CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

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

AGENDA

COUNCIL CHAMBERS **December 17, 2018** **5:30 P.M.**

CALL TO ORDER: Mayor Cole

PLEDGE OF ALLEGIANCE: Mayor Cole

INVOCATION: Councilmember Ewalt

ROLL CALL: Councilmembers present on roll call were:

☐ Cromley, ☐ Yakawich, ☐ VACANT, ☐ Ewalt, ☐ Joy, ☐ Friedel, ☐ Gibbs, ☐ Ronning, ☐ Clark, ☐ Brown

MINUTES: December 10, 2018

COURTESIES:

PROCLAMATIONS:

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 3, 4 and 5 ONLY. Speaker sign-in required. (Comments are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign the roster located on the cart at the back of Council chambers or at the podium. Comments 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. **Professional Services Contract** for W.O. 18-23: 2018 Water Master Plan Update; HDR Engineering, Inc.; in an amount not to exceed $333,900.

B. **Professional Services Contract** for design and construction administration of W.O. 19-10: Jellison Rd. Water Main; Performance Engineering; $162,186.

C. **Four-Year Contract** for the Neptune AMR/AMI Software Hosting; Northwest Pipe Fittings, Inc.; Year 1 – $40,920; Year 2 – $49,290; Year 3 – $57,660; and Year 4 – $57,990, for a total of $205,530.

D. **Amendment No. 1, W.O. 18-22: Leavens Reservoir Expansion and Zone 1 Improvements,** Professional Services Contract, HDR Engineering, Inc., $599,700.

E. **Amendment No. 1**, Wireless Network Concession Agreement (Wi-Fi Agreement), Boingo Wireless, renewal and extension for one additional year to December 31, 2019.

F. **Exchange City Golf Corporation (ECGC)** 2019 annual budget and fee structure for Par 3 Golf Course.

G. **Easement** with Western Sugar Co-operative for stormwater pipeline for the W.O. 18-30: City-County Drain Mitigation Project.

H. **Easement** with Marte Nelson Trust for stormwater pipeline for the W.O. 18-30: City-County Drain Mitigation Project; $16,747.50.

I. **Encroachment Permit Appeal** for Alberta Bair Theater.

J. **Donation** to Fire Department, Station #6 from Phillips 66 for the purchase and installation of standby/back-up generator; $30,000.

K. **2018 High Intensity Drug Traffic Area (HIDTA) Award** from Executive Office of the President, Office of National Drug Control Policy; $606,450.

L. **Bills:**

1. November 26 and November 28, 2018

REGULAR AGENDA:

2. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 971:** a zone change from Neighborhood Commercial (NC) to Planned Development (PD) with underlying NC, to allow 1 microbrewery license and 1 restaurant beer and wine license (no gaming) on a 3.6 acre parcel of land described as: Lot 4, Block 1, MK Subdivision, north of Grand Avenue and west of 54th Street West. MYK Enterprises, owner; Scott Aspenlieder, agent. Zoning Commission has **no** recommendation on a vote of 1 in favor and 4 opposed to a motion to recommend approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of zone change.)

3. **ONE BIG SKY DISTRICT DEVELOPMENT PLAN.** Staff recommends supporting State Legislative efforts to further the One Big Sky District Development Plan.

4. **APPROVAL** of Mayor's appointment for the Ward II Councilmember replacement. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

5. **2019 MONTANA LEGISLATIVE PRIORITIES.** Staff recommends approval. (Action: approval or disapproval of staff recommendations.)

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes. Please sign the roster located on the cart at the back of 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.

Consent **1. A.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: W.O. 18-23: 2018 Water Masterplan Update

PRESENTED BY: David Mumford, Public Works Director

Department: Public Works

Presentation: No

PROBLEM/ISSUE STATEMENT

The City Council will consider awarding a Professional Engineering Services Contract to HDR Engineering, in the amount of $333,900 for W.O. 18-23: 2018 Water Master Plan Update. The purpose of the project is to update the existing water model, incorporate recent projects, analyze system storage, update projected demands based on water meter data, and provide a capital improvement plan identifying priority projects and estimated timeline.

HDR Engineering was selected based on City staff review of project proposals submitted by prequalified firms. Other firms considered for the work were Morrison-Maierle and DOWL.

ALTERNATIVES ANALYZED

City Council may:

- Approve award of the Professional Engineering Contract to HDR Engineering, or;
- Disapprove award of the Professional Engineering Contract to HDR Engineering. If the contract is not awarded the City will be unable to follow-through on the important task of keeping its Water Master Plan current. The last time the Master Plan was updated was 2012.

FINANCIAL IMPACT

The project will be paid out of Water Funds that were approved by City Council in the FY19 budget. A summary of the funding is as follows:

Project Budget	$350,000
Previously Encumbered	$0
This Contract	$333,900
Budget Remaining	$16,100

RECOMMENDATION

Staff recommends that Council award a Professional Engineering Services Contract for W.O. 18-23: 2018 Water Master Plan update to HDR Engineering, in an amount not to exceed $333,900.

APPROVED BY CITY ADMINISTRATOR

Attachments

Contract for Professional Architectural and Engineering Services

Project W.O. 18-23: 2018 Water Master Plan Update

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

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 9 pages (Basic Services of Contractor);

Appendix B consisting of 2 pages (Methods and Times of Payment);

Appendix C consisting of 1 pages (Additional Services of Contractor);

Appendix D consisting of 1 pages (Schedule of Professional Fees);

Appendix E consisting of 1 pages (Project Schedule);

Appendix F consisting of 21 pages (Certificate(s) of Insurance); and

PART I
SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

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

Section 2. Scope of Services.

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

Section 3. Time for Performance.

A. This Contract becomes effective when signed on behalf of Billings.
B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
C. This Contract shall terminate at midnight on June 30, 2020.

Section 4. Compensation; Method of Payment.

A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than Three Hundred Thirty-Three Thousand Nine Hundred and no/100 dollars ($333,900.00) in accordance with this Section and Appendix B.
B. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
C. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
D. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

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

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

Section 6. Duties Upon Termination

A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination and Billings shall pay for services rendered prior to termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.

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

Section 7. Insurance.

A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
B. The Contractor shall provide the following insurance:

    1. Workers' compensation and employer's liability coverage as required by Montana law.
    2. Commercial general liability, including contractual and personal injury coverage's -- $1,500,000 per occurrence.
    3. Commercial automobile liability -- $1,500,000 per accident.
    4. Professional liability in the amount of $1,500,000 per claim.

C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings: Travis Harris
City of Billings
Engineering Division
2224 Montana Avenue
Billings, MT 59101 FAX: (406) 237-6291

Contractor: Amanda McInnis, PE

HDR Engineering, Inc.
970 S 29th St W
Billings, MT 59102 FAX: (406) 652-2758

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:

1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
2. Strikes or Work stoppages.
3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

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

A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
C. Effectively controls and accounts for all municipal funds and Contract property;
D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
E. Allocates administrative costs to direct service delivery units;
F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
G. Provides accounting records supported by source documentation; and
H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

PART II
GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
F. The Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

Section 3. Permits, Laws, and Taxes.

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

Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Contractor: Jared Harris, Amanda McInnis, or Authorized Signatory

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and

expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any agent, employee or subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

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

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

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

City of Billings

_____
City Council or Designee

Date:_____

ATTEST:

_____
City Clerk

Date:_____

Contractor

_____

Name:_____
Title:_____
Date:_____

IRS Tax ID #_____

APPROVED AS TO FORM:

By_____
BRENT BROOKS, City Attorney

STATE OF MONTANA)
:ss.
COUNTY OF YELLOWSTONE)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

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

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

Appendix A

Basic Services of Engineer
City of Billings W.O. 18-23: Water Master Plan Update

Section 1. Engineer's Rights and Duties.

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.

B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.

C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.

D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.

E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.

F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.

G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.

H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.

I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.

J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.

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

Section 2. Billings Rights and Duties.

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.

B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Travis Harris, working under the City Engineer, Debi Meling.

Section 3. Scope of Work.

The project consists of engineering planning services for the City of Billings W.O. 18-23 – 2018 Water Master Plan Update. Overall general concepts of the Master Plan (MP) include:

- The MP evaluation will be for a 20 year period.
- The MP will be concentrated on water system infrastructure and will have minimum emphasis on operations.
- Evaluations will include the proposed water treatment plant (WTP) on the West End of Billings but only in terms of the WTP being a source of water and water storage. Nothing specific to the WTP process, exact location or operation will be evaluated.
- Population projections and water demands will be updated for each pressure zone.
- The City's current model will be updated, incorporating recent projects and projected demands, to facilitate evaluating existing infrastructure limitations and for projecting future infrastructure.
- A water system storage analysis will be performed based on updated demand projections.
- Analyzing distribution system operation
- A trigger based capital improvement plan (CIP) will be developed that will also include an initial time based implementation schedule.

The master plan excludes the following components:

- Evaluation of any water treatment facilities.
- Existing pressure zone boundary adjustments evaluation. Previous work will be included.
- Risk and resiliency analysis
- Analyzing plant operation

- Water age analysis with two plants operating
- Analyzing two plant operation for efficiency, water movement and seasonal operation.
- Condition analysis of facilities
- Emergency protocols

DETAIL SCOPE OF SERVICES

The scope of services that will be utilized on the Billings Water Master Plan Update project is presented in the summaries for Tasks 100 through 800. The scope of services is organized as follows:

Task Series	Description
100	Project Initiation, Coordination, and Management
200	Data Collection
300	Demand Projections
400	Existing Water Distribution System
500	Storage Analysis
600	Model Analysis
700	Miscellaneous
800	CIP Development
900	Master Plan Document

TASK SERIES 100 – PROJECT INITATION, COORDINATION, AND MANAGEMENT

101 – Project Initiation

The purpose of this task is to kick off the project externally and internally. A project management plan (PMP) and all the support paperwork will be developed for all team members to have available to understand the project, the project team, and the project requirements. The PMP is updated with significant changes in the project. The project will be kicked off with the City with pertinent staff from the City and HDR to review the project components, schedule, and the process for completing the water master plan.

