Inc.)	\$ 720.61	2110-31320-404520	1 1/2" crushed base
12/05/2016	800153	LONG Building Technologies Inc	\$ 2,900.00	5610-71170-402450	Invoice #SRVCE0080104. Replace A/C, Heating Unit at Parking Booth
12/05/2016	800156	Mahoney & Associates Consulting LLC	\$ 3,250.00	0100-15120-403590	FY16-Field - FY16 Cost Allocation
12/05/2016	800162	Marketing Specialties Inc	\$ 4,854.59	5410-31230-402450	Repair at the gas pumps
12/05/2016	800168	Montana Dakota Utilities CNG	\$ 5,315.82	6010-00000-141000	121216 PO NUM 301991
12/05/2016	800169	Montana Dakota Utilities Co	\$ 109.28	0100-51410-403440	571 295 3342 8
12/05/2016	800169	Montana Dakota Utilities Co	\$ 112.07	5020-74000-403440	010 490 1000 0
12/05/2016	800169	Montana Dakota Utilities Co	\$ 26.68	0100-51260-403440	061 943 1000 6
12/05/2016	800169	Montana Dakota Utilities Co	\$ 17.77	5020-74000-403440	110 490 1000 9
12/05/2016	800169	Montana Dakota Utilities Co	\$ 193.60	6500-15660-403440	130 733 1000 8
12/05/2016	800169	Montana Dakota Utilities Co	\$ 59.37	5020-74000-403440	210 490 1000 8
12/05/2016	800169	Montana Dakota Utilities Co	\$ 250.89	5020-73140-403440	310 490 1000 7
12/05/2016	800169	Montana Dakota Utilities Co	\$ 83.62	5120-83140-403440	310 490 1000 7

Check Date	Check	Name	Amount	Account	Item Desc
12/05/2016	800169	Montana Dakota Utilities Co	\$ 33.31	0100-51120-403440	371 101 1000 6
12/05/2016	800169	Montana Dakota Utilities Co	\$ 143.97	5020-73140-403440	410 490 1000 6
12/05/2016	800169	Montana Dakota Utilities Co	\$ 47.99	5120-83140-403440	410 490 1000 6
12/05/2016	800169	Montana Dakota Utilities Co	\$ 222.47	1500-22210-403440	442 190 1000 4
12/05/2016	800169	Montana Dakota Utilities Co	\$ 1,352.29	5020-74000-403440	500 490 1000 7
12/05/2016	800169	Montana Dakota Utilities Co	\$ 38.30	5020-74000-403440	510 490 1000 5
12/05/2016	800169	Montana Dakota Utilities Co	\$ 13.34	5020-74000-403440	527 033 1000 4
12/05/2016	800169	Montana Dakota Utilities Co	\$ 29.99	5020-74000-403440	566 923 1000 8
12/05/2016	800169	Montana Dakota Utilities Co	\$ 6.67	5020-74000-403440	600 490 1000 6
12/05/2016	800169	Montana Dakota Utilities Co	\$ 6.67	5020-74000-403440	600 490 1000 6
12/05/2016	800169	Montana Dakota Utilities Co	\$ 13.34	5020-74000-403440	610 490 1000 4
12/05/2016	800169	Montana Dakota Utilities Co	\$ 28.33	5020-74000-403440	666 923 1000 7
12/05/2016	800169	Montana Dakota Utilities Co	\$ 128.70	5020-74000-403440	700 490 1000 5
12/05/2016	800169	Montana Dakota Utilities Co	\$ 1,314.58	6500-15660-403440	757 633 1000 2
12/05/2016	800169	Montana Dakota Utilities Co	\$ 318.96	5410-31230-403440	770 390 1000 2
12/05/2016	800169	Montana Dakota Utilities Co	\$ 26.68	5020-74000-403440	800 490 1000 4
12/05/2016	800169	Montana Dakota Utilities Co	\$ 13.34	5020-74000-403440	832 001 1000 1
12/05/2016	800169	Montana Dakota Utilities Co	\$ 28.34	5120-85000-403440	868 563 1000 7
12/05/2016	800169	Montana Dakota Utilities Co	\$ 26.68	5020-74000-403440	900 490 1000 3
12/05/2016	800169	Montana Dakota Utilities Co	\$ 54.38	0100-51410-403440	927 890 1000 3
12/05/2016	800169	Montana Dakota Utilities Co	\$ 2,864.27	6500-15660-403440	989 733 1000 0
12/05/2016	800169	Montana Dakota Utilities Co	\$ 329.52	6500-15660-403440	993 733 1000 4
12/05/2016	800179	NorthWestern Energy	\$ 6,063.62	6500-15670-403410	0100507-3
12/05/2016	800179	NorthWestern Energy	\$ 415.69	1500-22210-403410	0712537-0
12/05/2016	800179	NorthWestern Energy	\$ 98.00	0100-51220-403410	0712683-2
12/05/2016	800179	NorthWestern Energy	\$ 25.24	5710-71480-403410	0712764-0
12/05/2016	800179	NorthWestern Energy	\$ 279.76	5210-15950-403410	0720829-1
12/05/2016	800179	NorthWestern Energy	\$ 350.58	1500-22210-403410	0720840-8
12/05/2016	800179	NorthWestern Energy	\$ 1,285.47	5020-74000-403410	0722252-4
12/05/2016	800179	NorthWestern Energy	\$ 612.56	5020-74000-403410	0723043-6
12/05/2016	800179	NorthWestern Energy	\$ 7.55	0100-51120-403410	0831702-6
12/05/2016	800179	NorthWestern Energy	\$ 1,332.68	5210-15910-403410	1569636-2
12/05/2016	800179	NorthWestern Energy	\$ 249.04	1500-21150-403410	1984150-1
12/05/2016	800179	NorthWestern Energy	\$ 374.78	1500-21150-403410	1984155-0
12/05/2016	800179	NorthWestern Energy	\$ 1,926.48	5210-15940-403410	3067416-2
12/05/2016	800179	NorthWestern Energy	\$ 346.77	5210-15950-403410	3279035-4
12/05/2016	800179	NorthWestern Energy	\$ 24,920.77	5610-71120-403410	0100482-9. Airport Vault Main. November 2016
12/05/2016	800182	Oxygen Forensic Inc	\$ 2,899.00	2550-21440-402290	Software renewal.
12/05/2016	800190	Pros Consulting Inc	\$ 16,355.58	7690-51820-403560	Comprehensive plan for PRPL. Payment 3529
12/05/2016	800191	Public Utilities	\$ 1,394.48	5120-84000-403420	111176

Check Date	Check	Name	Amount	Account	Item Desc
12/05/2016	800191	Public Utilities	\$ 9.67	8720-51980-403420	136098
12/05/2016	800191	Public Utilities	\$ 6,800.78	5610-71100-403420	136516
12/05/2016	800191	Public Utilities	\$ 318.48	6500-15660-403420	158260
12/05/2016	800191	Public Utilities	\$ 9.67	5120-85000-403420	180645
12/05/2016	800191	Public Utilities	\$ 91.73	0100-51120-403420	137793
12/05/2016	800191	Public Utilities	\$ 508.30	8720-51980-403420	242652
12/05/2016	800192	Qwest	\$ 49.10	5210-15920-403450	Qwest 406-252-2041 Park 2 Elevator Phone
12/05/2016	800192	Qwest	\$ 98.20	5610-71120-403450	Qwest 406-252-9412 Airport
12/05/2016	800192	Qwest	\$ 49.10	0100-51400-403450	Qwest 406-652-0269 Cemetery FAX Line
12/05/2016	800192	Qwest	\$ 50.57	0100-51120-403450	Qwest 406-652-5507 Parks
12/05/2016	800192	Qwest	\$ 37.59	2110-31320-403450	Qwest 406-652-8104 PW Traffic Signal 24 Central
12/05/2016	800192	Qwest	\$ 39.33	0100-51210-403450	Qwest 406-652-8403 Stewart Park Batting Cages
12/05/2016	800192	Qwest	\$ 36.56	0100-51120-403450	Qwest 406-657-3014 Parks 3890 Stillwater
12/05/2016	800192	Qwest	\$ 2,753.90	6060-19310-403450	Qwest 406-657-8377 Main System Centrex
12/05/2016	800192	Qwest	\$ 55.83	5610-71150-403450	Qwest 406-252-0721 Airport 1FB Line
12/05/2016	800192	Qwest	\$ 114.87	6060-19310-403450	Qwest 406-657-3009 PUD Measured Lines
12/05/2016	800192	Qwest	\$ 36.62	5210-15920-403450	Qwest 406-657-3054 Park 1 Elevator Phone
12/05/2016	800192	Qwest	\$ 78.31	6060-19310-403450	Qwest 406-252-3774 BOC Measured Lines
12/05/2016	800208	Sunset Excavation	\$ 675.00	5050-75150-403671	2236 Pueblo
12/05/2016	800208	Sunset Excavation	\$ 12,028.50	5050-75150-403671	Water Repair List 09 02 2016
12/05/2016	800219	Tire-Rama	\$ 4,992.00	5410-31220-402390	Recapped tires for the garbage trucks
12/05/2016	800219	Tire-Rama	\$ 3,160.87	5410-31220-402390	Recapped tires for the garbage trucks
12/05/2016	800219	Tire-Rama	\$ 3,080.00	5410-31220-402390	Recapped tires for the garbage trucks
12/05/2016	800219	Tire-Rama	\$ 4,928.00	5410-31220-402390	Recapped tires for the garbage trucks
12/05/2016	800219	Tire-Rama	\$ 60.32	5410-31220-402390	Tire for trailer
12/05/2016	800219	Tire-Rama	\$ 4,977.25	5410-31220-402390	Recapped tires for garbage trucks
12/05/2016	800219	Tire-Rama	\$ 1,848.00	5410-31220-402390	Recapped tires for the garbage trucks
12/05/2016	800219	Tire-Rama	\$ 948.00	5410-31220-402390	tire repairs for the garbage trucks
12/05/2016	800219	Tire-Rama	\$ 1,304.00	5410-31220-402390	Recapped tires for the garbage trucks
12/05/2016	800219	Tire-Rama	\$ 810.00	5410-31220-402390	tire repairs for the garbage trucks
12/05/2016	800221	TKR Gainan LLC	\$ 115,000.00	7230-65950-405930	DRLF - TKR Gainan LLC
12/05/2016	800222	Town & Country Supply Association	\$ 14,241.16	5610-71180-402313	Invoice #220272. QTA Car Rental Fuel
12/05/2016	800222	Town & Country Supply Association	\$ 485.45	1500-22260-402310	240505: FIRE1 UNLEADED DELIVERED 11/25/2016
12/05/2016	800222	Town & Country Supply Association	\$ 1,576.50	1500-22260-402310	240505: BLENDED DIESEL FIRE6 (280GAL); FIRE 1 (240GAL); FIRE3 (196GAL); FIRE5 (290GAL)
12/05/2016	800231	Wesco	\$ 36,292.40	5020-74000-403660	service agreement WTP Preventative Maintenance Testing Clarifications two breakers switch gear
12/05/2016	800238	Yellowstone Valley Animal Shelter	\$ 22,855.58	1500-21700-403990	contract 10-22-16\11-21-16
12/05/2016	800239	Yochum Contracting Inc	\$ 2,525.00	5050-75150-403671	repair 123 N 23rd
12/05/2016	800240	Guthals, Hunnes & Reuss Trust Account	\$ 75,000.00	2010-15070-403590	BIRD vs. BOA settlement

**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** Public Hearing and Pretreatment Service Agreement with the City of Billings and the Exxon Mobil Corporation

**PRESENTED BY:** David Mumford, Public Works Director

**Department:** Public Works

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**PROBLEM/ISSUE STATEMENT**

This Council memorandum is a follow-up to the December 5, 2016 work session for the approval of the Pretreatment Service Agreement with the ExxonMobil Corporation. Approval of this agreement is required before the Public Works Department is able to issue an Industrial Pretreatment Permit to their refinery. A public hearing is required prior to the City providing sewer service to an area outside of the City limits as per City Code (BMCC) Section 26-206. City Council will conduct a public hearing, consider granting a waiver to service and annexation requirements of Sections 22-203 and 22-204 (as amended) and consider approving the Pretreatment Service agreement with the ExxonMobil Corporation. The agreement identifies the terms and conditions to permit the ExxonMobil Corporation's refinery industrial wastewater discharge into the City's wastewater system for treatment. In general, this includes insuring compliance with City, State and Federal requirements, fee and rate methodology, limits on industrial loadings, and indemnification conditions. The agreement states that the ExxonMobil Corporation acknowledges and accepts a maximum daily discharge of 2.0 million gallons per day (2 MGD). They may request a variance to the 2 MGD if they anticipate the flow limit might be exceeded. Staff has determined that the City's wastewater treatment plant has the capacity to treat this industrial wastewater. The ExxonMobil Corporation is expected to utilize the Lockwood sewer system to convey this discharge to the City for treatment. The point of compliance for this agreement will be upstream of the Lockwood sewer system. In the event that the Lockwood sewer system is not used, the ExxonMobil Corporation is required to find an alternate conveyance system to the City.

Public Works originally presented this recommendation to Council at the January 5, 2015 work session. In addition, the Public Works Board discussed the City serving the ExxonMobil Corporation at their April 16, 2015 meeting. The consensus of the Board was to pursue serving this property outside of the City limits without requiring annexation. This agreement is similar to the Pretreatment Service Agreement with the Phillips 66 Billings refinery that was approved by City Council on July 22, 2013. Following the approval of the agreement, Public Works will issue a Significant Industrial User Discharge permit to the ExxonMobil Corporation which specifically sets pollutant and flow limits, monitoring and reporting requirements.

**ALTERNATIVES ANALYZED**

Council may:

- Grant a waiver to BMCC Sections 26-203 and 204 and approve this agreement without annexation; or
- Not approve the waiver or this agreement. Not approving the Agreement will require the ExxonMobil Corporation to pursue an alternate industrial wastewater discharge that would likely include direct discharge to the Yellowstone River.

## **FINANCIAL IMPACT**

If the Agreement is approved, the City would assess fees and rates based on an outside service contract similar to the Lockwood Water and Sewer District Agreement and to the Pretreatment Service Agreement for the Phillips 66 Company's Billings refinery. The ExxonMobil Corporation would be assessed a one-time System Development Fee, three-year Industrial Permit Fees, and a monthly wastewater rate based on metered flow.

## **RECOMMENDATION**

Staff recommends that the City Council conduct the public hearing, grant a waiver to BMCC 26-203 and 204 and approve this Pretreatment Service agreement between the City of Billings and the ExxonMobil Corporation without annexation.