- Deliverable: Meeting with City, agenda and meeting minutes.

102 – Meetings with City Staff

During the master plan development process, key members of the Consultant team will meet with the City staff to review the project. Meeting minutes will be prepared and distributed to all parties attending the meeting. Meetings will be held monthly on the average with a review meeting at the completion of the draft master plan and CIP. Fourteen (14) total meetings are planned for that could include workshops, meeting updates and conference calls.

- Deliverable: Agenda and meeting minutes for each meeting.

103 – Project Management

As part of this task, the Engineer's Project Manager will lead coordination of the project team with the City as well as supervise the project team. Project Manager and Accountant will monitor project status, maintain project schedule and prepare financial documents.

- Deliverable: Monthly Invoices

TASK SERIES 200 – DATA COLLECTION

This task series will include obtaining all existing information from the City pertinent to the water master plan, processing the information and reviewing the results of the processed data with the City. The tasks associated with data collection include the following:

201 –Meter Data

Obtain monthly water meter data with applicable account address and customer class information and GIS-based land base with parcel attribute information. Correlate the two data sets and geocode the water meter data to parcel information to create a spatial coverage of account-level water usage.) Review and compare records to previous model demand allocation. Using Theissen polygons, distribute GIS-based demand to the pertinent model junctions. Review data from the 20 largest water users in the system and verify location of point of use. Evaluate all meter data to determine per capita use, seasonal use and compare to pump station meter data.

- Assumptions: City will provide a database that will include a unique parcel ID, geocode and all available parcel information. The database will be set up so that historical monthly meter data will be able to be linked to the database for evaluation and uploading to the water model.

- Deliverable: Data tables of meter readings, per capita use by pressure zone, GIS file with allocated meter ID, geocode, address and model junction.

202 – Pump Station Meter Data

Collect meter data for the distribution pump stations including High Service Pump Stations for the last 10 years. Analyze the data to determine any outlier data points. Perform calculations to determine supply to each pressure zone based on the pump station meter information. Evaluate results and adjust as needed to arrive at supply numbers for each zone.

- Deliverables: Summary of pump station raw meter data
  Calculations to determine supply to each zone
  Adjusted water supply estimate to each zone by year

203 – Zoning, Planning and Land Use Information

Collect digital City and County GIS information related to zoning, population projections, planned developments and projected land use, if available.

- Deliverable: Summarize spatially by pressure zone the data collected.

TASK SERIES 300 – DEMAND PROJECTIONS

301 – Establish Demands in Existing Pressure Zones

Use meter data collected and most recent population data to estimate existing total demands and per capita demands for each current pressure zone.

- Deliverables: Estimated existing demand in existing pressure zones
  Estimated per capita demand by pressure zone

302 – Determine Growth in Each Pressure Zone

Verify boundaries of current and future pressure zones. Utilize collected planning information to estimate residential, commercial and industrial growth increases for each pressure zone over the 20-year planning period.

- Deliverables: Current and future pressure zone boundaries
  Growth and type of growth by pressure zone

303 – Determine Projected Demands for Each Pressure Zone

Utilize developed per capita demands, any projected changes in per capita demands, and projected demands for commercial and industrial by pressure zone and project demands. Project demands for each pressure zone at 10 and 20 year intervals. Demand increases to 10-year and then 20-year will be assumed to be linear. A workshop will conclude this task with the goal of obtaining direction on the demand projections prior to proceeding with subsequent master planning tasks.

- Deliverables: Projected water demand by pressure zone for 10-year and 20-year intervals.

TASK SERIES 400 – EXISTING WATER DISTRIBUTION SYSTEM

401 – Facility Description of Water Distribution System

Build off of Chapter 3 of the 2006 Master Plan and provide an up to date description of the existing storage facilities, pump stations, pressure zones and major distribution mains.

- Deliverables: Water Facility Description and Summary Graphic

TASK SERIES 500 – STORAGE EVALUATION

501 – Establish Storage Requirements by Pressure Zone

Based on projected demands for current and future pressure zones, calculate the storage volume needed for fire, operating and emergency volumes to determine a total storage volume needed per pressure zone. Assume one fire in the service area at a time. Show storage needs for each pressure zone as a fire demand is placed separately in each zone.

- Deliverables: Storage volume requirement per pressure zone for current and future projected demands.

502 – Evaluate Reallocating Storage

Evaluate reallocating storage from pressure zones with excess storage to pressure zones with a storage deficiency. Evaluation to include existing provisions for moving storage as well as new potential provisions that could beneficially be used to move water between zones. Include potential storage from clearwell(s) at West End WTP.

- Deliverables: Summary of locations to move water from one pressure zone to another for the benefit of meeting storage requirements.
- Deliverables: Updated storage summary by zone.

503 – Determine Winter Storage Requirements

Based on current and projected demands during winter, update evaluation to determine wintertime storage needs. Evaluate reallocating storage between zones similar to peak demands.

- Deliverables: Storage volume requirements and storage reallocation for current and future projected wintertime demands.

504 – Storage Recommendations

Provide recommendations for future storage requirements and provisions to move storage between zones. Take into consideration: configuration of existing storage, reliability of moving water between zones, condition of existing Staples 6 MG reservoir and seasonal operation.

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- Deliverable: Summary of storage recommendations.

505 – SCADA Provisions

Based on current storage volumes and provisions to move water between zones, develop a graphical representation of the distribution system storage provisions and how water can be moved from one zone to another.

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- Deliverable: SCADA graphical representation and programming recommendations to represent storage system.

TASK SERIES 600 – Model Analysis

Use the City's water model to analyze the distribution system. Analysis should include the proposed West End WTP located south of Hesper Road between 48th St. West and Shiloh Road.

601 – Model Update

Update the existing water model with any recent or currently being built facilities as well as new parcel-level water demands. Review operations and controls in the model with City staff and update the model with any changes.

- Assumptions: City will provide information on recent/current facilities and controls.
  All pipes, except laterals and fire hydrant pipelines, will be included in the model.
- Deliverable: Updated model.

602 – Calibrate Model

Once model has been updated, the model will be calibrated for both steady state (SS) and extended period simulation (EPS). Provide requests for the City to conduct fire hydrant tests and provide 24-hour SCADA reservoir and pump operation(s) to facilitate calibration.

- Assumptions: City will conduct fire hydrant tests and provide SCADA tank level and pump station operation records, including High Service Pump Station and Clearwells.
- Deliverable: Fire hydrant testing/model calibration plan. Final Calibrated model.

603 – Water System Analysis

Expand the calibrated model to include applicable seasonal operational control settings to evaluate the water distribution system piping, pumping and storage network. Model runs to include the following:

Base Analyses	Analysis	Average Day	Minimum Day	Maximum Day	Peak Hour
Existing	Pressure	★	★	★	★
	Velocity	★	★	★	★
	Water Age	★	★		
	Fire Flow			★	
Future	Pressure	★	★	★	★
	Velocity	★	★	★	★
	Water Age	★	★		
	Fire Flow			★	

- Existing System Improvements Analysis to address existing system deficiencies
- Existing System Improvements Analysis to address future system deficiencies
- West End WTP and Recommended Operations/Modifications Analysis

Run the calibrated model to evaluate the aforementioned scenarios. Modify piping and pumping in the model to improve model run results and address modeled deficiencies. Evaluate benefits of moving water from one zone to another in new locations. Evaluate the ability of the proposed West End WTP to provide water to the distribution system with the existing WTP off-line and if needed, determine modifications to facilitate this mode of operation. Provide recommendations for expansion, pressure adjustments and upgrades.

- Assumptions: City will provide applicable seasonal system pumping/storage/operating conditions to import into the model facility settings.
- Deliverable: Figures showing pressures, velocities and water age.
  Schematic for operating West End WTP only
  Recommended piping and pumping upgrade modifications

604 – Distribution System Operation Analysis

In conjunction with City staff brainstorm water system operations to evaluate different operation scenarios, means to increase redundancy and ways to make relatively minor capital modifications/additions to improve operations.

- Deliverable: Recommendations for means to improve operations.

TASK SERIES 700 - Miscellaneous

701 – Pressure Reducing Stations

Develop a standard design for pressure reducing stations for allowing water to safely move from a higher zone to a lower zone. Also provide recommended control and monitoring of the pressure reducing station.

- Deliverable: Pressure reducing station standard design and control.

702 – Backup Power

Review existing backup power provisions for the distribution system including High Service Pump Station. Analyze the existing and future needs. Future needs to be based on recommendations of improvements identified in previous tasks.

- Deliverable: Recommendation for backup power additions/upgrades.

703 – North Billings Water System Expansion Analysis

Review requirements and provide planning level cost estimates to serve the area north of Zone 2 East from Zone 3 East to the Yellowstone River.

- Deliverable: Draft Technical Memorandum summarizing expansion requirements and planning level costs.

TASK SERIES 800 – CIP Development

801 – Cost Estimate

Develop total project cost estimates for recommended improvements.

- Deliverable: Individual total project cost estimates.

802 – Project Worksheets

Develop project worksheets for each improvement or group of improvements. Include project description, cost estimate and a trigger for when the improvement is needed. Include a graphic as appropriate. Review worksheets with the City.

- Deliverable: Project Worksheets.

803 – CIP

Based on agreed upon projects, develop a CIP summary that includes project, estimated cost and trigger. Utilizing projected demands, time estimates of other triggers, available funding and other projected water projects, develop a time based CIP. Near term projects will be included in a 10-year CIP. Projects beyond 10-years will be listed as long-term.

- Deliverable: Trigger based CIP summary
  Time based CIP

TASK SERIES 900 – Water Master Plan Document

901 – Prepare Draft Water Master Plan

Based on results in the previous tasks develop draft of the water master plan.. Submit to the City for review.

- Deliverable: Draft Water Master Plan in a *.pdf file format for internal distribution as appropriate.

902 – Finalize Water Master Plan

Incorporate City comments in the water master plan and finalize.

- Deliverable: Final Water Master Plan. (1) electronic copy and (5) hard copies.

Appendix B

Methods and Times of Payment
City of Billings W.O. 18-23: Water Master Plan Update

Section 1. Payments for Basic Services.

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

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

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

1.	Project Initiation, Coordination and Management	$ 40,400
2.	Data Collection	$ 19,400
3.	Demand Projections	$ 25,900
4.	Existing Water Distribution System	$ 14,300
5.	Storage Analysis	$ 20,100
6.	Model Analysis	$ 88,900
7.	Miscellaneous	$ 37,300
8.	CIP Development	$ 41,500
9.	Master Plan Document	$ 46,100
		$ 333,900

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

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

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

Section 3. Corrections.

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

Section 4. Fee Increases

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

Appendix C

Additional Services of Engineer
City of Billings W.O. 18-23: Water Master Plan Update

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

A. Requests made or conditions identified which are beyond the scope and intent of the services identified under Appendix A.

Appendix D

Schedule of Professional Fees
City of Billings W.O. 18-23: Water Master Plan Update

Not used on this Contract.

Appendix E

Project Schedule
City of Billings W.O. 18-23: Water Master Plan Update

Based on a notice to proceed by Billings dated no later than December 17, 2018, the completion date for the Engineer's work shall be:

A. Data Collection – February 2019

B. Demand Projection – April 2019

C. Storage Analysis – June 2019

D. Model Analysis – September 2019

E. CIP Development – November 2019

F. Finalize Master Plan – January 2020

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

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

Based on the results of the Alternatives Analysis, Engineer will reassess remainder of project schedule and revise accordingly with City's concurrence.

Appendix F

Certificate(s) of Insurance
City of Billings W.O. 18-23: Water Master Plan Update

(Attach Certificate(s) of Insurance)

Consent **1. B.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: Consultant Agreement: W.O. 19-10: Jellison Rd Water Main

PRESENTED BY: David Mumford, Public Works Director

Department: Public Works

Presentation: No

PROBLEM/ISSUE STATEMENT

City Council will consider awarding a professional engineering services contract to Performance Engineering in the amount of $162,186 for design, bidding and construction administration services on W.O. 19-10: Jellison Rd. Water Main. The project consists of installing a new water main from Blue Creek Rd. to serve the new Solid Waste Transfer Facility. As part of the project, a brief route alternative analysis will be completed to assist staff in determining whether to install the water main along Jellison Rd. or Hillcrest Rd. After selecting the location, Performance Engineering will complete the design, bidding, and construction administrative services.

Performance Engineering was selected based on City staff review of project proposals submitted by prequalified firms. Other firms considered for the work were KLJ, Great West Engineering, Stahly Engineering & Associates, and WWC Engineering.

ALTERNATIVES ANALYZED

City Council may:

- Award the professional engineering services contract to Performance Engineering or;
- Disapprove award of the construction contract to Performance Engineering. If the project is not completed, the water main to serve the new solid waste transfer facility cannot be designed or constructed.

FINANCIAL IMPACT

Funding for this project has been approved by City Council for FY 19 in the Capital Improvement Plan (CIP) and is sufficient for the engineering design and construction administration portion of the project.

Project Budget	$850,000
Previously Encumbered	$0
This Contract	$162,186
Budget Remaining	$687,814

RECOMMENDATION

Staff recommends that the City Council award a professional engineering services contract for the design and construction administration of W.O. 19-10: Jellison Rd. Water Main to Performance Engineering, in the amount of $162,186.

APPROVED BY CITY ADMINISTRATOR

Attachments

Contract

Contract for Professional Architectural and Engineering Services

Project W.O. 19-10

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

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 4 pages (Basic Services of Contractor);

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

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

Appendix D consisting of 2 pages (Schedule of Professional Fees);

Appendix E consisting of 2 pages (Project Schedule);

Appendix F consisting of 1 page (Certificate(s) of Insurance); and

PART I
SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
B. “Billings” means the City of Billings.
C. "Contractor" means Performance Engineering, LLC.

Section 2. Scope of Services.

A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.

C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
D. The Engineer shall provide as-built drawings as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings. Requirements for submitting as constructed documents of completed Private Contracts, Work Orders, Special Improvement Districts and Site plans involving any City of Billings infrastructure: a point file; 1 (*.asc, *.txt, comma delimited; point number, northing, easting, elevation and description) / 2 (*.csv, with headings for; point number, northing, easting, elevation and description), with northings and eastings to the nearest tenth of a foot, elevations to the nearest hundredth of a foot, representing new, updated or relocated City of Billings infrastructure features such as, but not limited to Sanitary Sewer Manholes, Storm Drain Manholes, Water Valves, Water Bends, Signals, Street Light, etc., in the coordinates of Montana State Plane, Zone 2500 using NAD83(2011), Horizontal and NAVD88 Vertical, Horizontal units and Vertical units will be International feet, one half size paper copy to scale, one full size paper copy to scale, two CD's or DVD's with PDF files being half size to scale and full size to scale and AutoCAD DWG files as-constructed / as-built, Version 2016, or equivalent.
E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

A. This Contract becomes effective when signed on behalf of Billings.
B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
C. This Contract shall terminate at midnight on December 31 2020.

Section 4. Compensation; Method of Payment. **(Choose payment method A, B, or C)**

A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
C. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

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

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

Section 6. Duties Upon Termination

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

Section 7. Insurance.

A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
B. The Contractor shall provide the following insurance:

    1. Workers' compensation and employer's liability coverage as required by Montana law.
    2. Commercial general liability, including contractual and personal injury coverage's -- $1,500,000 per occurrence.
    3. Commercial automobile liability -- $1,500,000 per accident.
    4. Professional liability in the amount of $1,500,000 per claim.

C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

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

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

A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless

the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

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

Billings: City Engineer
City of Billings
Public Works - Engineering
2224 Montana Ave
Billings, Montana 59101 FAX: (406) 237-6291

Contractor: Performance Engineering
7100 Commercial Ave
Suite 4
Billings, Montana 59101 FAX: (xxx) _____

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:

1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
2. Strikes or Work stoppages.
3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.

4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

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

A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
C. Effectively controls and accounts for all municipal funds and Contract property;
D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
E. Allocates administrative costs to direct service delivery units;
F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
G. Provides accounting records supported by source documentation; and
H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

PART II
GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
F. The Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

Section 3. Permits, Laws, and Taxes.

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

Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Contractor: Craig Dalton, Owner
(title of position)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

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

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

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

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

City of Billings

_____
City Council or Designee

Date:_____

ATTEST:

_____
City Clerk

Date:_____

Contractor

_____

Name:_____
Title:_____
Date:_____

IRS Tax ID #_____

APPROVED AS TO FORM:

By_____
BRENT BROOKS, City Attorney

STATE OF MONTANA)
:ss.
COUNTY OF YELLOWSTONE)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

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

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.

B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.

C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.

D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.

E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.

F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.

G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.

H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.

I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.

J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard

Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.

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

Section 2. Billings Rights and Duties.

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.

B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Ken Ard, PE.

Section 3. Scope of Work.

Infrastructure Schematic Design

To refine the preliminary details of the project, this portion of the engineering effort forecasts action broadly in three areas, those being: Route Alternatives Analysis, Survey, and Preliminary Design. Each of these specifically includes time to meet in person with City staff to discuss progress, update construction cost estimates and schedules, and identify obstacles and opportunities which may affect production or progress.

1) Route Alternatives Analysis: Discussions with City personnel have revealed that there may be acceptable alternatives to the route broadly presented in the request for proposals. Given that the route is not "set in stone", it is wholly appropriate to step back and investigate other approaches which can accomplish the end goal of providing water to the area near the scales at the landfill. In order for the City to select a route which best achieves its goals, we will provide a simple comparative analysis of the straightforward approaches we have identified. While not an exhaustive report, it will highlight comparative items and allow for an informed selection.

2) Survey: Once a route has been finalized, we will gather relevant property, as-built, and right-o- way documents which will allow us to identify possible gross conflicts with the project (like extremely narrow right of way, stream crossings, and other utilities). We will develop a rough estimate of the alignment in order for our survey crews to collect extra data in and around potential conflict or constrained locations. Utility locates will be called in and that information will be collected simultaneously. The survey crews will locate existing benchmarks from prior projects on file as well as public records to ensure the project is oriented and located correctly and set to the common datum. The field data will be downloaded and checked daily. This makes quality assurance is a continuous, ongoing process allowing the design team to make informed decisions using the most accurate and up-to-date information.

3) Preliminary Design: Once the route has been completely surveyed, we will prepare a preliminary design which will include a limited scope hydraulic analysis, pipe diameter, classification, and material. The first project specific construction cost estimate will be delivered. We will engage regulatory stakeholders and City staff to identify specific areas of concern and incorporate those into the developing project plans.

Infrastructure Design Development

With the route established and revised in accordance with City comments, work towards the final design will proceed with Geotechnical and Utility Site Investigations, Final Design Development, and assembly of the Construction Documents.

1) Geotechnical and Utility Site Investigations: Depending on the route chosen during the Infrastructure Schematic Design phase, existing buried utilities may play a significant role in construction complexity, and in turn may dictate the best construction methods for certain locations. Based on the available drawings, we expect to vacuum excavate approximately 5 locations. The final number of potholes will depend on the "One Call" field marks along the selected route. Our surveyors will locate exposed utilities along the route and collect data to be incorporated into the project drawings for further refinement of the plans and to assist contractors in developing bids and executing the work safely and without avoidable delays.