## **APPROVED BY CITY ADMINISTRATOR**

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### **Attachments**

Pre-Treatment Agreement with ExxonMobil  
Application for Wastewater Service Area Enlargement  
Phillips 66 Agreement

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## Pretreatment Service Agreement

THIS PRETREATMENT SERVICE AGREEMENT (“Agreement”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”), by and between the CITY OF BILLINGS, MONTANA, a municipal corporation (“CITY”) and the EXXONMOBIL CORPORATION, located at 700 ExxonMobil Road, Billings, Montana 59101 (“EXXONMOBIL”). (The CITY and EXXONMOBIL may each, hereinafter, be referred to individually as a “Party,” or collectively as the “Parties”.)

### WITNESSETH

WHEREAS, the CITY is authorized under state law to establish, construct, reconstruct, extend, operate and maintain a municipal wastewater utility with a plant for the treatment and/or disposal of wastewater and to regulate, establish and change the rates, charges, and classifications imposed on persons served by the municipal wastewater utility;

WHEREAS, EXXONMOBIL requests to discharge process wastewater and limited stormwater, herein referred to as “Industrial Wastewater,” into the CITY’S wastewater collection and treatment system;

WHEREAS, the CITY has determined that it has sufficient capacity in its wastewater system to treat and dispose of EXXONMOBIL’s Industrial Wastewater in a manner that meets all effluent limitations set forth in the CITY’S current Montana Pollutant Discharge Elimination System Permit, MT-0022586, and Article 26-600 Industrial Waste Discharge, Section 26-604 Prohibited Discharges and Limitations, Billings, Montana City Code (“BMCC”); and

WHEREAS, EXXONMOBIL is an outside CITY contract customer and Significant Industrial Discharger subject to a wholesale rate fee schedule;

NOW, THEREFORE, BE IT RESOLVED that in consideration of mutual covenants to be performed by the Parties, it is hereby agreed as follows, inclusive of the referenced attachments:

**1. Contractual Relationship:** Approval of this Agreement does not create on behalf of EXXONMOBIL any ownership rights of the CITY’S collection and treatment system, nor any joint venture, partnership, cooperative or other legal relationship between the CITY and EXXONMOBIL. The only relationship established by this Agreement shall be that of municipal utility (Public Works Department) and contractual customer (EXXONMOBIL), subject to the conditions set forth herein. Also, approval of this Agreement does not authorize any infringement of federal, state or local laws by either Party.

**2. Contractual Conditions:** This Agreement establishes the provisions and submittals for the acceptance of treated Industrial Wastewater from EXXONMOBIL. Per Article 26-600, BMCC, EXXONMOBIL shall apply and must obtain an Industrial Discharge Permit (“Permit”) and remit all fees prior to discharge. Conditions specific to the Permit shall be addressed in Pretreatment Application

(Part A) and Industrial Discharge Permit (Part B). The CITY shall be unable to serve ExxonMobil as a contractual customer pursuant to this Agreement until EXXONMOBIL can convey its Industrial Wastewater from the point of compliance to the CITY'S wastewater system.

EXXONMOBIL shall be responsible for (i) the conveyance and costs of conveyance of all Industrial Wastewater from the point of compliance (as set forth in Section 3 below) to the CITY'S wastewater system and (ii) the execution of any necessary conveyance agreement (or similar agreement) with the Lockwood Area/Yellowstone County Water and Sewer District ("District"). The CITY shall give notice to EXXONMOBIL of any change or proposed change to, or termination or expiration of, its conveyance agreement with the District.

**3. Point of Compliance:** Under this Agreement, EXXONMOBIL shall be limited to one industrial wastewater discharge lateral further described as the location of the continuous monitoring equipment and lift station on EXXONMOBIL's property ("Point of Compliance"). EXXONMOBIL shall bear all costs associated with construction, operation, maintenance and replacement of all the appurtenances associated with the lateral discharge to the point of connection with the Lockwood Area/Yellowstone County Water and Sewer District facilities. The Industrial Wastewater discharge shall not be purposefully diluted with the intent of meeting CITY of Billings/EPA industrial pretreatment limits. Any domestic discharge upstream of the Point of Compliance shall be identified and quantified.

**4. Capacity Limits:** EXXONMOBIL's maximum daily mass limits for discharge shall be based on the % of the CITY'S Maximum Allowable Industrial Load (MAIL) for selenium and arsenic in the first EXXONMOBIL permit cycle. The % shall be equivalent to 0.28 #/day of arsenic and 1.27 #/day of selenium for the first permit cycle. EXXONMOBIL acknowledges and accepts a maximum daily discharge flow set by the CITY of 2.0 million gallons per day (mgd). Each renewal of the Permit shall list and set both pounds per day (lbs/day) and/or concentration and the maximum daily discharge flow. EXXONMOBIL acknowledges that mass limits, concentration limits, and number of specific pollutants shall either remain the same, increase, or decrease with each renewal of the Industrial Discharge Permit as determined by the CITY. EXXONMOBIL may request a variance to the daily maximum flow rate of 2.0 MGD in the event that it anticipates the flow limit might be exceeded. The variance shall be requested forty-eight (48) hours prior to the day on which the flow is expected to exceed 2.0 MGD. The volume shall be based on the CITY'S and the District's ability to hydraulically treat the additional loading from EXXONMOBIL. Increased sampling may be required with the CITY'S approval. Twenty-four (24) months after the commencement of the EXXONMOBIL industrial discharge, the CITY shall conduct a review of the EXXONMOBIL industrial discharge monitoring data and the CITY wastewater treatment plant operating data. The CITY, at its sole discretion, shall determine if revisions of the Local Limits, the Maximum Allowable Headworks Loading (MAHL), the Maximum Allowable Industrial Load (MAIL), the EXXONMOBIL Industrial Discharge Permit effluent limitations is needed.

Permit effluent limit revisions shall be made in accordance with the CITY'S pretreatment program and the reopener provisions of the Permit, which allow for Permit revisions for the following (without limitation): local limits re-evaluation, modification to the CITY'S MPDES permit, or the application of an industry within the CITY limits. Exxon Mobil's compliance schedule shall comply with the CITY'S compliance schedule to prevent permit violations or plant upsets.

The CITY and EXXONMOBIL shall initiate discussions no less than 90 days prior to the end of the first Permit cycle and all subsequent permit cycles to anticipate impacts to the Permit effluent limitations based upon, but not limited to, the MAHL, MAIL and the CITY'S MPDES permit limits. Discussions may include alternative approaches to direct reductions of specific pollutants to the EXXONMOBIL Industrial Wastewater discharge. The CITY shall determine if these alternative approaches are acceptable. The CITY shall determine the permit limits for each subsequent Permit cycle.

Notwithstanding anything to the contrary herein, if EXXONMOBIL's maximum daily mass limits for discharge pursuant to this Agreement are at any point less than 1.27 lbs/day of selenium or less than 0.28 lbs/day of arsenic, or if ExxonMobil is required to accept any other water quality parameter for the Industrial Wastewater, then EXXONMOBIL may terminate this Agreement with immediate effect without further cost or penalty by giving written notice to CITY pursuant to the requirements of Section 16 of this Agreement.

**5. Compliance with Regulations:** EXXONMOBIL agrees to accept and shall abide by the following regulations governing pretreatment service (the "Legal Requirements"):

- A. All applicable provisions of the BMCC and the CITY'S Rules and Regulations governing pretreatment service or any future amendments thereto;
- B. All state, federal and local regulations governing the discharging of wastewater and industrial wastes and any future amendments thereto;
- C. Any special conditions set forth in this Agreement and/or Permit, and
- D. All policies and procedures in the Enforcement Response Plan (ERP).

**6. Flow Measurement:** EXXONMOBIL, at its sole expense, shall install, operate and maintain any flow measuring facilities designated by the CITY'S Public Works Director ("Director"), for the purpose of measuring the flow of the EXXONMOBIL industrial wastewater discharge being conveyed to the Point of Compliance described in Section 3. EXXONMOBIL shall keep said facilities in good operating condition at all times. The flow measuring facilities shall accurately and continuously indicate and transmit to the CITY'S wastewater treatment plant the rate of flow and volume of all Industrial Wastewater discharge at the Point of Compliance.

**7. Testing and Sampling:** EXXONMOBIL, at its sole expense, shall install, operate and maintain all sampling facilities designated by the Director for the purpose of testing and sampling the Industrial Wastewater being conveyed at the Point of Compliance. EXXONMOBIL shall install sampling and testing facilities in a location which allows representative samples to be collected of the discharge to the Lockwood wastewater system. The CITY shall have access to said facilities as needed to ensure compliance. EXXONMOBIL shall provide the necessary safety training for appropriate City staff to have immediate access onto the plant site to inspect the equipment and/or collect samples per EXXONMOBIL site access procedures.

The Director or designee shall determine the type of tests to be performed, frequency of sampling, limits for test compliance, and methods and points of sampling on EXXONMOBIL effluent Industrial Wastewater. Said parameters are listed within the Permit and are subject to change with each

reissuance of the permit. Such changes do not require renegotiation of this Agreement. EXXONMOBIL may request in writing to modify both the number of parameters and sampling frequency during each three year permit cycle.

In the event that acute toxicity occurs in the CITY'S Publicly Owned Treatment Works ("POTW") effluent demonstrated by two sampling events collected within 14 days, the CITY shall notify ExxonMobil within 5 days of the second event. EXXONMOBIL shall financially participate on an equitable basis in supplemental toxicity testing, toxicity identification evaluations ("TIE") and toxicity reduction evaluations ("TRE") conducted by the CITY. The EXXONMOBIL financial liability shall be based on actual costs incurred by the CITY and shall end at the time it is concluded that the EXXONMOBIL Industrial Wastewater discharge did not contribute to the POTW effluent toxicity. The enforcement procedures per the CITY'S ERP shall apply if the TRE and/or TIE indicate that the EXXONMOBIL Industrial Wastewater discharge caused the toxicity in the POTW effluent.

**8. Noncompliance:** Upon the CITY making a determination of noncompliance with the Industrial Discharge Permit, EXXONMOBIL shall take immediate steps to correct the problem and regain full compliance. EXXONMOBIL shall, as a result of any noncompliance, make timely payment to the CITY of all costs, damages and penalties imposed by this Agreement and/or by any other applicable codes and regulations including the Industrial Discharge Permit.

**9. Operation and Maintenance:** EXXONMOBIL acknowledges that the failure by EXXONMOBIL to properly operate and maintain its pretreatment plant may adversely influence the volume, rate of flow, and characteristics of the Industrial Wastewater discharged by EXXONMOBIL at the Point of Compliance.

**10. Modifications:** EXXONMOBIL shall obtain the Director's written approval prior to modifying its pretreatment system or lateral appurtenances if the modifications can be expected to change the character, volume, or rate of discharge of its wastewater over and above that specified in the Industrial Discharge Permit.

**11. Reopener:** It is understood by the Parties that the CITY can treat EXXONMOBIL's industrial wastewater only to the extent the CITY is capable of treating wastewater utilizing its existing collection and treatment facilities. In the event that DEQ, EPA or other agency require the CITY to operate with a lower effluent limit, the CITY shall comply with such requirements and may require a reduction in the discharge limits either during or at the reissuance of the Permit as determined by the CITY.

**12. Wastewater System Development Fees:** The System Development Fees ("SDF") shall be calculated by the CITY specifically for the EXXONMOBIL connection. This fee shall be paid at the time of connection. If the SDF is not paid at such time, this Agreement shall be null and void by the CITY.

The methodology used in calculating the SDF for EXXONMOBIL shall be based on industry standard cost of service principles and in accordance with Title 7, Chapter 6, Part 16, Montana Code Annotated. The SDF calculation for EXXONMOBIL shall include only the fixed assets defined as the CITY'S trunk line and waste water treatment plant facilities, capital improvement plan projects, and construction work in progress for which EXXONMOBIL shall receive a benefit.

13. **Billing:** EXXONMOBIL agrees to pay all established rates, charges, and fees of the CITY, now existing or revised, including franchise fees and late payment fees as specified in the CITY'S adopted schedule of rates and charges. EXXONMOBIL shall pay to the CITY a monthly charge for the treatment and disposal of EXXONMOBIL Industrial Wastewater. Monthly payments shall begin at the time EXXONMOBIL commences discharge of wastewater. Payments are due and payable in full no later than thirty (30) days from the date of billing. In addition to the franchise fee and other rates, fees and charges specified herein, a six (6) percent surcharge will be applied to all monthly charges for the treatment and disposal of EXXONMOBIL Industrial Wastewater. The surcharge shall not apply to system development fees and franchise fees.

Payments not received within thirty (30) days shall become delinquent and subject to a late-payment interest charge.

14. **Outside CITY Contract Wastewater Rate Methodology:** It is the intent of the Parties that during the life of this Agreement, EXXONMOBIL shall pay reasonable rates for treatment of its Industrial Wastewater and that the CITY, in turn, shall receive reasonable compensation for the treatment of the EXXONMOBIL Industrial Wastewater. Accordingly, the wastewater rate charged to EXXONMOBIL for treatment of its Industrial Wastewater shall be based upon cost-of-service principles set forth in 40 Code of Federal Regulations (CFR) Part 35, and the Water Environment Federation's latest publication outlining standard principles for equitable cost of service analyses. When calculating the cost-of-service rate to be charged to EXXONMOBIL for treatment of its Industrial Wastewater, the CITY shall use the "utility approach" to determine revenue requirements and the industry standards when allocating costs of service to cost components. In addition, the CITY shall, among other things, take into consideration the following when calculating the cost-of-service rate to be charged to EXXONMOBIL:

- A. The amount of capacity and level of service that the CITY is providing to EXXONMOBIL.
- B. Any capital contributions EXXONMOBIL has made for the construction of the CITY'S wastewater treatment facilities.
- C. The amount of contributions made by inside-city customers towards facilities utilized to serve EXXONMOBIL.
- D. The amount of reserve capacity that the CITY has set aside for EXXONMOBIL in the CITY'S collection and treatment system.

The CITY shall also take into consideration the fact that EXXONMOBIL is classified as a non-owner customer under this Agreement, and as such, it should pay a return on investment to the CITY'S owner customers throughout the life of the Agreement. In order to recognize the risks incurred by the CITY in serving EXXONMOBIL, the rate of return to be used to calculate the return on investment shall be 15%, providing that the average 30-year treasury rate plus 600 basis points for the most recent twelve

month period ending June 30<sup>th</sup>, hereinafter referred to as “return on investment accelerator”, is 15% or less. If the return on investment accelerator exceeds 15%, the rate of return used to calculate the return on investment shall equal the rate of return on investment accelerator; however, the rate of return shall never be less than 15%.

EXXONMOBIL shall pay its proportionate share of any federal, state or local fees assessed to the CITY’S municipal wastewater utility. Such fees shall be due and payable as set forth in Section 14, above.

The CITY reserves the right to periodically adjust the rates set forth herein under the procedures set forth in sections 14 and 15 of this Agreement.

15. **Wastewater Rate Study:** With respect to any future wastewater rate studies that would affect the industrial wastewater rates charged to EXXONMOBIL, the CITY shall give EXXONMOBIL advance notice of its intent to undertake such a study. EXXONMOBIL agrees to provide any information relevant to determining customer service characteristics.

Once the CITY has completed its written report, the CITY shall promptly provide a copy of the report to EXXONMOBIL.

If the CITY and EXXONMOBIL are unable to agree on a reasonable and just wastewater rate to be charged EXXONMOBIL, then the CITY and EXXONMOBIL shall have thirty (30) days from the date of submission of EXXONMOBIL’S response to the CITY’S wastewater rate study within which to informally attempt to reach an Agreement through non-binding mediation. The CITY and EXXONMOBIL agree to work together in good faith in attempting to reach an Agreement on a reasonable and just rate. In the event the Parties are unable to reach an Agreement, EXXONMOBIL may appeal the determination of City staff to the City Council through the normal publicly available challenge process. The determination of the City Council shall be final and binding upon both Parties.

16. **Term of Agreement:** This Agreement shall be effective as of the Effective Date and shall continue until the fifteenth anniversary of the Effective Date, subject to the termination provisions and extensions provided for under this Section 16. This Agreement is renegotiable at any time if both Parties so consent in writing. Either party may terminate this Agreement by giving the other party three (3) years written notice. Upon expiration of the first fifteen (15) year term, this Agreement shall automatically renew for three (3) additional six (6) year terms unless terminated by either party giving to the other Party at least three (3) years’ written notice in advance of such renewal term.- Either Party may immediately terminate this Agreement in the event that EXXONMOBIL is no longer permitted to discharge Industrial Wastewater to the District; provided, that the CITY may not terminate this Agreement if EXXONMOBIL is able at such time to discharge Industrial Wastewater to the City System by other means, including a direct connection to the City System.

17. **Milestones:** EXXONMOBIL shall have three (3) years from the date this Agreement is approved by the CITY’S Mayor and Council to begin discharging their Industrial Wastewater to the CITY’S wastewater treatment plant. Should EXXONMOBIL fail to meet this milestone, this

Agreement may be terminated immediately, or the CITY may extend the Agreement for a reasonable period of time upon receiving from EXXONMOBIL information which the CITY deems to constitute good cause for the delay.

18. **Definitions:** Terms/phrases used in this Agreement (such as but not limited to, industrial wastes, Montana Pollutant Discharge Elimination System ("MPDES") Permit, municipal wastewater system, municipal wastewater treatment plant, pollutant, pretreatment, Public Works Department, Public Works Director, rules and regulations, Maximum Allowable Industrial Load (MAIL), Maximum Allowable Headworks Loading (MAHL), user, wastewater, and wastewater meter) shall be defined as set forth in the Billings Montana City Code, CITY'S Rules & Regulations Governing Wastewater Service, Montana Code Annotated, and applicable US EPA regulations, or any future amendments thereto.

19. **Indemnification:** EXXONMOBIL agrees to indemnify, hold harmless and defend the CITY and its agents, employees and contractors from and against any and all third party claims, demands, suits, and causes of action (collectively referred to hereafter as "Claims") including and without limitation to those Claims relating to injury or death of any persons whomsoever, and to pay all costs of judgments, losses, fines, penalties, damages (including environmental damages to, loss of, or contamination or pollution of any property or resource), and costs and expenses (including reasonable attorneys' fees, costs of litigation and/or investigation and other costs) resulting from any such Claim to the extent such Claim arises out of or results from, directly or indirectly" (i) EXXONMOBIL's breach of this Agreement or (ii) any negligence, Gross Negligence or Willful Misconduct by EXXONMOBIL and its officers, directors, employees and contractors in connection with the performance of this Agreement.

The CITY agrees to indemnify, hold harmless, and defend EXXONMOBIL, its affiliates, and their respective officers, directors, employees, contractors, successors and assigns from and against any and all Claims and to pay all costs of judgments, losses, fines, penalties, damages (including environmental damages to, loss of, or contamination or pollution of any property or resource), and costs and expenses (including reasonable attorneys' fees, costs of litigation and/or investigation and other costs) resulting from any such Claim to the extent such Claim arises out of or results from, directly or indirectly: (i) the CITY'S breach of this Agreement or (ii) any negligence, Gross negligence or Willful Misconduct by the CITY and its agents, employees and contractors in connection with the performance of this Agreement.

Notwithstanding anything in this Agreement to the contrary, each Party is fully responsible, without limit, for Gross Negligence or Willful Misconduct of its managerial and senior supervisory personnel and is not entitled to a release, indemnity, or defense from the other party for this conduct. "Gross Negligence" is defined by the law governing this Agreement; however, if such law does not define the term "Gross negligence," it means any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences. "Willful Misconduct" is defined by the law governing this Agreement; however, if such law does not define the term "Willful misconduct," it means an intentional disregard of good and prudent standards of performance or of any of the terms of this Agreement.

20. **Confidentiality:** "Confidential Information" under this Agreement means all technical and business information that is made available to the CITY, directly or indirectly, by ExxonMobil or Affiliates and expressly marked as such by ExxonMobil. The CITY will hold in confidence all expressly marked Confidential Information and may not use Confidential Information for any purpose other than the development or performance of this Agreement; provided, that the CITY may disclose Confidential Information as required to comply with a valid subpoena or order of a governmental entity or court with proper jurisdiction or as otherwise required by applicable laws, rules or regulations, provided that the CITY: (i) gives EXXONMOBIL prompt written notice to allow EXXONMOBIL to seek a protective order or other appropriate remedy; (ii) discloses only such information as is required by the order or other legal requirement; and (iii) uses reasonable efforts to obtain confidential treatment of the Confidential Information so disclosed.

21. **Audit:** The CITY shall preserve documentation related to this Agreement for three years after completion of the Agreement or as required by law. EXXONMOBIL may audit CITY'S compliance with the Agreement and the CITY shall provide EXXONMOBIL access to the CITY'S documentation, personnel and facilities in support of any such audit and shall permit EXXONMOBIL to reproduce any of the documentation. CITY shall cause any subcontractors to preserve documentation and allow EXXONMOBIL to audit to the same extent. EXXONMOBIL shall bear its own costs to perform an audit but shall not be liable for the CITY'S or subcontractor's costs resulting from an audit of the CITY'S pretreatment program.

22. **Assignment:** Neither Party may assign this Agreement without written approval of the other Party; such approval shall not unreasonably be withheld.

23. **Notices:** Questions, information, and notices under this Agreement shall be directed to the following addresses. Notices shall be in writing and either deposited in the mail with postage prepaid, delivered in person or by private prepaid courier, sent by facsimile with confirmation, or sent by email with confirmation. Either Party may change its address below by written notice to the other party.

EXXONMOBIL  
Address: 700 ExxonMobil Road  
City, State, Zip: Billings, MT 59101  
Attn:  
Phone:  
Fax:  
E-Mail:

CITY  
Address: 210 North 27<sup>th</sup> Street  
City, State, Zip: Billings, MT 59101  
Attn:  
Phone:  
Fax:  
E-Mail:

24. **Applicability Law:** The Parties agree that this Agreement is governed in all respects by the laws of the State of Montana and the Parties expressly agree that venue will be in Thirteenth Judicial District Court, Yellowstone County, Montana, and no other venue.

25. **Severability:** In the event any provision of this Agreement is declared void, invalid or contrary to law, the Parties hereto agree that the remaining provisions shall continue and remain in full force and effect. Failure to request a Permit renewal shall nullify this Agreement.

\*\*\*\*\*

IN WITNESS WHEREOF, each of the Parties has executed and delivered this Agreement as of the date first above written.

CITY OF BILLINGS, MONTANA

EXXONMOBIL CORPORATION

By: \_\_\_\_\_  
Thomas W. Hanel, Mayor

By: \_\_\_\_\_  
Billings Refinery Manager

APPROVED AS TO FORM  
AND CONTENT

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

By: \_\_\_\_\_  
Brent Brooks, City Attorney

Attest:

\_\_\_\_\_  
Denise R. Bohlman, City Clerk

APPLICATION FOR WASTEWATER SERVICE AREA ENLARGEMENT

1. Applicant's Name: Exxon Mobil Billings Refinery
2. Mailing Address: 700 Exxon Mobil Rd., Billings MT 59101
3. Legal description of area to be served: See Attachment A  
\_\_\_\_\_  
\_\_\_\_\_
4. The total population to be served by the proposed development is N/A and the estimated volume of sewage to be contributed in gallons per capita from said development 2,000,000 gpcd.
5. Engineer for Applicant: Ron Kubler, Steve Marts
6. The attached Title Memorandum indicates the "Owner of Record" for all of the property requesting inclusion in the Wastewater Service Area.
7. The (DEDICATED) (PROPOSED) (APPROVED PRELIMINARY) or (RECORDED) attached plat or certificate of survey describes all the property for which this application is submitted, the type of development and land use proposed, the type of construction of the buildings and streets to be located on the property in question.
8. Public Works Department  
P.O. Box 30958  
Billings, MT 59101

Applicant:

Being desirous of obtaining wastewater service from the City of Billings and as a necessary prerequisite thereto, we the owners of the property described in Section 4, above, petition the City Council to grant and approve an enlargement of the City of Billings Wastewater Service Area so as to include said property within said Wastewater Service Area. It is clearly understood that consideration of this application shall be governed by Chapter 26-200 of the Billings Municipal Code.

It is understood to be the fundamental policy of the Public Works Department and the City Council that the City shall not indefinitely reserve unused sanitary sewer service capacity to the detriment of the City and its existing and prospective customers.

If this application shall be approved, it is understood and agreed that construction of a sanitary sewer system to serve the subject property shall be commenced within two (2) years of the date of approval of this application; and said construction shall be prosecuted continuously to completion within a reasonable time. Notwithstanding any prior approval of this application, the subject property shall be automatically excluded from the approved Wastewater Service Area if construction of the sanitary sewer system is not commenced within two (2) years of the date of approval of this application; and if said construction is not prosecuted continuously to completion within a reasonable time, the subject property shall be excluded from the approved Wastewater Service Area.

The owners for themselves, their successors, and assigns agree to comply with all Rules, Regulations, Policies, Resolutions, and Ordinances of the Billings Public Works Department, the Billings City Council, the Yellowstone County Commissioners, and the Montana Public Service Commission which may govern the extension, use, operation, maintenance and rates, charges, and rentals of the wastewater system of the City of Billings, Montana.

\_\_\_\_\_  
Record Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Record Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Record Owner's Signature

\_\_\_\_\_  
Date

If a Corporate Owner, by \_\_\_\_\_  
(Its Corporate Officer designated as representative for  
purpose of application)

\_\_\_\_\_  
Date

9. Submitted to City Council: \_\_\_\_\_

Public Hearing Held on: \_\_\_\_\_

Approved by City Council: \_\_\_\_\_

Denied by City Council: \_\_\_\_\_

10. SUBJECT TO ATTACHED LETTER.

11. By: \_\_\_\_\_  
Public Works Director

**Attachment A**  
**Legal Description of Area to Be Served**

S24, T 01N, R 26E, COS 2067 96.14 AC

S24, T 01N, R 26E, COS 2065 Parcel 1 282.66 AC

S25, T01N R26 E, 913, Parcel 001, TR 1 & 2, COS 913, IN SECS 2/5/26-1N-26E 64.79  
AC

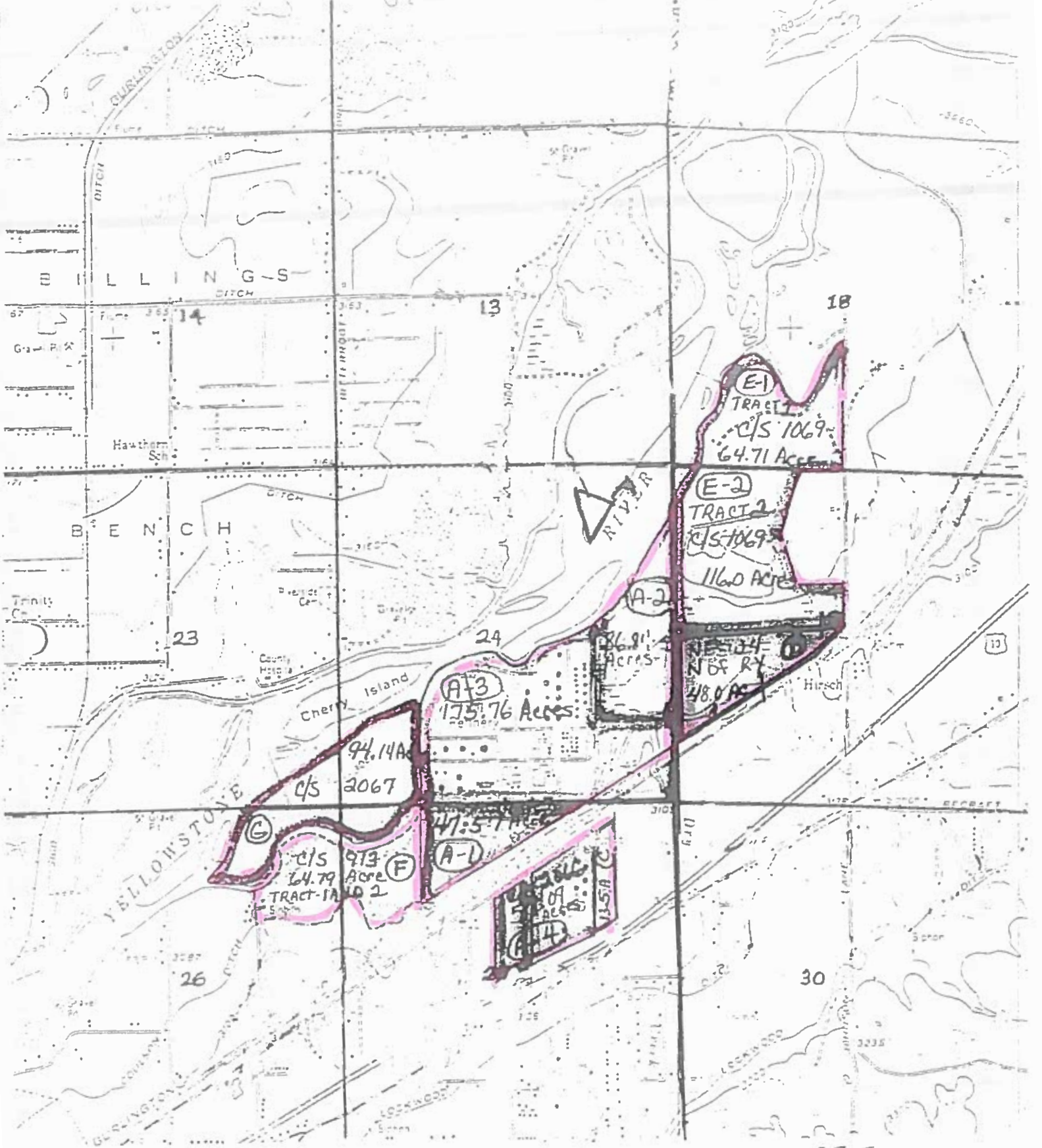
S25, T01N, R26E, COS 2697, Parcel 1, TR 1, COS 2697 IN N2 60.583 AC

S19, T01N, R 27E, COS 1069, Parcel 2, CORR 116.0 AC

S18, T01N, R 27E, COS 1069, Parcel 1, CORR 64.71 AC

S19, T01N, R 27E, FRAC LTS 3 & 4 & NESW4 N of RY 48 AC





25 E

26 E

27 E

ert survey # 2065

Attachment A1



Property Address: 700 ExxonMobil Road



## Pretreatment Service Agreement

THIS AGREEMENT made and entered into this 22nd day of July, 2013, by and between the CITY OF BILLINGS, MONTANA, a municipal corporation, hereinafter referred to as "CITY," and the PHILLIPS 66 Billings Refinery located at 401 S. 23<sup>rd</sup> Street, Billings, Montana 59101 referred to as "PHILLIPS 66". (The CITY and PHILLIPS 66 may each hereinafter be referred to individually as a "Party" or collectively as the "Parties".)