2) Final Design Development: Final Design Development will refine the alignment and profiles, making adjustments to minimize fitting installations, resolve and avoid as many incidental pipe conflicts as possible. These details will be incorporated into the hydraulic model and checked to ensure that projected performance meets or exceeds DEQ and City criteria.
At this juncture, we will provide 60% progress plans and updated construction cost estimate to the City and meet to discuss concerns, address questions, and collect comments for revisions.

Construction Documents

1) Construction Documents: With plans that are technically complete and which align with the City's project budget, we will assemble the construction document package and present permit applications to stakeholder agencies (which may include MDT, Yellowstone County, MT DEQ, and the Army Corps of Engineers, among others). As the guiding technical design references will be the stakeholders' references, and as we will have been in contact with them early in the process, such reviews are usually straight forward and permits are issued without delay. Some submittal timings may be adjusted to comply with some agency sequencing or "complete package" requirements. However, it is during this period that we will have developed and distributed approved construction documents to agencies and utilities in the construction corridor.

Construction Administration

The final project phase is Construction Administration. This period broadly includes Bid and Construction Assistance, Submittal Reviews, Construction Staking, Construction Observation and Documentation, and Project Closeout.

1) Bid and Construction Assistance: We will conduct a pre-bid meeting for plan holders which may include a site visit to walk the pipeline route and call attention to specific locations where the design process has brought concerns to light. We will receive questions from plan holders, responding and publishing those to all plan holders in order to maintain a level informational playing field. Once the City has received, opened, and read the bids, we will consolidate the bids into a comprehensive document which will verify the bidder's mathematics and notify the City of any irregularities. As requested, we will conduct telephone reference checks of bidders, and finally make a recommendation of award to the City. Once approved, we will complete the forms, notifying the awardee of the decision, and setting the calendar for the accumulation and verification of relevant documents like the construction schedule, insurance, bonds, and execution of the construction contract itself.

2) Submittal Reviews: Once the construction contract is in place, we will review contractor material submittals for compliance as well as discuss any special construction methods the contractor proposes. Boring and jacking is one such process which requires special consideration and planning. So while we do not dictate or direct contractor methods, we seek to be part of the contractor's plans to avoid unnecessary delays, injuries or facility damage.

3) Construction Staking: In accordance with the Contractor's published schedule and marking requirements, we will field stake the project for construction and walk the project one last time before construction begins to ensure that the scope, route and project plans are unmistakably clear and unambiguous. The right-of-way and benchmarks established during the route location phase will be clearly marked for reference during construction. Buried appurtenance locations will be staked with station and offset to ensure that the Contractor has all the information necessary to document the installation as it progresses. This helps to ensure the accuracy and reliability of the record drawings.

4) Construction Observation and Documentation: During construction, we will be on site to document the project any time that construction activity is active including excavation, bedding, placement, backfill, and compaction of pipe, fittings, and appurtenances. We will document typical conditions daily, and unusual situations (change in soil conditions, springs and seeps, etc.) as they are encountered. The contractor will schedule, and we will attend, construction progress meetings on a day and at a time which is consistent from week to week so that the City (and other regulatory stakeholders) can plan on attending at will. Weekly, we will publish the prior week's daily log forms, testing results, and minutes from that week's construction progress meeting. That record will include photograph(s) of the contractor's progress record drawings, so that office support staff can maintain those concurrently with construction progress. We will observe pressure testing and sample collection to satisfy the requirements of the construction documents and will advise the City when all of the regulatory and administrative requirements have been met to place the line into service. We will maintain records of progress which we will reconcile against each request for progress payment so that any discrepancies and disputes are resolved before we endorse the request. For the purposes of this scope of work, a 12 week construction schedule was assumed.

5) Project Closeout: Once the City has beneficial occupancy, a certificate of substantial completion can be prepared which will begin the new facility's warranty period. An 11-month warranty walk through will be scheduled. With the City staff and the contractor, we will develop and publish the final quantities change order, endorse the final payment request (presumably with release of retainage), and the acceptance punch list, verifying for the City that we believe that the contractor has met the terms, conditions and requirements of a complete project. To close the project, we will provide a comprehensive volume of project records which will include the daily logs, as built drawings (on paper and in digital format), correspondence including submittals and requests for information, and our certification that the project has been installed in accordance with the approved plans and specifications. We will provide this also to the MT DEQ to meet the terms of their standard permit language, as well as to any other bodies or agencies with similar permit requirements. Once those have been satisfied, we will apply to the City for final payment on the project.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

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

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

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

1.	Infrastructure Schematic Design	$13,758
2.	Infrastructure Design Development	$34,602
3.	Construction Documents	$14,562
4.	Construction Administration	$99,264

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

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

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix D.

Section 3. Corrections.

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

Section 4. Fee Increases

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

Appendix C

Additional Services of Engineer

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

A. Field and laboratory testing of materials and reports.

B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

Appendix D

Schedule of Professional Fees

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are included below.

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

Section 1. Professional Services.

	Standard Rate	Overtime Rate
A. Principal	$ 165	$ 165
B. Engineer		
1. Engineer Level 5	$ 165	$ 165
2. Engineer Level 4	$ 140	$ 140
3. Engineer Level 3	$ 135	$ 135
4. Engineer Level 2	$ 115	$ 115
5. Engineer Level 1	$ 95	$ 95
6. Engineer Intern	$ 75	$ 100

	Standard Rate	Overtime Rate
C. Clerical and Computer		
1. Administrative Coordinator	$ 65	$ 97.50

Section 2. Surveying Services.

A. Land Surveyor 3	$ 135	$ 135
B. Land Surveyor 2	$ 115	$ 115
C. Land Surveyor 1	$ 95	$ 95
D. Survey Crew		
1. 2-Man Crew	$ 190	$ 190

Section 3. Equipment Rates.

1. Vehicle - Larger of	$ 0.80/mile	or	$5/hour
B. ATV/Snowmobile			$150/day
C. Computer Equipment			
1. CADD Plotter			
a. Bond (24"x36")			$3/page
2. 11"x17" Plots			$1/page
D. Robotic Total Station			$20/hour
E. RTK GPS Equipment			$20/hour

Section 4. Supplies, Office, Drafting, & Reproduction.

A. Copier Reproduction (Reduced Rates for Volume Copying)
   1. 8-1/2 x 11 - $ 0.25 per page
   2. 11 x 17 – R $ 1.00 per page

Section 9. Materials and Other Direct Costs.

Materials and other direct costs will be invoiced at current rates, plus a ten percent (10%) handling fee. Included as direct costs are the following:

A. Approved Employee Meals, Lodging, Transportation

B. Premium Delivery Service (UPS, Federal Express, etc.)

C. Toll Communication Services (Telephone, Fax, etc.)

D. Supplies

E. Premiums for Special Insurance, Performance Bonds, etc.

F. Other Out-of-Pocket Expenses

G. Consultants

The cost of Professional Liability Insurance coverage is included in the hourly rates of personnel.

Appendix E

Project Schedule

Based on a notice to proceed by Billings date no later than **December 31, 2018**, the completion date for the Engineer's work through final design shall be:

A. Submittals and Meetings

1. Infrastructure Schematic Design – 01/15/19 to 02/07/19
    a) Preliminary Analysis of Route Alternatives – 01/15/19
    b) Project Kickoff Meeting – 01/15/19
    c) Topo and Boundary Survey – 01/21/19
    d) Preliminary Water Main Design – 01/30/19
2. Infrastructure Design Development – 02/01/19 to 02/28/19
    a) Geotechnical and Utility Site Investigations – 02/01/19
    b) Final Design Development – 02/15/19
        I. 60% Design Review Meeting – 02/21/19
3. Construction Plan Set and Specifications – 03/01/19 to 03/21/19
    a) 90% Design Review Meeting – 03/14/19
    b) Final Construction Documents Submittal – 03/21/19
4. Construction Administration – 04/01/19 to 09/30/19
    a) Bidding and Contracting – 04/01/19
    b) Project Award – 05/13/19
    c) Construction Submittals – 05/20/19
    d) Construction Start – 06/13/19
    e) Construction Completion – 09/06/19
    f) Project Closeout and Record Drawings – 09/30/19

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

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

Appendix F

Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)

Consent **1. C.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: AMR Neptune/AMI Software Hosting – Four (4) Year Contract with Northwest Pipe Fittings, Inc.

PRESENTED BY: David Mumford, Public Works Director

Department: Public Works

Presentation: No

PROBLEM/ISSUE STATEMENT

The City of Billings Public Works Department currently has an AMR/AMI (Automatic Meter Reading/Advanced Metering Infrastructure) system in place through Neptune Technology Group, Inc. The City's current Neptune software is hosted on a City server which is failing and Neptune is discontinuing this software in 2019. Neptune's new software which works with all the City's metering infrastructure is cloud based. Exhibit A shows Neptune's four (4) year Software as a Service (SAAS) proposal. This software system is proprietary to the Neptune AMR/AMI system. In order to change the brand of software, it would require a large investment in new hardware including meters, telemetry and computer collection devices.

Northwest Pipe Fittings, Inc. is the only authorized Neptune distributor for the market area, including Billings, for sales, service and warranty of Neptune water products and systems.

ALTERNATIVES ANALYZED

City Council may:

- Approve the proposed four (4) year contract with Neptune Technology Group and Northwest Pipe Fittings, Inc. for the Neptune software and services, or;
- Disapprove the four (4) year contract. A new server would need to be purchased to host the current software and a contract for the new software would need to be approved in 2019 before Neptune Technology Group discontinues the current software platform.

FINANCIAL IMPACT

Exhibit A (attached) depicts the four (4) year pricing based on the current number of metered accounts (31,000). This number will vary from year to year based on new water connections. The Public Works Department has adequate funding in its water fund for this purchase.

RECOMMENDATION

Staff recommends that Council award the contract to Northwest Pipe Fittings, Inc. for the Neptune AMR/AMI Software Hosting in the amount of: Year 1 – $40,920; Year 2 – $49,290; Year 3 – $57,660; and Year 4 – $57,990 for a total of $205,530 for all four (4) years.