### WITNESSETH

WHEREAS, the CITY is authorized under state law to establish, construct, reconstruct, extend, operate and maintain a municipal wastewater utility with a plant for the treatment and/or disposal of wastewater and to regulate, establish and change the rates, charges, and classifications imposed on persons served by the municipal wastewater utility; and

WHEREAS, PHILLIPS 66 requests to discharge treated non-domestic wastewater and limited stormwater, herein referred to as industrial wastewater, into the CITY's collection and treatment systems.

WHEREAS, the CITY has determined that it has sufficient capacity in the municipal wastewater system to treat and dispose of the PHILLIPS 66 industrial wastewater in a manner that meets all the effluent limitations set forth in the CITY's current Montana Pollutant Discharge Elimination System Permit, MT-0022586, and Article 26-600 Industrial Waste Discharge, Section 26-604 Prohibited Discharges and Limitations, and

WHEREAS, PHILLIPS 66 is an outside CITY contract customer and Significant Industrial Discharger subject to a wholesale rate fee schedule, and

NOW, THEREFORE, BE IT RESOLVED that in consideration of mutual covenants to be performed by the Parties hereto, it is hereby agreed as follows, inclusive of the referenced Attachments:

- 1. Contractual Relationship:** Approval of this Agreement does not create on behalf of PHILLIPS 66 any ownership rights in the municipal wastewater system, nor is any joint venture, partnership, cooperative or other legal relationship between the CITY and PHILLIPS 66. The only relationship established by this Agreement shall be that of municipal wastewater utility (Public Works Department) and contractual customer (PHILLIPS 66), subject to the conditions set forth herein. Also, approval of this Agreement does not authorize any infringement of federal, state or local laws by either Party.
- 2. Contractual Conditions:** This Agreement establishes the provisions and submittals for the acceptance of treated industrial wastewater from PHILLIPS 66. Per Billings Municipal Code 26-600 PHILLIPS 66 shall apply and must obtain an Industrial Discharge Permit and remit all fees prior to discharge into the wastewater system. Conditions specific to the Permit will be addressed in pretreatment application (Part A) and Industrial Discharge Permit (Part B).
- 3. Point of Connection:** Under this agreement PHILLIPS 66 shall be limited to one industrial wastewater discharge lateral connection to the CITY's municipal wastewater system as identified in the Industrial Discharge Permit. PHILLIPS 66 shall bear all costs associated with construction, operation, maintenance and replacement of all the appurtenances associated with the lateral connection to the point of connection of the municipal wastewater system. The industrial wastewater discharge shall not be diluted with PHILLIPS 66 existing domestic discharge.

4. **Reserve Capacity:** CITY has allocated 80% of the Maximum Allowable Industrial Loading (MAIL) for selenium and arsenic in the first permit cycle to PHILLIPS 66. PHILLIPS 66 acknowledges and accepts a maximum daily discharge flow set by the CITY. Each Industrial Discharge Permit renewal will list and set both pounds per day (lbs/day) and/or concentration and the maximum daily discharge flow. PHILLIPS 66 acknowledges that mass limits, concentration limits, and number of specific pollutants will either remain the same, increase, or decrease with each renewal of the Industrial Discharge Permit as determined by the CITY.

Eighteen (18) months after the commencement of the PHILLIPS 66 industrial discharge, the CITY will conduct a review of the PHILLIPS 66 industrial discharge monitoring data and the CITY wastewater treatment plant operating data. The CITY at its sole discretion will determine if revisions of the Local Limits, the MAHL, the MAIL, the PHILLIPS 66 Industrial Discharge Permit effluent limitations is needed.

Should it be determined that revisions of the PHILLIPS 66 Industrial Discharge Permit effluent limitations are necessary, these revisions will be made in accordance with the CITY's pretreatment program and the reopener provisions of the PHILLIPS 66 Industrial Discharge Permit. In the event that a reduction in the PHILLIPS 66 Industrial Discharge Permit effluent limitations is made, the CITY will afford PHILLIPS 66 a minimum of a two-year compliance schedule in the Industrial Discharge Permit to comply with the reduced limits.

The CITY and PHILLIPS 66 shall initiate discussions no less than 90 days prior to the end of the first Industrial Discharge Permit cycle and all subsequent permit cycles to anticipate impacts to the PHILLIPS 66 Industrial Discharge Permit effluent limitations based upon, but not limited to, the MAHL, MAIL and the CITY's MPDES permit limits. Discussions can include alternative approaches to direct reductions of specific pollutants to the PHILLIPS 66 industrial wastewater discharge. The CITY will determine if these alternative approaches are acceptable. The CITY shall determine the permit limits for each subsequent Industrial Discharge Permit cycle.

5. **Compliance with Regulations:** PHILLIPS 66 hereby agrees to accept and abide by the following regulations governing pretreatment service:

- A. All applicable provisions of the Billings Montana City Code and the CITY'S Rules and Regulations Governing pretreatment service or any future amendments thereto;
- B. All state, federal and local regulations governing the discharging of wastewater and industrial wastes into the municipal wastewater system and any future amendments thereto;
- C. Any special conditions set forth in this Agreement and/or Industrial Discharge Permit, and
- D. Comply with the policies and procedures in the amended Enforcement Response Plan (ERP)

If PHILLIPS 66 violates any of said codes, regulations, special conditions, and/or the indemnification provisions set forth in Section 19 then the CITY may, upon 30 days notice, deem the Agreement terminated. The CITY may extend this 30 day notice period if it receives information constituting good cause for a violation from PHILLIPS 66 and PHILLIPS 66 submits a written corrective action plan and schedule to the CITY that will correct the violation within a reasonable time. What constitutes a reasonable time pursuant to this provision will be determined on the basis of the nature and severity of the violation, regulatory mandates under which the CITY and PHILLIPS 66 are required to operate and the viability and expediency of the corrective action. Upon receiving this information, the CITY will inform PHILLIPS 66 of its intent to either 1) allow continued discharging under the

Agreement or to 2) terminate the Agreement.

**6. Flow Measurement:** PHILLIPS 66, at its sole expense, shall install, operate and maintain any flow measuring facilities designated by the Director, for the purpose of measuring the flow of the PHILLIPS 66 industrial discharge being conveyed to the municipal wastewater system. PHILLIPS 66 shall keep said facilities in good operating condition at all times. The flow measuring facilities shall, accurately and continuously indicate and transmit to the municipal wastewater treatment plant the rate of flow and volume of all industrial wastewater discharge into the municipal wastewater system.

**7. Testing and Sampling:** PHILLIPS 66, at its sole expense, shall install, operate and maintain all sampling facilities designated by the Director for the purpose of testing and sampling the industrial discharge being conveyed to the municipal wastewater system. PHILLIPS 66 shall install sampling and testing facilities at or near the point of connection to the municipal wastewater system. The CITY shall have access to said facilities as needed to ensure compliance. PHILLIPS 66 shall provide the necessary safety training for appropriate CITY staff to have immediate access onto the plant site to inspect the equipment and/or collect samples per PHILLIPS 66 site access procedures.

The Director or designee shall determine the type of tests to be performed, frequency of sampling, limits for test compliance, and methods and points of sampling on PHILLIPS 66 effluent industrial wastewater. Said parameters are listed within the Industrial Discharge Permit and are subject to change with each reissuance of the permit. Such changes do not require renegotiations of this Agreement. PHILLIPS 66 may request in writing to modify both the number of parameters and sampling frequency during each three year permit cycle.

In the event that acute toxicity occurs in the CITY's POTW effluent demonstrated by two sampling events collected within 14 days, PHILLIPS 66 will financially participate on an equitable basis in supplemental toxicity testing, toxicity identification evaluations (TIE) and toxicity reduction evaluations (TRE) conducted by the CITY. The PHILLIPS 66 financial liability will be based on actual costs incurred by CITY, and will end at the time it is concluded that the PHILLIPS 66 industrial wastewater discharge did not contribute to the POTW effluent toxicity. The enforcement procedures per the CITY's Enforcement Response Plan would apply if the TRE and/or TIE indicated that the PHILLIPS 66 industrial wastewater discharge caused the toxicity in the POTW effluent.

**8. Noncompliance:** Upon making such determination, PHILLIPS 66 shall take immediate steps to correct the problem and regain full compliance. PHILLIPS 66 shall, as a result of such noncompliance, make timely payment to the CITY of all costs, damages and penalties imposed by this Agreement and/or by any other applicable codes and regulations including the Industrial Users Permit.

**9. Operation and Maintenance:** PHILLIPS 66 acknowledges that the failure by PHILLIPS 66 to properly operate and maintain its pretreatment plant can adversely influence the volume, rate of flow, and characteristics of the industrial wastewater discharged by PHILLIPS 66 into the municipal wastewater system.

**10. Modifications:** PHILLIPS 66 shall obtain the Director's written approval prior to modifying its pretreatment system or lateral appurtenances which can change the character, volume, or rate of discharge of its wastewater entering the municipal wastewater system over and above that specified in the Industrial Discharge Permit.

**11. Reopener:** It is understood by the Parties hereto that the CITY can only treat PHILLIPS 66 industrial wastewater to the extent the CITY is presently capable of treating wastewater, utilizing the

existing municipal wastewater treatment facilities. In the event that DEQ, EPA or other agency requires a lower effluent limit, the CITY shall comply with such requirements and may require a reduction in the discharge limits either during or at the reissuance of an Industrial Discharge Permit as determined by the CITY.

**12. Wastewater System Development Fees:** The System Development Fees (SDF) will be calculated by the CITY specifically for the PHILLIPS 66 connection. This fee shall be paid at the time of connection. If the system development fee is not paid at such time, this Agreement shall be null and void by the CITY.

The methodology used in calculating the system development fee for PHILLIPS 66 will be based on industry standard cost of service principles and in accordance with Title 7, Chapter 6, Part 16, Montana Code Annotated. The SDF calculation for PHILLIPS 66 will include only the fixed assets defined as the CITY's trunk line and waste water treatment plant facilities, capital improvement plan projects, and construction work in progress for which PHILLIPS 66 will receive a benefit.

**13. Billing:** PHILLIPS 66 agrees to pay all established rates, charges, and fees of the CITY, now existing or revised, including franchise fees and late payment fees as specified in the CITY's adopted schedule of rates and charges. PHILLIPS 66 shall pay to the CITY a monthly charge for the treatment and disposal of PHILLIPS 66 industrial wastewater. Monthly payments shall begin at the time PHILLIPS 66 commences discharge of wastewater into the municipal wastewater system. Payments are due and payable in full no later than thirty (30) days from the date of billing. In addition to the franchise fee and other rates, fees and charges specified herein, a six (6) percent surcharge will be applied to all monthly charges for the treatment and disposal of PHILLIPS 66 industrial wastewater. The surcharge shall not apply to system development fees and franchise fees.

Payments not received within thirty (30) days shall become delinquent and subject to a late-payment interest charge.

**14. Outside CITY Contract Wastewater Rate Methodology:** It is the intent of the Parties hereto that during the life of this Agreement, PHILLIPS 66 shall pay reasonable rates for treatment of its industrial wastewater and that the CITY, in turn, shall receive reasonable compensation for the treatment of the PHILLIPS 66 industrial wastewater. Accordingly, the wastewater rate charged to PHILLIPS 66 for treatment of its wastewater shall be based upon cost-of-service principles set forth in 40 Code of Federal Regulations (CFR) Part 35, and the Water Environment Federation's latest publication outlining standard principles for equitable cost of service analyses. When calculating the cost-of-service rate to be charged to PHILLIPS 66 for treatment of its industrial wastewater, the CITY shall use the "utility approach" to determine revenue requirements and the industry standards when allocating costs of service to cost components. In addition, the CITY shall, among other things, take into consideration the following when calculating the cost-of-service rate to be charged to PHILLIPS 66:

- A. The amount of capacity and level of service that the CITY is providing to PHILLIPS 66.
- B. Any capital contributions PHILLIPS 66 has made for the construction of the CITY'S wastewater treatment facilities.
- C. The amount of contributions made by inside-city customers towards facilities utilized to serve PHILLIPS 66.
- D. The amount of reserve capacity that the CITY has set aside for PHILLIPS 66 in the municipal wastewater system.

The CITY shall also take into consideration the fact that PHILLIPS 66 is classified as a non-owner customer under this Agreement, and as such, it should pay a return on investment to the CITY'S owner

customers throughout the life of the Agreement. In order to recognize the risks incurred by the CITY in serving PHILLIPS 66, the rate of return to be used to calculate the return on investment shall be 15%, providing that the average 30-year treasury rate plus 600 basis points for the most recent twelve month period ending June 30<sup>th</sup>, hereinafter referred to as "return on investment accelerator", is 15% or less. If the return on investment accelerator exceeds 15.00%, the rate of return used to calculate the return on investment shall equal the rate of return on investment accelerator; however, the rate of return shall never be less than 15%.

PHILLIPS 66 shall pay its proportionate share of any federal, state or local fees assessed the municipal wastewater utility. Such fees shall be due and payable as set forth in Section 14, above. The CITY reserves the right to periodically adjust the rates set forth herein under the procedures set forth in paragraph 14 and 15.

15. **Wastewater Rate Study:** With respect to any future wastewater rate studies that would affect the industrial wastewater rates charged to PHILLIPS 66, the CITY shall give PHILLIPS 66 advance notice of its intent to undertake such a study. PHILLIPS 66 agrees to provide any information relevant to determining customer service characteristics.

Once the CITY has completed its written report, the CITY shall promptly provide a copy of the report to PHILLIPS 66.

If the CITY and PHILLIPS 66 are unable to agree on a reasonable and just wastewater rate to be charged PHILLIPS 66, then the CITY and PHILLIPS 66 shall have thirty (30) days from the date of submission of PHILLIPS 66 response to the CITY'S wastewater rate study within which to informally attempt to reach an agreement through non-binding mediation. The CITY and PHILLIPS 66 agree to work together in good faith in attempting to reach an agreement on a reasonable and just rate. In the event the Parties are unable to reach an agreement, PHILLIPS 66 may appeal the determination of CITY staff to the City Council through the normal publicly available challenge process. The determination of the City Council shall be final and binding upon both Parties.