APPROVED BY CITY ADMINISTRATOR

Attachments

Exhibit A

EXHIBIT A

Neptune Software Hosting

- **SaaS – 4 YR Proposal**
  - Costs:
    - Year 1 - $40,920 (31,000 x $1.32)
    - Year 2 - $49,290 (31,000 x $1.59)
    - Year 3 - $57,660 (31,000 x $1.86)
    - Year 4 - $57,660 (31,000 x $1.86, Optional 1 Year Price Extension)

- Automatic transition to end of life N_Sight PLUS
- No Server Costs
- No Software Maintenance Costs
- No IT Resources to Manage and Maintain OS Updates
- Storage and Data Security are covered
- Initial Setup Fee will be waived ($8,500)
- Transition to New 360 Platform in 2019 (Estimated)

MSA Number: _____59111_____

MASTER SERVICE AGREEMENT

This Master Service Agreement (this "MSA") is made by and between Neptune Technology Group Inc. ("Neptune"), and the undersigned Customer as of the Effective Date identified below.

The following list of terms are used throughout this agreement. Definition of each term is provided as reference:

Application Availability - The degree to which the application is operational, functional and usable by the subscriber of Neptune's SaaS application.

Connectivity - The ability for Neptune's meter data collection devices to send readings to Neptune's SaaS application, assuming the collection devices are operational.

Maintenance Window - A scheduled outage of services for planned changes, upgrades, and/or repairs for Neptune's SaaS application.

Penetration Testing – Testing by Customer or a third party retained and authorized by Customer to conduct vulnerability and penetration testing against Neptune systems.

Software as a Service (SaaS) - A software licensing and delivery model in which Neptune's software application is licensed on a subscription basis and is delivered and managed remotely.

System Availability - The availability of all servers and connectivity resources to allow subscribers access to Neptune's SaaS application.

1. Service Order Agreements. This MSA sets forth the terms and conditions pursuant to which Neptune will provide hosting services as described in greater detail in Section 2 of this MSA and any Service Order Agreement (each, an "SOA" and collectively, the "SOAs") (the "Service") to the Customer. Neptune and Customer may enter into one or more SOAs describing, among other things, other features of the Service. The features of the Service may vary between one SOA and another SOA. Each SOA will exist and operate separately from any other SOA. Unless otherwise agreed to in writing by Neptune and Customer, this MSA will apply to all SOAs entered into between Neptune and Customer.

2. Service. Neptune (either itself or through a contractor) will provide the Service to Customer during the Service Terms set forth in the SOAs. Customer shall not use, and shall not permit the use of, the Service by any end-users other than the subscribers contemplated by the SOAs. Customer shall not use or permit the use of Neptune's systems for any purpose other than providing the subscribers contemplated by the SOAs with the Service. Unless identified in an SOA, the Services include only the following services:

a) Providing secure access to the hosted Neptune SAAS application for the Customer.
b) Providing application, server and Network monitoring, security monitoring, and database preventive maintenance monitoring.
c) Providing telephone support at 1-800-647-4832 Monday-Friday from 7:00am-5:00pm central time. Excluding corporate holidays.
   Support requests can also be initiated via email at support@neptunetg.com
d) Providing updates and upgrades to Neptune SAAS APPLICATION releases. If Neptune makes an upgrade available, the Customer will be notified three (3) months prior to the software upgrade availability. Customer will have two (2) months after said availability to acquaint themselves with the upgrade software version through a demonstration environment. After such time, Neptune will automatically implement the software upgrade into the Customer's production system.

Services do not include (and are subject to additional charges at Neptune's then-current rates) any item not specified above or in an SOA, and specifically does not include the following:

e) Providing services in the field that require inspection of or access to any endpoint module.
f) Providing remote firmware maintenance for Neptune's R900 Gateway collection hardware.

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g) Providing services around the management and connectivity of R900 Gateway collection hardware (data backhaul and general uptime/field service).
h) Providing all application user administration.
i) Penetration Testing. If Customer desires to conduct Penetration Testing or to have a third party conduct Penetration Testing on its behalf, Customer must provide written notice to Neptune on a form supplied by Neptune. Customer must request the form from Neptune and must submit the completed form to Neptune at least thirty (30) days prior to the Penetration Test. Penetration Testing is not authorized until after receipt and validation of the required information provided to Neptune by Customer and after delivery to Customer of authorizations for Penetration Testing provided by Neptune or its contractor. Any Penetration Testing conducted by or at the request of the Customer will be limited to the source and destination IP addresses and network bandwidth specified in the Penetration Testing request form, and the times and other conditions specified in the authorization provided by Neptune or its contractor, and Customer will abide by the policies of Neptune or its contractor provided to Customer regarding the use of security assessment tools and services. Customer is responsible for any damages to Neptune or other Neptune customers that are caused by Penetration Testing activities.

3. Billing and Payment. Pricing for the Service will be as set forth in the SOAs. Unless otherwise specified in an SOA, billing for the Service will begin on the Effective Date set forth in an SOA, and payment in full is due upon the Effective Date of the SOA. A 5% late charge will be assessed on all amounts not paid by the 5th day of the month following the Effective Date. All amounts not paid by the 10th day of the month following the Effective Date will bear interest until paid in full at the rate of 15% per annum or, if less, the maximum rate permitted by applicable law.

4. Technical Support. Neptune will open a trouble ticket (a "Ticket") upon the earlier of (i) when Neptune first observes a trouble issue or (ii) when the Customer first reports the trouble. If a trouble issue relates to the subscriber's system and Neptune becomes aware of the trouble, Neptune will promptly report this information to the Customer.

5. Service Level

(a) Network. For purposes of this MSA, "Network" shall mean Neptune's SAAS APPLICATION.

(b) Service Level Objectives. Neptune will use commercially reasonable efforts to uphold the service level objectives outlined below (collectively, the "Service Level Objectives"):

Application Availability	At least 99% uptime of the Neptune SaaS application during regular business hours over any calendar year. Regular business hours are Monday-Friday from 7am-5pm central time.
System Availability	At least 99% availability for all server and connectivity resources to allow customers subscribers and R900 Gateways to access the host software

(c) Service Failures. Neptune shall use commercially reasonable efforts to attempt to correct the Service Failure as soon as reasonably possible. If at any time during the Service Term (as defined in each SOA) the Service is not being provided in accordance with the Service Standards ("Service Failure"), Customer may elect to terminate per Section 11.

(d) Internet Unavailability. Neptune shall not be responsible for any failure or deterioration of performance of Services that are attributable, directly or indirectly, to issues arising from or relating to the public internet or any internet network connection provided by any third party.

6. Force Majeure. Section 5 above notwithstanding, Neptune shall incur no liability of any kind to Customer or any other party due to (i) causes unrelated to the Network, including, but not limited to, any disruption in

Customer's or its subscribers' networks or any disruption in the Internet or World Wide Web, or (ii) any other causes beyond its reasonable control, including, but not limited to, acts of God, war, terrorism, electrical storm, wind storm, tornado, hurricane, strikes or lack of access to equipment at Customer's site or subscriber modules. Neptune does not guarantee network security, or the integrity of any data which is sent over, backed up, stored or subject to load balancing, or that Neptune's security procedures will prevent the loss of, alteration of, or improper access to, Customer's or its subscribers' data or information.

7. Disclaimer of Warranties. NEPTUNE DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED HEREUNDER, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO SUCH SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTIBILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NEPTUNE EXPRESSLY DISCLAIMS SUCH WARRANTIES AND CONDITIONS.

8. IP Addresses. Customer shall be solely responsible for providing public IP addresses for all of its subscribers. Except for IP addresses expressly registered in the name of Customer or its subscribers, all IP addresses, Network-based domain names and telephone numbers shall remain, at all times, the property of Neptune and shall not be transferable. Customer shall have no right to use such IP addresses upon termination or expiration of the SOA or otherwise.

9. Connectivity with Customer. Customer shall be solely responsible for supplying routing connectivity between Neptune's network and Customer's Ethernet/IP network.

10. Term. The Service Term for the provision of the Service for each SOA is as stated in the SOA. After the initial Service Term, the Service Term for an SOA shall automatically be renewed for additional consecutive one-year terms unless either party delivers written notice to the other that it does not desire to renew such Service Term at least thirty (30) days prior to the end of the then current Service Term. This MSA shall remain in effect at all times that an SOA between Neptune and Customer is active; provided, however, that Section 3, Section 6, Section 7, Section 8, Section 16, Section 18, Section 19 and Section 20 shall survive the termination of any or all SOAs and this MSA.

11. Termination of SOA by Customer. Customer may cancel the Service with respect to an SOA and terminate such SOA prior to the expiration of the Service Term for such SOA only by delivering written notice thereof to Neptune and paying Neptune a termination fee equal to 100% of all payments scheduled to be made to Neptune under such SOA during of the remainder of the Service Term of such SOA.

12. Termination by Neptune. Neptune may discontinue providing the Service and terminate this MSA and any or all SOAs at any time by giving one hundred twenty (120) days prior written notice thereof to Customer. If Neptune discontinues the Service and terminates this MSA or the applicable SOA for convenience pursuant to the prior sentence, then Neptune will refund or credit Customer for any payments for the Service that have been made by the Customer prior to the effective date of the discontinuance of the Service and termination of this MSA or the applicable SOA on a pro rata basis based on any remaining months in the then-current Term of this MSA or the applicable SOA. Notwithstanding the foregoing, Neptune may discontinue providing the Service and terminate this MSA and any or all SOAs at any time without giving any prior notice thereof to Customer (i) if required to do so by applicable law, (ii) in response to a court order or government demand, or
(iii) if Neptune determines, in its sole discretion, that Customer's use of the Service is in violation of any provision of the applicable SOA(s) or this MSA or applicable law or will cause Neptune to be in violation of applicable law, expose Neptune to harm, or cause harm to the integrity or normal operations of Neptune or Neptune's ability to provide services to other customers.

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13. Data Ownership and Rights upon Termination. Any data and information provided to Neptune by Customer or its subscribers ("Customer Data") remains the property of the Customer. Customer grants to Neptune the right and license to host, access, store, and use the Customer Data for the purposes of Neptune's performance pursuant to this MSA, including, but not limited to for the purposes of providing and maintaining the Service. Upon expiration or termination of this MSA or an applicable SOA, Neptune will no longer provide the Service and Customer may no longer use the Service. Following such expiration or termination, provided that Customer is current in all payments to Neptune, upon the written request of the Customer made within thirty (30) days after the effective date of the expiration or termination, Neptune will use commercially reasonable efforts to prepare for export or download any Customer Data, with such export or download to be made in a mutually agreed format. Customer hereby agrees to pay Neptune for all services associated with the export or download at Neptune's then-current rates or at such other rate that is agreed to by Customer and Neptune. After such thirty (30) day period, Customer acknowledges and agrees that Neptune has no obligation to maintain or provide the Customer Data, and Neptune may delete or destroy all Customer Data (and all copies of Customer Data) in its systems or otherwise in its possession or control, unless prohibited by law.

14. Equipment Installation and Access. If Neptune is to install subscriber modules in connection with an SOA, Customer agrees to secure for Neptune and its employees, independent contractors and other representatives reasonable access to subscribers' sites and premises for the purpose of installing any and all equipment that is necessary to provide the Service. Customer shall obtain all appropriate authorizations for Neptune and its employees, independent contractors and other representatives to have access to such equipment. If Neptune is not installing the subscriber modules, Customer shall take all actions necessary to install the subscriber modules at the subscribers' sites. Neptune shall not have any liability for the installation of subscriber modules by Customer or its contractors.

15. Equipment Maintenance. Neptune shall not be responsible for the maintenance of (i) subscriber modules or other elements of the subscribers' networks or (ii) connectivity equipment located at Customer's site. All such maintenance shall be the responsibility of Customer or its subscribers, as applicable.

16. Limitation of Liability. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL NEPTUNE BE LIABLE TO CUSTOMER, ANY SUBSCRIBER OR ANY OTHER THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWIILL OR BUSINESS REPUTATION, BUSUINESS INTERRUPTION, COSTS OF PROCURING SUBSTITUTE GOODS, LOSS OF DATA, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS MSA OR ANY SOA OR THE PROVISION OR NON-PROVISION OF THE SERVICE (WHETHER IN CONTRACT, TORT OR OTHERWISE), EVEN IF CUSTOMER, ANY SUBSCRIBER OR ANY SUCH THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEPTUNE'S LIABILITY FOR DAMAGES ARISING OUT OF OR CONNECTED IN ANY WAY WITH THE MSA OR AN SOA OR THE PROVISION OR NON-PROVISION OF THE SERVICE (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL BE DIRECT DAMAGES, NOT TO EXCEED AN AGGREGATE OF THE AMOUNT PAID TO NEPTUNE IN THE YEAR BEFORE THE EVENT WHICH CAUSED THE DAMAGES. CUSTOMER HEREBY ACKOWLEDGES THAT WITHOUT THE LIMITATION OF LIABILITY SET FORTH HEREIN THE FEES CHARGED FOR THE SERVICE WOULD BE HIGHER.

17. Responsibilities of Customer.

(a) Customer acknowledges and agrees that the procurement, compatibility, operation, security, support and maintenance of Customer's hardware and software (that are not the express subject of this MSA) is the responsibility of Customer.

(b) Application user administration, including but not limited to the definition, management, and security of usernames and passwords are the sole responsibility of Customer.

(c) Customer represents and warrants to Neptune that it will hold at all relevant times all appropriate licenses and consents required to operate its business for which the Service is provided and that it will at all relevant times conduct its business in accordance with applicable law and regulation. Customer and/or its subscribers shall be responsible for the payment of any taxes, assessments or fees associated with the use of the Service by Customer's subscribers. Neptune prohibits use of its Service in any way that: (i) is unlawful; (ii) interferes with use of the Network or the Internet by any other person or entity; (iii) infringes the intellectual property rights or privacy rights of any other person or entity; (iv) presents security or privacy risks, including, without limitation, interfering with or gaining unauthorized access to or otherwise violating the security of the Network or any other person or entity's server, e-mail accounts, or data; or (v) is inconsistent with the terms and conditions of this MSA or the applicable SOA.

18. Indemnification. Customer hereby agrees to indemnify and hold harmless Neptune and its officers, managers, directors, members, shareholders, employees, representatives and agents, and their respective affiliates, successors and assigns (collectively, the "Indemnitees"), from and against any loss, liability, claim, damage, cost, expense (including reasonable attorney's fees, disbursements and other charges of counsel), or diminution in value suffered by any Indemnitee, resulting or arising from or in connection with any breach of the terms of, or any inaccuracy of the representations and warranties contained in, the SOAs or this MSA by Customer, Customer's subscribers or any of their respective employees, consultants, agents or other representatives.

19. Confidentiality. Customer acknowledges and agrees that Neptune's network design and management system are proprietary to Neptune. Customer agrees to keep confidential the details of Neptune's network design and management system and all other proprietary information of Neptune which Customer obtains in connection with this MSA, the SOAs, the receipt of the Service or otherwise. Customer agrees not to disclose or use any such information except in connection with performing its obligations under this Agreement. Customer further agrees not to disclose this MSA or any SOA, or the terms thereof, to any third party without Neptune's prior written consent. To the extent that information is proprietary it can be held confidentially. However, Customer is subject to the Public Records Act and have time limits for production. Neptune will have to identify proprietary documents.

20. Miscellaneous. Customer may not assign or otherwise transfer, by operation of law or otherwise, an SOA or this MSA or any of its rights or obligations thereunder without first obtaining the written consent of Neptune. Neptune may freely assign its rights and obligations under the SOAs and this MSA to any party that succeeds to its interest in the assets used to provide the Service, whether by stock sale, asset sale or merger. The SOAs and this MSA shall be binding upon and inure to the benefit of each party's permitted assigns and successors. This MSA, together with the SOAs, constitute the entire understanding and agreement between the parties with respect to the subject matter hereof and shall supersede any prior proposals, understandings and agreements, whether written or oral, between the parties with respect to that subject matter. Neither this MSA nor any SOA may be amended or modified except by a written instrument executed by duly authorized representatives of both Neptune and Customer. The headings in this MSA, including all Section and subsection titles or captions, are inserted for convenience only and shall not constitute a part hereof nor affect the interpretation of this MSA. This MSA and each SOA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy of a counterpart shall have the same effect as an original.

21. Effective Date. This MSA shall be effective on the date (the "Effective Date") on which an SOA is first entered into between Customer and Neptune.

IN WITNESS, WHEREOF, intending to be legally bound, the parties hereto have caused this MSA to be executed by their duly authorized officers on the respective dates set forth below.

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Billings, City of	Neptune Technology Group, Inc
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

DRAFT

Service Order Agreement
Number One
To Master Service Agreement with Neptune Technology Group Inc.

This Service Order Agreement ("SOA") details the services Neptune Technology Group Inc. ("Neptune") will provide to **Billings, City of** ("Customer") pursuant to the Master Service Agreement (the "MSA") entered into between Neptune and Customer. This SOA will be effective as of **TBD** and will continue for a Service Term of one (1) year, and unless terminated pursuant to the provisions of the MSA, will automatically renew for successive one-year Service Terms. In the event of any conflict between the terms of the MSA and this SOA, the terms of the MSA will control.

1. Customer will remit payment to **Northwest Pipe & Fittings ("Distributor")** for the Service pursuant to the terms of the MSA, according to the following fee schedule (the "Fee Schedule"). The Fee Schedule is based on the number of radio frequency ("RF") endpoints the Customer has in service that employ the Network on the commencement date of the initial Service Term and as set forth below for any renewal Service Term.

Fee Schedule:

Effective/Anniversary Date	Initial RF Endpoints	Annual Rate
TBD	31,000	Year 1: $40,920* (31,000 x $1.32) Year 2: $49,290* (31,000 x $1.59) Year 3: $57,660* (31,000 x $1.86) Year 4**: $57,660* (31,000 x $1.86) **Pricing excludes any future add-on modules **Optional 1-year extension to the Year 3 pricing.

At least ninety (90) days prior to the expiration of the initial Service Term or any renewal Service Term, Neptune will determine the number of endpoints in service that employ the Network. Customer will provide to Neptune any information requested by Neptune to assist Neptune in making that determination. Neptune may adjust the Fee Schedule by providing written notice of any adjustment at least sixty (60) days prior to the expiration of the initial Service Term or any renewal Service Term. If Customer objects to the adjustment, then Customer may, at its option, terminate this SOA, or engage in good faith discussions with Neptune about the Fee Schedule; provided that the parties will agree on an adjusted Fee Schedule no later than the beginning of the renewal Service Term.

2. Neptune will provide access rights to and permit Customer to use Neptune's host software for its intended uses.

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3. The Neptune application will be hosted on a third-party environment chosen by Neptune that is configured according to Neptune's specifications.

4. Neptune will provide and manage implementation of server updates (including but not limited to operating system updates, patches, and fixes), as Neptune determines are appropriate.

Billings, City of	Northwest Pipe & Fittings
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Neptune Technology Group, Inc.