16. **Term of Agreement:** This Agreement is renegotiable at any time if both Parties so consent in writing. Either party may terminate this Agreement by giving the other party two (2) years written notice. Upon expiration of the first fifteen (15) year term, this Agreement will automatically renew for three (3) additional six (6) year terms unless terminated by either party.

17. **Milestones:** PHILLIPS 66 shall have two (2) years from the date this Agreement is initially signed to begin discharging their industrial wastewater to the CITY's wastewater treatment plant. Should PHILLIPS 66 fail to meet this milestone, this Agreement may be terminated immediately, or the CITY may extend the Agreement for a reasonable period of time upon receiving from PHILLIPS 66 information which the CITY deems to constitute good cause for the delay.

18. **Definitions:** Terms/phrases used herein this Agreement (such as but not limited to, industrial wastes, Montana Pollutant Discharge Elimination System (MPDES) Permit, municipal wastewater system, municipal wastewater treatment plant, pollutant, pretreatment, Public Works Department, Public Works Director, rules and regulations, Maximum Allowable Industrial Load (MAIL), Maximum Allowable Headworks Loading (MAHL), user, wastewater, and wastewater meter) shall be defined as set forth in the Billings Montana City Code or the CITY'S Rules & Regulations Governing Wastewater Service, or any future amendments thereto.

19 **Indemnification:** PHILLIPS 66 agrees to protect, release, indemnify, and hold the CITY and

its agents harmless from and against any and all claims, losses, fines, penalties, damages, demands, suits, causes of action, judgments, costs and expenses (including attorneys' fees, costs of litigation and/or investigation and other costs associated therewith), and liabilities, of every kind, (collectively referred to hereafter as "claims"), including without limitation those relating to injury or death of any persons whomsoever, damage (including environmental damage) to, loss of, or contamination or pollution of, any property or resource, or the violation of any laws, rules, or regulations and from any breach of this agreement, arising out of or connected, directly or indirectly, with PHILLIP 66's exercise of any rights hereunder, regardless of the cause or causes thereof, including, without limitation any claims caused by or contributed to, in whole or in part, by the indemnified Parties' joint or concurrent negligence or fault (whether imposed by statute, rule, regulation or otherwise) and strict liability, except to the extent any such claims are caused solely by the indemnified Parties' gross negligence or willful misconduct.

The CITY agrees to indemnify, hold harmless, and defend PHILLIPS 66 and its successors and assigns from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which the PHILLIPS 66 may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage, is caused by; (1) the CITY'S breach of the Agreement between the CITY and PHILLIPS 66; or (2) any gross negligence or willful act or omission of the CITY or its employees or agents.

20. **Applicability Law:** The Parties agree that this Agreement is governed in all respects by the laws of the State of Montana and the Parties expressly agree that venue will be in Thirteenth Judicial District Court, Yellowstone County, Montana, and no other venue.

21. **Severability:** In the event any provision of this Agreement is declared void, invalid or contrary to law, the Parties hereto agree that the remaining provisions shall continue and remain in full force and effect. Failure to request an Industrial Discharge Permit renewal shall nullify this Agreement.

IN WITNESS WHEREOF, each of the Parties has executed and delivered this Agreement as of the date first above written.

CITY OF BILLINGS, MONTANA

By: Thomas W. Hanel  
Mayor

PHILLIPS 66 BILLINGS REFINERY

By: Julian R. Stoll  
Julian R. Stoll, Billings Refinery Manager

Date: 21<sup>st</sup> July, 2013

APPROVED AS TO FORM  
AND CONTENT

By: Christine A. [Signature]  
City Attorney

Attest:

Cari Martin  
City Clerk

**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** Purchase property located at 2305 9th Avenue North

**PRESENTED BY:** Bruce McCandless, Assistant City Administrator

**Department:** City Hall Administration

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**PROBLEM/ISSUE STATEMENT**

The City Council is being asked to approve purchasing property in the North Park area that may assist with the new 9-1-1 Emergency Communication Center's (ECC) construction and possibly its long-term operations. Alternatively, the City may hold and then sell the property for future residential redevelopment.

**ALTERNATIVES ANALYZED**

City Council may approve purchasing 2305 9th Avenue North or may choose to not purchase it. There is no other nearby and available land that could be used for ECC purposes. If the land isn't used for public purposes, it could be sold for residential redevelopment.

**FINANCIAL IMPACT**

The General Fund will be used to purchase the property. If the ECC needs the property for its operations or future expansion, the 9-1-1 Fund could reimburse the General Fund.

**BACKGROUND**

The City purchased 21,000 sq. ft. of property at 2315 and 2325 9th Avenue North for \$335,000 in March 2016. A residence and three commercial buildings are being demolished. The land will host the new ECC and design is proceeding, with construction expected to begin in 2017.

The subject property is located east of the alley in the same block as the ECC property and is addressed as 2305 9th Avenue North. It has 16,000 sq. ft. of land and has a house, a garage and a shop on it. The City Administrator made a contingent offer for the property in October, 2016. The property has been appraised by two (2) qualified residential appraisers. One considered it a primarily residential property and suggested a value of \$164,500. The other appraiser decided that the highest and best use would be commercial or public and valued the property at \$225,000. The low appraisal is about 6% below the offered price, but the high appraisal is about 27% greater than the offer. The square foot price is 30% lower than the next-door ECC property purchase. The property owner desires to conclude the sale by the end of the year.

The City hired a local company to prepare a Phase 1 Environmental Assessment and as usual with older buildings, there is probably lead paint and asbestos thermal wrap in them. The owner will remove all personal property from the buildings, including empty storage barrels and some equipment, but there is no evidence or history of serious contamination. The paint and asbestos will have to be removed by a qualified environmental remediation company if the City remodels the buildings or demolishes them.

The immediate plan is to secure the buildings from entry and to use the land for material and equipment staging and parking for the ECC construction. After construction, staff will assess parking and operational needs of the ECC and make additional recommendations to Council about the property's long-term use. The property has a deed restriction that requires that the land be used in conformance with zoning. The property is zoned Residential 7000, so permanent public use may require a zone change.

## **RECOMMENDATION**

Staff recommends that the City Council approve purchasing 2305 9th Avenue North for \$175,000.

## **APPROVED BY CITY ADMINISTRATOR**

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### **Attachments**

Purchase offer

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# AGREEMENT TO SELL AND PURCHASE

## AND RECEIPT FOR EARNEST MONEY COMMERCIAL AND INVESTMENT PROPERTIES

Date October 28, 2016

THE EXECUTION OF THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD SEEK COMPETENT LEGAL ADVICE IF NOT UNDERSTOOD. THIS IS A LEGAL AND BINDING CONTRACT.

### 1. PARTIES AND PROPERTY:

City of Billings Buyer, taking title as:

Joint tenants with rights of survivorship,  Tenants in common,  Single in his/her own name,  Other

agrees to buy, and the Seller agrees to sell on the terms and conditions set forth in this Contract, the following described real property

in the City of Billings County of Yellowstone State of Montana

Property commonly known as: 2305 9<sup>th</sup> Avenue North

Legal description of the Property: Lot 4, Block 9, Sunnyside Subdivision 2<sup>nd</sup> Filing

If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of the title company referred to in Section 10.

### 2. PURCHASE PRICE AND TERMS:

The purchase price shall be \$ \$175,000 payable in U.S. Dollars by Buyer as follows:

\$ 5,000 (A) Earnest Money in the form of  Personal Check  Cashiers Check  Other To be:

1) Held and not deposited until acceptance by all parties.

2) Deposited within 3 business days of acceptance.

Earnest Money to be held by First Montana Title  Broker  Attorney  Title Company

in a trust account on behalf of both Seller and Buyer. Broker is authorized to deliver the earnest money deposit to the closing agent, if any, at or before closing. Parties agree that interest accruing on earnest money, if any, while deposited shall be payable to Broker in consideration for services rendered. The undersigned sales representative hereby acknowledges receipt from Buyer of the above noted Earnest Money.

\$ 170,000 (B) Cash at closing, plus Buyer's closing costs, to be paid by Buyer at closing by cashier, certified check or electronic funds.

\$ \_\_\_\_\_ (C) Seller to finance Buyer's purchase under the following terms and conditions: \_\_\_\_\_

\$ \_\_\_\_\_ (D) Assumption of Existing Financing: \_\_\_\_\_

\$ 175,000 TOTAL PURCHASE PRICE

Additional Provisions: Seller shall be allowed to rent back the property for the cost of utilities for a period not to exceed one hundred twenty (120) days from the closing date. Upon vacating property, Seller to remove all personal property and leave the property in broom clean condition. Seller to carry liability insurance on the property naming the City of Billings as an additional insured.

### 3. PERSONAL PROPERTY AND FIXTURES:

The following personal property shall be included in this sale and transferred by Bill of Sale at closing.

Security Deposits  Signs  Dumpster(s)  None

The following personal property is leased and not included in the sale: None

Fixtures: All permanently installed fixtures and fittings that are attached to the Property are included in the purchase price, such as electrical, plumbing, and heating fixtures, built in appliances, attached floor coverings, antennas, coolers or air conditioners,



**7. CONDITION OF PROPERTY AND RELATED ISSUES:**

Seller agrees that the Property shall be in the same condition, broom clean, normal wear and tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller has no knowledge of any notice of violations of City, County, State, Federal, Building Zoning, Fire, Health Codes or ordinances, condemnation, hazardous waste, underground storage tanks, special improvement districts or other governmental regulation filed or issued against the Property, except noted herein:

If the property is damaged by fire, hail, or other casualty prior to time of closing. Seller  shall be,  shall not be obligated to repair the same **before the date of closing**. If such damage is not repaired within said time, this Contract may be terminated at the option of the Buyer and the Earnest Money shall be returned to Buyer. Should Buyer elect to carry out the Contract despite such damage, Buyer shall be entitled to credit for all the insurance proceeds resulting from such damage to the Property and Inclusions, not exceeding, however, the total purchase price. Should any Inclusion(s) or service(s) fail or be damaged between the date of this Contract and the date of closing or the date of possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion(s) or service(s) with a unit of similar size, age, and quality, or an equivalent credit, less any insurance proceeds received by Buyer covering such repair or replacement. **Buyer agrees to accept property in "AS IS, WHERE IS" condition except as herein provided.**

**8. ASSIGNABILITY:**

This Contract shall not be assignable by Buyer without Seller's prior written consent, which assignment shall not be unreasonably withheld by Seller. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

**9. CONVEYANCE:**

Seller shall convey the real Property by Warranty deed including all interest of Seller in vacated alleys and streets, easements, other apportionments and improvements free of all liens and encumbrances except those described in the title insurance section of this agreement, and reservations or conveyances of record. All water rights, entitlements, claims, certificates and permits are included with the property, **with any transfer fees split equally.**

**10. TITLE INSURANCE:**

Seller, at Sellers expense, shall furnish Buyer title insurance from First Montana Title (Title Company) pursuant to a standard form American Land Title Association title insurance commitment in the amount equal to the purchase price, committing to insure merchantable title to the real Property in Buyer's name, free and clear of all liens and encumbrances except: encumbrances hereinabove mentioned, zoning ordinances, building and use restrictions, reservations and exceptions in patents from the United States and the State of Montana, all standard ALTA exceptions, beneficial utility easements apparent or of record, other easements of record, real estate taxes for the year in which closing occurs, Special Improvement Districts (including rural SID's) either noticed to seller by the city / county but not spread, or currently assessed, if any which will be:

PAID OFF BY SELLER AT CLOSING                       ASSUMED BY BUYER AT CLOSING,

The following loans None the following leases None should be assigned to Buyer at closing. If the Seller's title is not merchantable and cannot be made merchantable before the stated closing date, **30 ADDITIONAL DAYS SHALL BE ALLOWED FOR THE SELLER TO MAKE SUCH TITLE MERCHANTABLE.** If at that time the title is still not merchantable, this Contract may be terminated by Buyer with no penalty, and the earnest money will be returned to Buyer. Encumbrances to be discharged by Seller shall either be satisfied prior to closing or from Sellers' proceeds at time of closing.

**11. TAX DEFERRED EXCHANGE:** (check, where applicable)

Buyer herein acknowledges that it is the intention of Seller to create IRC Section 1031 tax deferred exchange and that Seller's rights and obligations under this agreement may be assigned to facilitate such exchange. Buyer agrees to cooperate with Seller in any manner necessary to enable Seller to qualify for said exchange at no additional cost or liability to Buyer, including the execution of an Assignment Agreement.

Seller herein acknowledges that it is the intention of Buyer to complete IRC Section 1031 tax deferred exchange and that Buyer may assign his rights and obligations under this agreement for the purpose of completing such exchange. Seller agrees to cooperate with Buyer in any manner necessary in order to complete said exchange at no additional cost or liability to Seller, including the execution of an Assignment Agreement.

**12. STATUTORY DISCLOSURES:**

**METHAMPHETAMINE:** If the property is inhabitable real property, the Seller represents to the best of Seller's knowledge that the Property  has  has not been used as a clandestine Methamphetamine drug lab. If the Property has been used as a clandestine Methamphetamine drug lab Seller agrees to execute and provide any documents or other information that may be required under Montana law concerning the use of the Property

CPV / \_\_\_\_\_  
Buyers initials                      Sellers initials

as a clandestine Methamphetamine drug lab.

**RADON:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal guidelines have been found in buildings in Montana. Additional information regarding radon and radon testing may be obtained from your county or state public health unit. Buyer acknowledges receipt of a copy of this statement prior to entering into the agreement to sell and purchase – commercial

If the Property is inhabitable real property as defined in the Montana Radon Control Act, Seller(s) represent that to the best of Seller's knowledge the Property  has  has not been tested for radon gas and/or radon progeny and the Property  has  has not received mitigation or treatment for the same. If the Property has been tested for radon gas and/or radon progeny, Seller agrees to provide, as available, test results to Broker along with any evidence of mitigation or treatment.

**LEAD-BASED PAINT:** If a residential dwelling exists on the Property and was built before the year 1978, the Seller  has  has no knowledge of lead-based paint and/or lead-based paint hazards on the Property. If Seller has knowledge of lead-based paint and/or lead-based paint hazards on the Property Seller agrees to provide all pertinent reports and records concerning that knowledge. Seller acknowledges that the Broker has advised the Seller of Seller's obligation to make lead-based paint disclosures and Broker's obligation to ensure that the Seller satisfies this obligation.

**MOLD:** If the Property is inhabitable real property as defined in the Montana Mold Disclosure Act the Seller represents to the best of Seller's knowledge that the Property  has  has not been tested for mold and that the Property  has  has not received mitigation or treatment for mold. If the Property has been tested for mold or has received mitigation or treatment for mold Seller agrees to provide any documents or other information that may be required under Montana law concerning such testing, treatment or mitigation.