By: _____

Name: _____

Title: _____

Date: _____

DRAFT

Consent **1. D.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: Consultant Agreement Amendment 1: W.O. 18-22: Leavens Reservoir Expansion and Zone 1 Improvements

PRESENTED BY: David Mumford, Public Works Director

Department: Public Works

Presentation: No

PROBLEM/ISSUE STATEMENT

The Mayor and City Council are asked to consider authorizing and executing amendment one to the Contract for Professional Services with HDR Engineering, Inc. to complete the engineering design for W.O. 18-22: Leavens Reservoir Expansion and Zone 1 Improvements. The initial Contract which was Phase I covered the preliminary evaluation and design, survey, and geotechnical information. The amendment will provide engineering services for Phase II which will complete final design and bidding and construction phases. The purpose of the project is to add additional water storage for the Zone 1 Pressure Zone and to provide piping modifications within the High Service Pump Station to the distribution main in Belknap Avenue to improve reliability leaving the Water Treatment Plant. The Zone 1 potable water pressure zone is a critical zone which serves downtown, hospitals, several schools, and the university. The phase II negotiated price will not exceed $599,700, bringing the total contract price to $769,600.

ALTERNATIVES ANALYZED

The Council may:

- Approve Amendment 1 to Contract for Professional Services with HDR Engineering, Inc.; or
- Do not approve Amendment 1 to Contract for Professional Services with HDR Engineering, Inc. If the amendment to the contract is not approved, final design of additional storage and piping modifications for Zone 1 cannot be completed.

FINANCIAL IMPACT

Funding for this project is from water revenues and is included in the FY 19 budget.

Project Budget	$5,500,000
Previously Encumbered	$169,900
This Contract	$599,700
Budget Remaining	$4,730,400

RECOMMENDATION

Staff recommends that the City Council authorize the Mayor to sign Amendment 1 to the contract for professional services with HDR Engineering, Inc., for W.O. 18-22: Leavens Reservoir Expansion and Zone 1 Improvements in an amount not to exceed $599,700.

APPROVED BY CITY ADMINISTRATOR

Attachments

Amendment 1

AMENDMENT NO. 1

TO

CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

W.O. 18-22

LEAVENS RESERVOIR EXPANSION AND ZONE 1 IMPROVEMENTS

THIS AGREEMENT, made and entered into on _____, 2018, by and between the following:

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

and

HDR Engineering, Inc.
970 South 29th Street West
Billings, Montana 59102
Hereinafter designated the Contractor

WITNESSETH:

WHEREAS, the City and Contractor have entered into a contract dated July 31, 2018, for Contractor to provide engineering services to the City for Work Order 18-22 Leavens Reservoir Expansion and Zone 1 Improvements, and;

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

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

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

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

Part I, Section 4. is amended as follows:

Increase the amount of compensation by Five Hundred Ninety-Nine Thousand Seven Hundred and no/100 DOLLLARS ($599,700.00) to Seven Hundred Sixty-Nine Thousand Six Hundred and no/100 DOLLARS ($769,600.00).

Appendix A, Section 3. Add the following to the Scope of Work under Final Design and Construction Documents

- Provide Final Design services for the following major elements of work:
  - Three million gallon round concrete pre-stressed and post-tension reservoir to be located on the Leavens site.
  - Interior reservoir baffle wall with concrete columns and membrane curtain walls or CMU walls between the columns. A non-mechanical diffuser/mixing system may be installed in the reservoir in lieu of a baffle system.
  - Valve vault with the following major components:
    - Lighting;
    - Ventilation and gas unit heaters to heat vault to 50 degrees Fahrenheit;
    - A means to remove all large valves via a hoist mounted on a truck;
    - Sump and sump pump with discharge to the sump pump discharge from the pump station;
    - Grating immediately above piping, operator nuts on valves with extension stems to allow manual operation of valves from the grating platform via a t-bar, and an opening in the grating for an operator nut on extension stems;
    - Ladder access to grating platform and to floor;
    - Hatch above the ladder;
  - Stormwater detention pond design.
  - Connection of detention pond to storm water system.
  - Post-Construction Water Quality BMP Design
  - Site Erosion Control Design
  - Stormwater management specifications
  - Stormwater Management Memorandum
  - Assist the Contractor with mitigation plan for SWPPP and BMPs at Leavens Site and at excess material dump site.
  - Survey of site where excess excavated material will be deposited and provide contours for finished grade for post construction BMPs.
  - Inlet and outlet piping from the existing reservoir to the valve vault.
  - Overflow from the new and existing reservoir to the detention pond.
  - New inlet and outlet piping for the new reservoir.
  - Perimeter drain for the new reservoir.
  - Drains for the existing and new reservoir that will be connected to the existing storm water pipe and a manhole installed at the connection point.
  - Drain valve for the existing reservoir.
  - Means to drain all new piping.
  - Pipe from the valve vault to the Zone 1 piping in Normal Ave.

- Demolition of the existing reservoir inlet and outlet piping from the reservoir to the connection point into Zone 1 piping on the south side of Rimrock Road. Valves on either side of the existing connection will be removed.
- Demolition of the existing chlorine building and below-grade foundation and filling of the remainder of the existing vault.
- Grout repair of the existing reservoir baffle wall.
- Repair cracks on the interior and exterior of the existing reservoir as recommended in the Liner Evaluation Report.
- Final site grading.
- Second access road and gate from Rimrock Road to the existing access around the pump station.
- Traffic plan for lane closures on Rimrock Road and Yucca Street.
- Connection from the Zone 1 discharge header in the High Service Pump Station (HSPS) to the Zone 1 waterline in Belknap Ave.
- Pressure reducing station to the new Zone 1 connection in the HSPS from the Zone 2 buried waterline south of the HSPS.
- Plug the existing 24-inch Zone 1 waterline south of the Filter Building
- Remove the abandoned 24-inch Zone 1 waterline except for the pipe south of Filter Building.
- Connect the new 8-inch Zone 1 waterline into the new Zone 1 connection in Belknap Ave. Route the new waterline east on Belknap Ave to connect into the existing 6-inch waterline. Also, route the 8-inch waterline in the location where the abandoned 24-inch line is to be removed and continue to connect into the existing piping east of the Operations Building. Connect the 6-inch waterline from Filter Building tunnel to new 8-inch waterline.
- Remove the butterfly valve and bypass on the Zone 1 waterline southwest of Clearwell No. 2 in Belknap Ave.
- Provide a tap of the Zone 2 waterline in Garden Ave to connect to the Zone 1 hydrant.
- Provide temporary water to customers that would not have water because of improvements.
- Provide sequencing plan to minimize risk of improvements.
- Electrical improvements at each site of the new facilities.
- SCADA design and programming per the following:
    - HDR will provide Applications Engineering Services (Control System Programming), and associated documentation and testing including assistance during commissioning and start up for the Leavens Site, sleeve valve in High Service Pump Station at the WTP and Mountainview Site. The control system to be programmed is built around Allen Bradley brand of PLC's, Exor UniOP OIT's, and FactoryTalk HMI. All programming will adhere to existing or agreed to standards and will meet intent of the approved design.

- HDR shall edit the existing PLC program at both the locations based on the final approved PCD. It is understood that any minor modifications to the PCD shall be mutually agreed to during the workshop. The draft PLC program will provided to the Client for review and comment. HDR shall then develop the final PLC program after incorporating comments into the draft PLC program, and load the program into the existing PLC's. HDR shall also develop new OIT screens at both sites using current existing objects and load the new screens into the existing OIT's. Additionally HDR shall develop new FactorTalk HMI screens to monitor and/or control the new additions at the Leavens and WTP sites. OIT and HMI screens shall be provided in draft form for Client review prior to final development and implementation. HDR shall participate in the on site testing and commissioning of the edited PLC programs and OIT and HMI screens.
- The above scope is based on the following assumptions:
  - ✓ Leavens PLC is a new ControlLogix, WTP PLC is existing and only new IO points as listed below are included in this scope.

    Leavens Site

    - o New ultrasonic in new reservoir (tank)
    - o Sump pump alarm in valve vault
    - o Sump pump running
    - o Sump pump fault
    - o Pressure from Mountain View via new radios
    - o Temperature from Mountain View via new radios

    WTP New sleeve valve in High Service Pump Station

    - o Valve position feed back
    - o Open/lose of valve
    - o L/R position of Valve
    - o Valve failure
    - o Pressure indication upstream of valve
    - o Pressure indication downstream of valve
    - o Flow measurement downstream of valve
  - ✓ Two HMI and two OIT screens (one for each facility)
  - ✓ One trend for all values related to new sleeve valve
  - ✓ PLC programming is limited to new additions at the two sites and no changes to existing program is needed
  - ✓ One Workshop to review screens and PLC programs
  - ✓ 2 weeks on site for testing and commissioning
  - ✓ All hardware and software is existing and no new licenses are needed
  - ✓ All communications are existing, working and appropriate for new additions to the system with the exception of the new radios and

antenna for serving the Mountainview Site which will need to communicate with the new Leavens PLC.

Appendix A, Section 3. Add the following to the Scope of Work under Detailed Scope of Services.

TASK SERIES 100 – PROJECT INITIATION, COORDINATION AND MANAGEMENT

104 – Montana Department of Environmental Quality Coordination
Apply to MDEQ for necessary deviations including buried reservoir and overflow discharge. Meet with DEQ to review final drawings and specifications and submit all required documents to MDEQ for approval. City will pay for Construction Permit.

105 – Design and Construction Project Management
Project Manager, Programming Managers and Accountant will continue to monitor project status, maintain project schedule and prepare financial documents throughout construction.

TASK SERIES 300 – FINAL DESIGN
Recommended elements identified in the preliminary design and above will be translated into engineered project elements. The basis of the design will be finalized and drawings and specifications will be prepared. Specific tasks include the following:

301 - Prepare 60% Drawings
Utilizing concepts developed in the preliminary design, the drawings of the selected project elements will be prepared. Electrical and instrumentation drawings will also be prepared.

302 - Prepare 95% Drawings
Utilizing comments on drawings from the 60% review with the City, provide detailed drawings of all project elements.

303 - Prepare Preliminary Detailed Specifications
Front-end specifications and technical specifications will be prepared. Reservoir specifications will be written to allow AWWA D110 or D115 construction methods for the new reservoir.

304 – Cost Estimate Update
Update cost estimate completed in the Preliminary Design.