**13. TIME OF ESSENCE / REMEDIES:**

Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(A) If Buyer is in default: If Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period provided in this agreement, Seller may:

- 1) Declare the earnest money paid by Buyer to Broker to be forfeited to Seller as liquidated damages, which sum the parties agree is a reasonable sum, as the actual damages to Seller would be extremely difficult or impractical to ascertain; or
- 2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; or
- 3) Demand Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.

(B) If Seller is in default: If Seller fails to accept the offer contained in this Agreement within the time period provided, all earnest moneys shall be returned to Buyer. If Seller accepts the offer contained in this Agreement but refuses or neglects to consummate the transaction within the time period provided in this Agreement, Buyer may:

- 1) Demand immediate repayment of all moneys that Buyer has paid to Broker as earnest money, and upon return of such money the rights and duties of Buyer and Seller under this agreement shall be terminated.
- 2) Demand that Seller specifically perform Seller's obligations under this Agreement; or
- 3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

**14. EARNEST MONEY DISPUTE:**

Notwithstanding any termination of this Contract, Buyer and Seller agree that, in the event of any controversy regarding the Earnest Money and things of value held by Broker or Closing Agent, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or Closing Agent shall not be required to take any action but may await any proceeding, or at Broker's or Closing Agent's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney fees.

**15. BUYER'S CERTIFICATION:**

By entering into this Agreement, each person or persons executing this Agreement as Buyer represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own real property in the State of Montana; and if acting on behalf of a corporation, partnership, or other non-human entity, that he/ she is duly authorized to enter into the Agreement on behalf of such entity.

**16. SELLER'S CERTIFICATION:**

By entering into this Agreement, each person or persons executing this Agreement as Seller represents that he/she is eighteen (18) years of age or older, of sound mind, and legally entitled at this time to transfer title to the real property free and clear of all liens and encumbrances except those described in this Agreement; and if acting on behalf of a corporation, partnership, or other non-human entity, that he/she is duly authorized to enter


/

Buyers initials
Sellers initials

into the Agreement on behalf of such entity.

**17. ALTERNATIVE DISPUTE RESOLUTION:**

**MEDIATION:** If a dispute arises between the parties relating to this Contract, the parties may agree to submit the dispute to mediation. The parties may jointly appoint an acceptable mediator and may share equally in the cost of such mediator. If mediator proves unsuccessful, the parties may then proceed with such other means of dispute resolution as they so chose.

**18. ATTORNEY'S FEES:**

If either party defaults in its performance of this Agreement and the other party employs an attorney because of such default, the defaulting party agrees to pay, on demand, all costs, charges, and expenses, including reasonable attorney's fees, reasonably incurred at any time by the other party because of the default.

**19. ENTIRE CONTRACT:**

All prior Agreements between the parties are incorporated in this Agreement, which constitutes the entire Contract. Its terms are intended by the parties as a final expression of their Agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior Agreement or contemporaneous oral Agreement. The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any involving this Agreement. If any portion of this Agreement shall be held to be void or unenforceable, the balance hereof shall nonetheless be effective. This Agreement shall be governed by the laws of the State of Montana and shall be binding upon the heirs, successors and permit assigns of the parties.

**20. BROKER RELATIONSHIPS:** The following agency relationship(s) are hereby confirmed for this transaction.

Listing Agent Norm Lehfeldt  Is the agent of (check one):  Seller exclusively  
(Print Agent name)  Both /Buyer & Seller

Selling Agent Michael Walker & Drew Smith  Is the agent of (check one):  Buyer exclusively  
(Print Agent name)  Both /Buyer & Seller

**21. ADDENDUM ATTACHED:** \_\_\_\_\_

**22. CONSENT TO DISCLOSE:** Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller, Broker, and their attorneys, closing agents, and other parties having interest essential to this Agreement, of any and all information reasonably necessary to consummate the transaction described in this Agreement, specifically including access to escrow agents and lenders for review of contracts, deeds, trust indentures, inspections, or similar documents of prior transaction concerning this property or underlying obligations pertaining thereto.

**23. COUNTERPARTS / FACSIMILE:**

A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete Contract between the parties. The parties agree that a facsimile copy of this Agreement to Sell and Purchase which contains the parties' signatures may be used as the original.

**24. BUYER'S COMMITMENT:**

Buyer agrees to purchase the above described Property on the terms and conditions set forth in the above offer and grants said sales Representative until October 31, 2016 at 1:00 pm to secure Seller's written acceptance. Buyer may withdraw this offer at anytime prior to Seller's written acceptance. If Seller has not accepted by the time specified, this offer is automatically withdrawn. Buyer hereby acknowledges receipt of a copy of this Agreement of Sell and Purchase-Commercial and Investment Properties, bearing Buyer's signature(s) and that Buyers have read and understand this Agreement.

Buyer's Phone: (406) 657 8430 Buyer's Signature: Christina Walsh, City Administrator

Address: 210 N. 21<sup>TH</sup>, BILLINGS, MT 59101 Buyer's Signature: \_\_\_\_\_

CAV / \_\_\_\_\_  
Buyers initials Sellers initials



**Regular City Council Meeting**

**Meeting Date:** 12/19/2016

**TITLE:** Postpone Action to Feb. 13, 2017, on Dehler Park Facility Management, Operation and Use Agreement with Mustangs Baseball, LLC

**PRESENTED BY:** Tina Volek, City Administrator

**Department:** City Hall Administration

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**PROBLEM/ISSUE STATEMENT**

At its Dec. 12, 2016, meeting, the City Council provided staff with revisions to the attached City of Billings Facility Management, Operation and Use Agreement, and postponed action on this item to Dec. 19, 2016. Additions to the amended document are underlined, and deletions are struck through.

Billings City Council first approved a Ballpark Management, Operation & Use Agreement with the Billings Pioneer Baseball Club, doing business as the Billings Mustangs, in 2008, as what became Dehler Park was preparing to open. The contract remains in place, and is due to expire on Dec. 31, 2017, with options for the Ball Club to extend it for additional 10-year periods. However, the Mustangs organization was purchased in 2014 by Main Street Baseball, LLC., and the new owners asked to renegotiate the contract in late 2015, leading to extensive contract negotiations. The resulting contract was edited slightly by the Billings Parks, Recreation and Cemetery Board on Nov. 16, 2016, and recommended by a 4-1 vote to the City Council for approval.

The proposed agreement differs from the in the following, significant ways:

- 1) Gives Main Street Baseball the opportunity to sell naming rights to the field. They may also sell scoreboard advertising and ballpark naming right when the current agreements expire. The City of Billings Ballpark Permanent Fund will receive 50% of the net revenue from the sales to enhance or replace the score board in the case of the scoreboard revenue, and to provide major maintenance to the ball park in the case of the field and park naming rights.
- 2) Increases the ball club's fixed rental payment from \$30,000 to \$60,000 annually. The rent will be deposited in the City of Billings Ballpark Permanent Fund to offset capital repairs of more than \$25,000 that will be needed at the ball park as it ages. Expenditures from the permanent fund will continue to be approved by the City Council upon the recommendation of a Facility Review Committee, currently consisting of one representative each from the City Parks Department, the Parks Board and the Ball Club.
- 3) Creates a \$30,000, City-funded maintenance account, combined with a \$5,000 Ball Club account, to handle non-capital repairs. The agreement authorizes the City Administrator or the Administrator's designee to authorize such repairs in keeping with the City's Purchasing Policies and Procedures.
- 4) Authorizes the Ball Club, at its own expense, to make improvements including an enclosed, glass Great Room; a children's play area with zip line; seating, service and concession area upgrades; and additional improvements recommended by the Facility Review Committee and approved by the City Council.
- 5) Adds two members to the Facility Review Committee to be appointed by the City Council.
- 6) Ensures the Ball Club will play in Dehler Park for the duration of the contract, as long as the

park meets Minor League Baseball Facility Standards, and that the City will not attempt to sell Dehler Park during the term of the contract.

- 7) Provides both the City and the Ball Club with the opportunity to schedule events at the park, with each receiving revenue from their own events.
- 8) Provides a dispute resolution process.

Eliminated from the prior contract are provisions that give the City the opportunity to review all Mustangs contracts with other business entities, that require the City to review Mustangs' finances annually (an alternative process is provided), and that require a baseball camp.

Dave Heller, president of the organization that owns the Mustangs, has indicated that he will not agree to a 50% split on naming rights and other revenue unless the City increases its \$30,000 contribution to routine maintenance by another \$25,000. Mr. Heller is being sent a copy of this agenda item, and has been encouraged by the staff to provide comments in writing to the Council. He has indicated his willingness to come to Billings in late January to discuss the contract directly with the Council or a small subcommittee.

## **ALTERNATIVES ANALYZED**

City Council may:

- Approve the agreement as presented,
- Disapprove the agreement, which would require new negotiations at some point before December 2017;
- Modify the agreement to meet the request of the Mustangs owner and approve it; or
- Continue the agreement to the Feb. 13 Business Session, and invite Mr. Heller to meet in February with the Council or a subcommittee of the Council, to revise the agreement language.

## **FINANCIAL IMPACT**

If the agreement is approved, the City would need to budget \$30,000 annually in the Parks and Recreation Fund for repairs. Such a clause was included in the Cobb Field agreements, but not paid for many years, contributing to the decline of the old stadium. The additional cost would be offset by a \$30,000 increase in the Mustangs' rent, although that money will go into the City of Billings Ballpark Permanent Fund, offsetting contributions that otherwise might have been necessary in the future.

The exact amount of revenue that would come to the Permanent Fund from the sale of naming rights is unknown. Using the Dehler Park naming rights as an example, the \$1 million donation would have added \$150,000 to the Permanent Fund account. However, Mr. Heller believes the Ball Club can raise more revenue than in the past from such naming rights.

## **RECOMMENDATION**

Staff recommends continuing the agreement to the Feb. 13, 2017, Business Session, and scheduling a meeting with Mr. Heller to discuss the City Council's concerns about the agreement.

## **APPROVED BY CITY ADMINISTRATOR**

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# Attachments

Revised Agreement 12.16.16

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Draft of 12/16/16

**CITY OF BILLINGS FACILITY MANAGEMENT,  
OPERATION AND USE AGREEMENT**

This Agreement, by and between the City of Billings, a Montana Municipal Corporation, Billings, Montana, hereinafter designated as "City," and Mustangs Baseball, LLC, a Montana Corporation licensed to conduct business as the Billings Mustangs, hereinafter designated as the "Bal Club," hereinafter collectively referred to as "the parties," states:

**RECITALS:**

The City owns a baseball stadium located at North 27th Street and Ninth Avenue North, in Billings, Montana, more particularly described in Exhibit "A", attached, hereinafter referred to as the "Facility,"

The Bal Club is a professional baseball club and a member of the Pioneer League and a member of the National Association of Professional Baseball Leagues, Inc. (NAPBL);

The Bal Club owns the exclusive right to arrange, control, promote and profit from playing professional baseball in the Billings area and desires to enter into this Agreement with the City for certain activities to be conducted at the Facility;

The Bal Club has unique industry experience in operating Minor League Baseball Teams, multi-purpose event facilities and stadia at the highest level and is considered a professional operator and expert in the field of sports and facility management;

City desires to permit the Bal Club to use the Facility to play professional baseball, and Bal Club desires to use the Facility for those purposes;

The Bal Club and the City desire that quality food, beverage and other concession services be available through concession operations located at the Facility;

The Facility attracts people to the City, provides economic benefit to the City and its residents improves and promotes tourism and enhances the tax base of the City;

The City and the Bal Club desire to permit reasonable use of the Facility by the Billings American Legion Baseball (BALB) program, the Montana State University - Billings (MSU-B) baseball program and other youth baseball organizations;

The Bal Club and the City acknowledge that the Facility is a community asset and intend that the Facility provide a venue for multiple activities and civic events in addition to professional and amateur baseball;

The Facility provides wholesome recreational and entertainment opportunities for the City residents;

The Facility provides residents and visitors from surrounding areas with an opportunity to attend professional baseball games, without the need to travel extended distances and thus increases the attractiveness of the City as a place in which to reside and work; and

The Facility provides the Bal Club with the premiere facility in the Pioneer League in which it can profitably play as an affiliate of a major league team. In consideration of the

premises, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each part, the parties mutually agree and covenant as follows:

## **FACILITY MANAGEMENT, OPERATION AND USE AGREEMENT Section**

### **1. Facility.**

1.1 Name. The name of the Facility shall be Dehler Park through June 26, 2032. The Ball Club shall have the right to sell and retain the revenue from the sale of the naming rights to the field (example: Company X Field at Dehler Park) The naming rights shall be approved by the Parks, Recreation and Cemetary Board and the Billings City Council, with the payment of fifty percent (50%) of the proceeds to the City of Billings Ballpark Permanent Fund, as outlined in Section 6.9 below. The Ball Club shall not have any right or other interest in the name of the Facility.

1.2 The boundaries of Dehler Park ("the Ballpark") shall include the ballpark and the area north of the ballpark from between left and center field to the sidewalk along 10<sup>th</sup> Avenue North, and all improvements thereon, as depicted in Exhibit A.

1.3 Design. The Facility was designed and constructed to meet or exceed the Standards for Minor League Playing Facilities as set forth in the current version of Minor League Baseball Rule 58, and both the City and the Ball Club will cooperate to ensure that those standards continue to be met in the future.

1.4 Field. To ensure the longevity of the playing field and to keep the playing field in peak playing condition and safe for the users of the field, the Ball Club shall maintain the playing field in a condition that meets or exceeds the Minor League Baseball Facility Standards (MiLB Facility Standards). The parties agree that the Ball Club has established maintenance practices of the field that at the time of this agreement exceed the MLB Facility Standards and are acceptable to the City. The methods used to achieve this level have been based in part by the onsite knowledge of the Ball Club's Field Staff. As such, the Ball Club shall continue with these practices and consult with the Professional Standard of Care shown on Exhibit B. The Parties agree, due to the desire to have BALB, MSUB, and other community baseball teams have an opportunity to play at the Facility, that the field does receive an extraordinary amount of wear and tear that is not due to the play of the Ball Club and as such, Ball Club will use commercially reasonable efforts to maintain the field at a level outlined herein.

1.5 Administrative Offices. At all times during the term of this Agreement, the Ball Club shall have the right to use designated administrative, Ball Club office and storage space in the Facility as shown on Exhibit A attached herein, subject to the City's right of inspection by authorized City representatives during regular business hours and upon reasonable notice. The Ball Club and the City shall also have the right of shared access to, and inspection of, all common areas of the facility including the stadium, kitchens, conference room, restrooms, and mechanical and custodial rooms, by giving reasonable

amount of time in advance. The Ball Club shall have the right to display its name and logo on areas inside and outside of the Facility as appropriate and consistent with other Minor League Baseball Facilities.

1.6 Expansion, enhancement and capital improvement. The City and the Ball Club agree to work together in good faith throughout the term of this Agreement toward their common goal of enhancing the Facility.

## **Section 2. Effective Date and Term.**

2.1 Effective date. This Agreement is effective upon the date it is executed by the parties.

2.2 Initial Period. This Agreement will expire December 31, 2026.

2.3 Options to Extend. At the end of the initial period of this Agreement, both parties shall have the option to extend this Agreement, upon terms to be agreed upon by the parties, for additional periods of ten (10) years.

2.4 Surrender of Possession upon Termination: The Ball Club agrees that upon termination of this Agreement it will surrender possession and deliver the Facility, including permanent fixtures installed by the Ball Club. The Facility shall be surrendered and delivered in good, clean condition except for ordinary wear and tear. Removables shall remain property of the Ball Club and may be removed upon termination of this Agreement.

## **Section 3. Management, Operation, Scheduling and Use of the Facility.**

3.1 General. The Parties share the right and responsibility to manage, operate, administer, supervise and schedule the use of the Facility in manner consistent with this Agreement, Minor League Baseball Industry Standards, and the priorities and understandings stated in this Section 3.

3.2 Priorities. Events at the Facility shall be scheduled in accordance with the following priorities:

(a) Professional baseball. The Parties shall maintain and use the Facility for professional baseball games and related functions as a first priority throughout the term of this Agreement;

(b) Billings American Legion Baseball. Ball Club agrees to accommodate the game schedule needs of the Billings American Legion Baseball (BALB) program to the fullest possible extent throughout the term of this Agreement, subject to the first priority of professional baseball, and upon reasonable terms and conditions, bearing in mind the long history and tradition of BALB baseball in Billings;

(c) Montana State University-Billings. The Ball Club agrees to accommodate the schedule of the MSU-B Baseball program throughout the term of this Agreement, subject to the priorities of professional and BALB baseball, and upon reasonable terms and conditions;

(d) Non-baseball events. The Parties desire that the Facility provide a venue for multiple uses and civic events, subject to the priorities set forth in this Section and;

(e) Youth baseball. The Ball Club understands the value to the community of encouraging the growth, development and popularity of baseball and agrees to accommodate requests by youth baseball programs to use the Facility to the extent possible and upon reasonable terms and conditions. These will be for championship games only.

3.3 "Baseball," "Baseball-related" and "Non-baseball" Events, Defined. As used in this Agreement,

(a) "Baseball" events include baseball games and all activities, entertainments and promotions planned, scheduled or undertaken incidental to, in conjunction with, or during the course of any baseball game;

(b) "Baseball-related" events include any activity, organized or scheduled for the purpose of facilitating, improving, promoting, honoring or financing professional or amateur baseball, its players or affiliated organizations, but not incidental to, in conjunction with or during the course of a baseball game; and

(c) "Non-baseball" events include activities, entertainments, gatherings or uses that are neither "baseball" nor "baseball-related" events.

3.4 Scheduling of "Baseball" and "Baseball-related" Events. The Ball Club shall have the exclusive right and responsibility to schedule and manage baseball events at the Facility on available dates and in a manner consistent with, and subject to, the priorities stated in Section 3.2, above.

3.5 Scheduling of Non-Baseball Events. The City and the Ball Club each shall have the right and responsibility to schedule and manage non-baseball events at the Facility on available dates, provided that no event involving the playing surface of the Facility may be scheduled without prior consultation and mutual approval from the other Party. Each Party shall be responsible for all the costs of and receive all the revenue derived from the events it schedules.

3.6 Reserved dates for City/PRPL Parks, Recreation and Public Lands) (PRPL). On or before December 31, each year, The Ballclub will reserve and provide to City/PRPL no fewer than fifteen (15) dates and times between May 1 and September 30 on which the City/PRPL may schedule non-baseball events for all or a specified portion of the Facility. The months of June, July and August shall include a minimum of 1 block of three days per month. It is understood and agreed, however, that if no event has been scheduled by City/PRPL within ten (10) days of any reserved date, such date shall be deemed jointly available to the Parties for the scheduling of baseball, baseball-related or non-baseball events on a first-come, first served basis.

~~Reserved dates for City/PRPL: Once the conditions have been fulfilled in accordance with Section 3.3, herein, the Ball Club and City shall agree to 15 priority dates that will be reserved for the City's use. The Ball Club shall have any remaining dates for its use or for Special Events. These dates do not include the Ball Club's regularly scheduled games in the Pioneer League. This selection process shall occur annually on or before December 31, or within 10 days of the Pioneer League's season schedule being released, whichever is later.~~

Once chosen, each party shall have the exclusive right to use the chosen date for its special event. If the City or the Ball Club has chosen a date and realizes that it will not hold an intended event, the party will make the date available for use by the other party. Throughout the year, each party shall have the right to secure additional dates for special event uses that have not been selected as a Priority Date herein, at no cost to the other party. These dates shall be secured by communicating the intended date in writing to the other party. In the case when one date is desired by both parties, the party that has held the date first (first hold) shall have the right to the date and must confirm the date with the other party.

3.7 Calendar of Non-baseball Events and Master Calendar. The City shall maintain a Calendar of non-baseball events at the Facility and promptly provide notice to the Club when any non-baseball event is placed on said Calendar. In consultation and cooperation with the City /PRPL, the Ball Club shall maintain a Master Calendar of all events (baseball and non-baseball events) at the Facility.

#### **Section 4. Rent, ~~and~~ Annual Financial Review and Taxes.**

4.1 Fixed rental payment. For the term of this contract, the Ball Club will pay a fixed annual rent to the City in the amount of Sixty Thousand and No Hundredths Dollars (\$60,000.00), in two equal payments of Thirty Thousand Dollars (\$30,000.00) due on or before June 1 and December 1. The annual rent will be deposited in the "City of Billings Ballpark Permanent Fund" for major repairs and capital improvements to the Facility as outlined in Section 6.9 of this contract.

4.2 Annual review. The Ball Club shall maintain financial records in proper form. A review of the City of Billings Ballpark Permanent Fund (established in Section 6.9, below), will be conducted annually by the Facility Review Committee (outlined in Section 6.10, below). The Ball Club will provide the City/PRPL with a copy of the report provided to Minor League Baseball on the Ball Club's outstanding debt by October 31<sup>st</sup> each year of the contract. In addition, the Ball Club will send its most recent financial report to the City's Bond Counsel for review and certification of solvency at the City's expense each year no later than the anniversary date of the contract's signing. The current City Bond Counsel is Dorsey and Whitney in Missoula, Montana. The City will notify the Ball Club of any changes in Bond Counsel as needed.

4.3 Prohibitions on Liens Against the Facility. Neither the Ball Club nor any contractor or subcontractor hired by, or doing work on behalf of, the Ball Club shall have the right to file or place liens of any type or character upon the Facility. The Ball Club agrees to fully comply with statutory laws concerning payment, performance, mechanics and materialmen's bonds in advance of any and all contractors and subcontractors performing work on the Facility during the term of this Agreement. Copies of such bonds shall be provided to the City prior to the performance of any work, materials, service or labor on the Facility.

4.4 Taxes. Ball Club shall pay and discharge all applicable taxes of any kind, including but not limited to the State of Montana privilege tax on beneficial use of otherwise tax exempt property, as provided in 15-24-1203, MCA, and all other assessments, penalties, charges, rates or liens levied on any part of the leased premises or on any improvements or fixtures.

#### **Section 5. Concessions, fundraising, pricing and revenue.**

5.1 Authority. The Ball Club shall be the sole and exclusive vendor of food, drink, and novelty items for all Ballpark Events including BALB and MSU-B, except those sponsored by the City. This will include Team Home Games, Ball Club Special Events, and all other non-City activities and events held at the Ballpark for the Term of this Agreement. The Ball Club shall be the sole beneficiary of all revenues derived from the operation and sales of concessions and merchandise for its Home Games and non-City Special Events.

For City Events, the City or a designated third party shall be the beneficiary of all revenues. The City agrees that neither it nor its designated third parties will use the concession equipment or space utilized by the Ball Club for its provision of services.

Either Party may grant concession rights to a third party or third parties (i.e., concessionaires) as it deems appropriate for the conduct of its business at the Ballpark.

Neither party shall have the right to use each other's equipment to provide concession services.

Either Party shall have the right to prohibit patrons and guests from bringing into the Ballpark any outside food and/or drink to its Home Games, special Events and activities. Should any Party choose to allow patrons to bring in outside food or drink, the allowing Party shall immediately assume all liability and responsibility for such actions, and hold harmless the other party.

The Ball Club agrees to conduct concession sales in a clean, professional, and businesslike manner similar to operations in other Minor League ballparks and agrees to comply with all local, state and federal laws and regulations.

5.2 Naming and advertising rights and baseball promotion. Ball Club has the exclusive right to sell naming and advertising rights, space and opportunities within the Facility in compliance with City Code. Ball Club shall retain all revenue from such sales, including but not limited to signage (including signage that faces to the exterior of the Ballpark), banners, scoreboard advertising, displays, announcements, program advertisements and product placements subject to the following exceptions and limitations only:

(a) The right to name the Facility exercised in Section 1.1, above, and all revenue from the sale of such right, belongs exclusively to the City from June 17, 2008, to June 26, 2032. Thereafter, if this Agreement has been renewed and is in effect, the Ball Club subsequently may exercise alternate naming rights with the concurrence of the City and with payment of fifty percent (50%) of the Net Revenues (as defined in Section 5.2(h) to the City of Billings Ballpark Permanent Fund, as outlined in Section 6.9 below.

(b) From June 17, 2008, to September 30, 2017, revenue received from Wendy's of Montana for scoreboard advertising sold to defray the cost of construction of the Facility belongs exclusively to the City. In exchange, Wendy's name will remain on the electronic scoreboard, through September 30, 2017, and Wendy's will receive four tickets to all events to be held in the stadium through that period. Wendy's will have an option to renew signage rights at the current rate at the time of renewal.

(c) From June 17, 2008, to September 30, 2017, revenue received from First Interstate Bank (Bank) for scoreboard advertising sold to defray the cost of construction of the Facility belongs exclusively to the City. The scoreboard sign for the Bank will occupy a space for 10 seasons, from July 1, 2008, through September 30, 2017, and the Bank will receive four tickets to all events to be held in the stadium for a period of 10 years. The Bank sign shall remain in the same location and size it currently holds through September 30, 2017. The number of advertisers on the scoreboard through September 30, 2017, will be limited to 3 companies in addition to the Bank, and none of the other advertisers will represent the financial services industry.

(d) From June 17, 2008, to September 30, 2017, revenue received from donations related to scoreboard signage from Jean E. Dimich and Mike D Dimich and Sons dba Pepsi-Cola Bottling Company of Billings belongs exclusively to the City. The Donors have the right to have the Pepsi logo placed on the scoreboard in a mutually agreed upon size and format through September 30, 2017, and will have right of first refusal to the same signage for a period of 10 years at the current rate at the time of renewal.

(e) Any naming and advertising rights sold by the Ball Club ~~may~~ shall not extend beyond the term of this agreement without the express written consent of the City, and

(f) Without exception, the sale of naming rights in the Facility will be undertaken in a manner consistent with the standards of professional baseball and recognizing the Facility is intended to provide a venue and environment suitable for family entertainment.

(g) Once the above-sponsorship advertising agreements in 5.2(a) through (d) above have expired, Ball Club shall have the exclusive right to sell and retain the revenue received for the open inventory located on the scoreboard.

(h) All revenues received by the Ball Club in accordance with Section 5.2 (g), minus marketing expenses, activation expenses, commissions, and other delivery costs (the "Net Revenues"), shall be accrued and fifty percent (50%) shall be returned to the City of Billings Ballpark Permanent Fund to be used to invest back into the enhancement or purchase of the existing scoreboard.

(i) ~~The team~~ Ball Club shall have the right to display the company logo and name as a condition to fulfill the field naming rights agreement.

(j) The naming rights of the team and any revenue derived from those rights will revert to the City in the event of the sale of the Ball Club or the termination of the lease with the Mustangs.

5.3 Safe, clean concession operations and food service. The Ball Club will at all times use necessary care to provide safe, clean operations for all events at which it engages in concession sales. Ball Club agrees that all of its storage, preservation, refrigeration, preparation, cooking and delivery of food and beverage will fully comply with all standards of RiverStone Health, and the City's Fire Department and Building Codes Division for all events at which it engages in concession sales.

5.4 Vendor Selection. Except for City-sponsored events, the Ball Club has the exclusive right to contract with third parties for concession and vending services at baseball and baseball-related events and to select and sell partial or exclusive concession rights for baseball and baseball-related events at the Facility and to lease, rent or delegate the right to engage in concession sales for baseball and baseball-related events at the Facility upon terms it considers appropriate and consistent with the requirements of Section 5.3, above. Provided, the City shall have the authority to determine its own contracts and fees for events that it sponsors.

5.5 Pricing. The Ball Club has the exclusive right and authority to determine and set reasonable prices and lease and rental rates for admission, concessions, advertising, sponsorships, naming rights (subject to the provisions of Section 5.2) and use of the Facility, except for City-sponsored events.

## **Section 6. Cleaning, maintenance, repairs, safety, improvements and ownership.**

6.1 Duty of Ball Club. The Ball Club has the right and responsibility to regularly clean, maintain, preserve, repair and safely operate the Facility in accordance with this Section and applicable laws and in such a manner as to meet or exceed all applicable standards of Minor League Baseball.

6.2 Duty of City. The City has the right and responsibility to clean, maintain, preserve, repair and safely operate the Facility, except the playing surface, during and immediately following each non-baseball related event it schedules pursuant to Section 3.7, and at all times to maintain, preserve and safely manage the grounds of Athletic Park Block outside the confines of the Facility walls, including but not limited to sidewalks, landscaping, artwork, memorials, parking lots, protective netting and related structures.

6.3 Playing surface, grounds and irrigation. The Ball Club has the exclusive right and responsibility to maintain, repair and prepare the baseball playing surface and any areas that include improvements made by and providing income to the Ball Club. The City shall be responsible for the reasonable cost of maintenance, repair and preparation of the playing surface, outside the ordinary course of Ball Club operations, necessitated by City-sponsored events. The Ball Club shall maintain the grounds within the interior walls of the Facility in a manner that meets or exceeds all Applicable Standards, including maintenance of the irrigation system within the Facility.

6.4 Cleaning. The Ball Club agrees that all public areas within the Facility, including seating, entrances, restrooms and concession facilities will be cleaned daily if needed with cleaning agents with complete Material Safety Data (MSD) information on site and procedures approved by the City-County Health Department. The entire Facility will be cleaned at least monthly from April to September.

6.5 Maintenance and utilities within the Facility. The Ball Club shall pay all utility charges and regularly perform all routine maintenance within the Facility, including but not limited to: painting, plumbing, mechanical, HVAC, and electrical and other needed repairs in accordance with professional building management standards by knowledgeable service personnel, or as reasonably directed by the City. The Ball Club shall use its own equipment for all such maintenance or separately contract for such maintenance and repairs. To insure Ball Club's compliance with cleaning, maintenance, all on-site concession operations and City-authorized improvements, the City's representative shall inspect the Facility quarterly.

6.6 Repairs. The Ball Club will be responsible for making routine repairs within the Facility costing \$5,000 or less, in the aggregate, will be undertaken by the Ball Club as soon thereafter after discovery as can reasonably be arranged, up to a total of \$5,000 annually. The City will contribute \$30,000 annually to a routine maintenance fund to be used after the Ball Club has reached its maximum \$5000.00 contribution. The unspent portion of each year's fund will be retained for five year. for repairs costing up to \$30,000. In order to expedite the repair process, the City Administrator or his/her designee is hereby authorized by the City Council to approve such repairs in keeping with the City's Purchasing Policies and Procedures. All City-paid repairs of more than \$25,000 are considered Capital Repairs and shall be approved as outlined in Section 6.9, Capital Repair and Improvement Fund. The City shall be responsible for the cost of repair of damage occurring at City-sponsored events.

6.7 Restrooms. The Ball Club agrees the public restrooms will be stocked, supplied and checked regularly during baseball and baseball-related events and that cleaning will be performed as needed. The City agrees it is responsible for restocking, supplying, checking and cleaning the public restrooms during and following non-baseball events.

6.8 Fire and life safety. As required by the Billings Fire Department, emergency exit systems shall be operational and fire code compliant at all times. that the Facility is in use, as required by the Billings Fire Department. In addition, the Ball Club agrees to comply with the Life Safety Code and in specific, the following items:

(a) Emergency lighting shall be provided as required by City Code  
(b) Fire extinguishers shall be inspected monthly and the date and initials of each inspection noted on an inspection card attached to each extinguisher. The fire extinguishers will be serviced and properly mounted with Type K extinguishers placed in or near each cooking area.

(c) Fire hoses shall be inspected monthly during the operating season and all deteriorated hoses and corroded hose connections will be replaced according to the Uniform Fire Codes Compliance with the above Fire Codes will be done at Ball Club expense.

(d) The Facility is smoke free and smoking shall not be permitted anywhere within the ticket booths and entrance fences, locker rooms, spectator seating, and field areas. ~~except in an approved and clearly designated and signed location outside the stadium equipped for tobacco use.~~

(e) The handicapped accessibility and seating areas shall be appropriately equipped and clearly indicated.

6.9 Capital repair and improvement fund. The City has created and shall administer a fund known as the "City of Billings Ballpark Permanent Fund," which is a permanent fund of the City available for major repairs and capital improvements to the Facility (work beyond the scope of routine maintenance and repair duties described in Section 6.6 of this Agreement). Separate accounts within the permanent fund may be established and earmarked for particular uses, plans and projects within the Facility or Athletic Park Block. Prior approval of the Facility Review Committee created in Section 6.10, below, is required to authorize any expenditure of funds from the Ballpark Permanent Fund. Any single expenditure from the Ballpark Permanent Fund exceeding \$25,000 must receive prior approval from the Mayor and City Council. Regardless of the amount of any expenditure, all contracts must comply with the City Purchasing manual and City contracting rules.

6.10 Facility Review Committee. A Facility Review Committee consisting of one authorized representative each of the City's Parks, Recreation and Public Lands Department, the City's Park Board and the Ball Club, and two members appointed by the City Council shall as necessary periodically review the management, operation, use and maintenance of the Facility. This Committee shall make recommendations to the Mayor and City Council for any expenditure exceeding \$30,000 from the Ballpark Permanent Fund.

6.11 Remedies. In the event either Party does not satisfactorily perform its cleaning, upkeep and maintenance obligations under this Agreement, the other Party has the right to hire a third-party to perform such obligations and charge the cost of such cleaning, Upkeep or maintenance to the non-performing Party.

6.12 Improvements by Ball Club. The City agrees to allow the Ball Club, at its own expense:

(a) To build a 3,000-square-foot, glass-enclosed "Great Room" above the concession stands behind the third base dugout, covering the width of the concourse, provided that the City will supervise design and construction of the structure to ensure it meets City standards;

(b) To build a children's play area and zip line from the area between left and center field to the sidewalk along 10<sup>th</sup> Avenue North. Any play area or zip line must meet the American Society for Testing and Materials (ASTM) and Consumer Product Safety Commission guidelines;

(c) To make any non-structural improvements and add any decorations to the interior of the Ballpark, provided that the Ball Club complies with all City permitting and construction requirements. Exterior improvements may be made with consent of the City/PRPL;

(d) To display advertising throughout the interior of the Ballpark, with the exceptions of signs above, below and beside the scoreboard, and to keep all revenues derived from such advertising. No later than January 1, 2020, the Facility Review Committee will evaluate and make a recommendation to the City Council on expansion and replacement of the video board portions of the scoreboard;

(e) To build Additional seating or standing areas, including tables, beverage stations, bars, canopies, food vending areas, and other seating enhancements as presented and approved by the Ball Club and City;

(f) To build Additional concession stands, portable food and beverage carts and vending areas; and

(g) To build Additional improvements as recommended by the Facility Review Committee and approved by the City Council.

6.13 Ownership. Any trade fixtures and equipment installed by the Ball Club shall remain the property of the Ball Club. All permanent fixtures, repairs and improvements to the Facility are deemed to be part of the Facility after completion of their construction/installation and thereafter are the property of the City,

#### **Section 7. Fireworks and displays.**

7.1 Fireworks and similar displays will be permitted in accordance with applicable laws and ordinances and in the discretion of appropriate City authorities. At no time shall any such displays interfere with operations of the Billings Logan Airport.

#### **Section 8. Continuation of professional baseball at the Facility.**

8.1 Continuing operations. During the term of this Agreement, the Ball Club agrees to maintain membership in the NAPBL and operate a professional baseball team in Billings, Montana, at the Facility.

8.2 Covenant not to relocate. The Ball Club agrees to schedule and play its home games at the Facility during the entire term of this agreement, and provided that the Facility continues to meet or exceed all applicable standards of professional baseball, covenants not to relocate the playing site of more than one of its home games without the prior written consent of the City.

#### **Section 9. Miscellaneous**

9.1 Ball Club employees. It is understood and agreed that no agent, servant, employee, contractor or subcontractor of the Ball Club shall under any circumstances be deemed an agent, servant or employee of the City, and that no agent, servant or employee of the City shall be under any circumstances deemed an agent, servant of the Ball Club.

9.2 Announcement. The Ball Club agrees to make the following announcement before each event that takes place at the Stadium:

"Ladies and Gentlemen:

Welcome to Dehler Park owned by the City of Billings, and the proud home of the Billings Mustangs Professional Baseball Club. For your safety, the Mustangs and the City of Billings ask you to take a moment to familiarize yourself with the nearest passageways and exits to be used in case of fire or other emergencies.

These exits are located at (description of exits).

Also, we would like to remind you that Dehler Park is a SMOKE-FREE facility by order of the Billings City Council. Further, please be attentive to the field of play because at times objects, such as bats and balls may enter the seating area.

Thank you for your cooperation."

9.3 Assignment. This Agreement is not assignable by the Ball Club in whole or in part without the prior written approval of the City.

9.4 Ballpark Sale. The City shall not sell or attempt to sell the Ballpark or any part thereof to any party for the duration of this agreement.

9.5 Indemnification. The Ball Club and each contractor or subcontractor of Ball Club performing work on the facility and other organizations using the Facility shall indemnify, defend and hold ~~have the duty to defend~~ the City and hold it harmless from and against all claims, liabilities, damages, losses, judgments and expenses including reasonable attorney's fees and litigation costs arising out of or resulting from the negligent acts or omissions of anyone they employ directly or indirectly, including sub-contractors, agents and volunteers. All users shall agree to, acknowledge and sign applicable document(s) containing this indemnification.

The City shall indemnify, defend and ~~hold have the duty to defend~~ hold the Ball Club and hold it harmless from and against all claims, liabilities, damages, losses judgments and expenses including reasonable attorney's fees and litigation costs arising out of or resulting from the negligent acts or omissions of its officers, employees or contractors.

9.6 Insurance. The Ball Club, each vendor providing services to a Ball Club event or City event and each a n y other organization including but not limited to BALB and MSU-B, using which use the Facility shall annually renew and carry liability and property, fire and casualty insurance naming the City as a primary, non-contributory insured when applicable, as approved by the Billings City Attorney, including ~~liquor liability insurance (when alcohol will be sold and/ or consumed) as approved by the Billings City Attorney, covering the Ball Club and all other users.~~

The Ball Club, each vendor providing services to a Ball Club event or City event and all other seasonal and single event users shall also obtain a separate liquor liability insurance policy or endorsement in the amount of One Million and no/100 Dollars (\$1,000,000) Per Occurrence naming the City as a primary, non-contributory insured when any alcoholic beverages are sold or consumed during any event.

The Ball Club and all other seasonal and single event users shall obtain a Commercial General Liability (CGL) insurance policy ~~in an amount as set forth below, and under the terms and conditions as approved by the Billings City Administrator or Billings City Attorney. The Ball Club and all other seasonal and single event users shall also obtain a separate liquor liability insurance policy in the amount of One Million and no/100 Dollars (\$1,000,000) per Occurrence when any alcoholic beverages are sold or consumed during any event.~~

Except for Liquor Liability insurance, all other ~~The required~~ insurance will be equivalent to in the minimum amount of One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000) per occurrence (MCA Section 2-9-108(1)) and shall be in effect for the entire baseball use season including practice and scheduled games for the term of this agreement. Prior to the start of the use of the Facility each year, the Ball Club and all

other permitted users shall provide the City a Certificate of Insurance made out to the City of Billings and naming the City of Billings as a primary, non-contributory insured in all categories of insurance. The City reserves the right to require reasonable increases in insurance coverage or changes in types of coverage as the circumstances or insurance industry practices may require. The City shall be notified by Ball Club or its insurer in writing thirty (30) days prior to any cancellation or nonrenewal of the policy. The notice of cancellation must be sent to the City.

If all or significant portion of the Facility is damaged or destroyed by fire or other casualty, in the event such loss is covered by insurance to the extent of eighty percent (80%) or more of the value of such portion(s) the City shall repair and rebuild the Facility with reasonable diligence to the condition immediately before the loss, the condition required by law or Minor League Professional Standards, at the sole option of the City. Such repairs or rebuilding shall be completed as soon as reasonably possible and in consultation with the Ball Club. If, in the good faith judgment of the Parties, there is substantial interference with the operation of the Ball Club's use of the Facility that requires the Ball Club to temporarily use another Facility, the sole remedy will be a pro rata abatement of payments due to the City in this Agreement for the period of time such interference has occurred. The Ball Club shall have the right to schedule home games at another facility during such time.

If at the sole option of the City the facility is not or cannot be restored to the condition immediately before such casualty or loss, the condition required by law or to Minor League Professional Standards following such casualty or loss, this Agreement may be canceled and voided by the Ball club. Under such termination by Ball Club, neither Party shall have any claim of any kind or type against the other Party as a result of such termination.

9.7 Ball Club agrees not to discriminate in any manner on the basis of age, gender, marital status, race, color, creed, handicap, height, weight, national origin with respect to any applicant or employee, and will use its best efforts to conform in all respects to the pertinent provisions of federal, state and/ or local laws, ordinances, rules and regulations of employment practices. Ball Club agrees that in serving the public, its employees shall not, on the grounds of gender, marital status, race, color, creed, handicap, height, weight, national origin, discriminate or permit discrimination or refuse to serve a person or group of persons in any manner prohibited by federal, state or local laws, rules, ordinances and regulations.

9.8 Stadium Security. The Ball Club shall provide security at each home baseball game and pay for up to two (2) uniformed Police Officers. ~~at each Ball Club Home baseball game.~~

9.9 Breach and Remedies. Should any material condition of this Agreement be violated, a notice thereof in writing shall be issued; and if said breach is not corrected within thirty (30) days of said notice, this Agreement may be terminated at the option of the Party wronged without further notice; provided, however, that this clause shall not require the termination of this Agreement, nor shall it prevent the issuance of any other remedy at law or in equity.

9.10 Default. The Ball Club shall be considered in default of this Agreement if:

- a) The Facility is abandoned or vacated by the Ball Club; or
- b) Proceedings are commenced against the Ball Club by any court under a bankruptcy act or for the appointment of a trustee or receiver of the Ball Club's property, either before; or after the commencement of the term of this Agreement; or
- c) The Ball Club fails to perform any of its material conditions or obligations under this Agreement after thirty (30) days receipt of written notice.

9.11 Default Remedies. In addition to any other remedy provided in this Agreement, the Parties shall be entitled to remedy any default following the expiration of the required notice as follows:

- a) Recover of monies due and owing, together with interest from date such monies were due;
- b) A right of specific performance of non-monetary covenants and agreements;
- c) Cancel and terminate this Agreement immediately or at any date elected by the non-defaulting Party;
- d) If this Agreement is terminated because of the Ball Club's default for any reason, the amount to be paid by the ball club shall be equal to the principal amount owed plus accrued interest

9.12. Dispute Resolution. If a dispute arises concerning any provision in this Agreement, the parties shall follow this order of resolving the dispute:

- a) The parties shall first attempt to informally resolve the dispute.
- b) If the matter remains unresolved, the parties shall then attempt to resolve the dispute through mediation using an agreed-upon process.
- c) If mediation does not resolve the dispute, the parties may mutually agree to binding arbitration with an agreed upon process; however, the Parties are not obligated or required to submit the dispute to binding arbitration and may proceed to d) below without such mutual agreement.
- d) The Parties may unilaterally pursue other remedies including but not limited to litigation.

9.13 Applicable Law and Venue for Litigation. This Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue for any litigation related to this Agreement shall be in the Montana Thirteenth Judicial District Court, Billings, Yellowstone County, Montana, and there shall be no other venue for resolution of disputes arising from the Agreement or the performance of its terms.

9.14 Attorney fees and costs. In the event it becomes necessary for any Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement, then the prevailing party shall be entitled to a reasonable attorney's fee and costs, including such fees and costs for in-house counsel.

9.15 Amendment and modification. The Parties hereby agree that any amendments or modifications to this Agreement or any provisions herein may be requested at any time during the term of this Agreement and, if mutually agreed upon, shall be made in writing and executed in the same manner as the original document and shall, after execution, become a part of this Agreement. Negotiations for amendments or modifications of this Agreement shall be conducted in good faith and in a manner consistent with the spirit and purpose of this Agreement.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this day of

CITY OF BILLINGS, a Montana Municipal Corporation

BY: \_\_\_\_\_  
Mayor

Seal

ATTEST: \_\_\_\_\_  
City Clerk

APPROVED:

  
\_\_\_\_\_  
CITY ATTORNEY

BALL CLUB:

Mustangs Baseball LLC, a Montana Corporation

BY:

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ATTEST:

(Seal)