305 - Perform In-House Review
Senior technical personnel not directly involved with the project will review the drawings and specifications and the cost estimate for completeness, accuracy, and constructability.

306 – Review 95% Documents with the City
Provide the 95% drawings and specifications to the City and meet with the City to review design and receive comments.

307 - Prepare Final Drawings
Incorporate review comments including any design modifications and prepare final drawings for advertising.

308 - Prepare Final Detailed Specifications
Incorporate review comments and prepare final specifications for advertising.

309 – Prepare Building Permit
Fill out the City's standard building permit and provide all support documentation to obtain permit. The City will pay for permit.

310 – Stormwater Design and Construction Assistance
Provide design drawings and specifications for site detention and post-construction water quality BMP facilities. Provide stormwater management memorandum that meets the City criteria.

TASK SERIES 400 – BIDDING SERVICES

401 – Bidding Administrative Assistance
Prepare bid documents and distribute to prospective bidders. Answer bidder questions and prepare addendum as needed. Schedule and conduct pre-bid meeting.

402 – Post-Bid Administrative Assistance
Receive, evaluate and tabulate bids. Assess completeness of low bid. Make recommendations to the City on award of contract.

TASK SERIES 500 – CONSTRUCTION SERVICES

Construction Phase scoping is based on a 56 week active construction period after which time only minor punch list items would need to be completed.

501 – Construction Initiation Services & Conformed Drawings
After award of the construction contract, the Consultant shall prepare Contracts, Conformed Documents and conduct a preconstruction conference including preparation of meeting minutes. The consultant will provide the contractor with 6 sets of "for construction" plans and specifications plus an electronic .pdf version.

502 – Office Assistance and Administration
During the construction phase of the project, the Consultant will provide office assistance to the City on the administration of the project. This effort will include review and preparation of change orders, shop drawing review, interpretation of drawings and specifications, monitoring of compliance with procedural requirements on the project, coordinating with the contractor, preparation of pay estimates, confirmation of certified payrolls, conducting weekly construction meetings, and preparing and distributing meeting minutes.

503 – Field Services
The Consultant will provide on-site construction observation services. A resident project representative will be provided based on the following schedule:

- New reservoir and valve vault construction: 7 months at 6 hours per day, 5 days per week including travel time and daily paperwork.
- Existing interior reservoir repairs – 3 months at 4 hours per day, 3 days per week
- Zone 1 improvements and site work at Leavens – 3 months at 40 hours per week. Zone 1 improvements include near full-time inspection for the waterline and other miscellaneous work at and near the Water Treatment Plant. This is anticipated to be early spring 2020. Also at this time it is anticipated that the Contractor would be finishing up grading, irrigation system, access road and fencing at the Leavens site requiring occasional observation.
- Mob/Demob and contractor coordination – 40 hours

The resident project representative will monitor the project for compliance with project plans and specifications. Consultant will provide field staking of new structures and as-built surveying of uncovered utilities in locations not indicated on the drawings. Consultant will provide periodic trips to the site beyond construction meetings. Allowance is included for geotechnical consultation. No testing services are included as these will be provided by the contractor.

504 – Construction Wrap-Up and Acceptance

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

505 – Post-Construction Warranty Services

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

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

TASK SERIES 600 – APPLICATION SOFTWARE PROGRAMMING

601 – Programming

Provide programming for new and existing PLCs for new data points including new data points from Mountain View Site. Modify and provide new screens for OITs.

602 – Workshops and Meetings

Conduct workshops and meetings to review programming requirements and to review programming.

603 – Testing and Commissioning

Provide on-site services for commissioning new programming and screens.

CONSULTANT

NAME: _____

BY: _____

TITLE: _____

DATE: _____

CITY OF BILLINGS, MONTANA

BY: _____
Mayor

DATE: _____

Consent **1. E.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: Amendment 1 to Airport Wireless Network Concession Agreement with Boingo Wireless

PRESENTED BY: Kevin Ploehn, Director of Aviation and Transit

Department: Airport

Presentation: No

PROBLEM/ISSUE STATEMENT

Following an RFP process, the City Council approved the current Wireless Network Concession Agreement (Wi-Fi Agreement) with Boingo Wireless on October 26, 2013. The five-year term of the Agreement is scheduled to end on December 31, 2018. The Agreement provides the City an opportunity to renew the Agreement for two additional one-year periods. Wi-Fi coverage will be required in the new space created by the Terminal Building Expansion Project. Since design on this major expansion project is not yet complete, not enough detail is available at this time, to include in a new RFP for prospective Wi-Fi concession bidders. Additionally, the Airport intends to include a cellular offload component and free public Wi-Fi in the next Wi-Fi Concession RFP. To allow time to complete the details of the design for the Terminal Building Expansion Project and further explore the cellular offload requirements so that both can be included in a later RFP process, the Airport and Boingo desire to extend the Agreement. Additionally, during the extension of the Agreement, the Airport would like to have Boingo provide free Wi-Fi for the Terminal. The two parties desire to exercise both of the one-year renewal options at this time, thereby extending the expiration date of the Agreement to December 31, 2020. In the near future the Agreement will be further negotiated and amended to include the terms of the free public Wi-Fi during the two-year extension. Boingo desires the two-year term, so they can negotiate a new agreement with their circuit provider, CenturyLink, which will then have an impact on the terms of the free public Wi-Fi amendment. Additionally, several language changes have also been incorporated in this Amendment to update language, as required by updates to the Airport's Federal grant assurances.

ALTERNATIVES ANALYZED

City Council may:

- Approve Amendment 1 to the Wi-Fi Agreement with Boingo Wireless to renew the Agreement and extend the term for two additional years, with a new expiration date of December 31, 2020; or
- Disapprove Amendment 1 to the Wi-Fi Agreement with Boingo Wireless to renew the Agreement and extend the term for two additional years, and advise staff on how to proceed.

FINANCIAL IMPACT

There is no cost to the Airport associated with this Amendment and the City will continue to receive 20% of the revenues generated on the Wi-Fi Concession at the Airport, which has averaged $2,500 to $4,000 per year. This will likely change with a future Amendment with Boingo, once negotiations on the terms for the free public Wi-Fi service are completed.

RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 to the Wi-Fi Agreement with Boingo Wireless to renew the Agreement and extend the term for two additional years, with a new expiration date of December 31, 2020.

APPROVED BY CITY ADMINISTRATOR

Attachments

Boingo Amendment 1

AMENDMENT ONE

TO

AIRPORT WIRELESS NETWORK CONCESSION AGREEMENT

BILLINGS LOGAN INTERNATIONAL AIRPORT TERMINAL BUILDING

BY AND BETWEEN

CITY OF BILLINGS

AND

BOINGO WIRELESS

W I T N E S S E T H

WHEREAS, the City of Billings (hereinafter "City") and Boingo Wireless (hereinafter "Boingo") entered into an Airport Wireless Network Concession Agreement (hereinafter the "Agreement") dated August 26, 2013 to provide Wi-Fi service in the Airport Terminal Building, and

WHEREAS, Billings Logan International Airport (hereinafter the "Airport") is currently in the design process for a major Terminal Expansion Project that will impact most of the tenants operating in the Terminal Building, and

WHEREAS, a number of the tenants operating in the Terminal Building operate under different concession agreements with the City, with terms ending prior to and/or during the construction of the Terminal Expansion Project, and

WHEREAS, until the final design and construction for the Terminal Expansion Project is completed and details for the new space are available, the City desires to work with

Terminal Building tenants on extensions of term to current agreements before seeking proposals on and entering into new agreements with new terms and conditions, and

WHEREAS, the original term of the Agreement expires on December 31, 2018, and the City, in accordance with Article II, Paragraph C, may exercise two one-year options to renew the Agreement, and

WHEREAS, both parties are in agreement that with the construction of the Airport Terminal Expansion Project, both one year renewals can be agreed to now, in effect extending the Lease an additional two years, to December 31, 2020, and

WHEREAS, during the first ninety (90) days of the extended term, both parties are willing to further negotiate and amend this Agreement with the terms to provide "free public Wi-Fi service" to the Airport's Terminal Building.

NOW THEREFORE, the Agreement is amended as follows:

1. ARTICLE II of the Agreement is amended to read as follows:

"ARTICLE II

TERM OF AGREEMENT

A. Term. The term of the Concession Agreement shall be for a period of ~~five (5)~~ seven (7) years commencing on January 1, 2014 and ending ~~December 31, 2018~~ December 31, 2020.

B. National Emergency. During the time of war or declared national emergency, the City shall have the right to lease the landing area or any part thereof to the United States Government for military use. If any such lease is executed, any provisions of this instrument that are inconsistent with the provisions of the lease to the Government shall be

suspended, provided that the term of this Agreement shall be automatically extended by the amount of the period of suspension.

C. Option to Renew. ~~This Agreement may be renewed for two (2) one (1) additional one-year terms term, with said option to be exercised at the sole discretion of the City.~~ This Agreement may not be renewed after December 31, 2020. ~~The optional one year renewals~~ This renewal may require equipment upgrades should access demands, service quality, or current equipment standards require such upgrades."

2. ARTICLE III of the Agreement is partially amended to read as follows:

"ARTICLE III

CONCESSION FEES, PAYMENTS, AND REPORTING

Concessionaire shall pay to the City for the rights and privileges herein granted the percentages of the annual gross sales revenue derived from the Wi-Fi Network Concession based on a "Fully Paid Model" as follows:

	FOR THE PERIOD	PERCENTAGE OF GROSS SALES
YEAR 1	1/01/14 thru 12/31/14	20%
YEAR 2	1/01/15 thru 12/31/15	20%
YEAR 3	1/01/16 thru 12/31/16	20%
YEAR 4	1/01/17 thru 12/31/17	20%
YEAR 5	1/01/18 thru 12/31/18	20%
YEAR 6	1/01/19 thru 12/31/19	20%
YEAR 7	1/01/20 thru 12/31/20	20%

In the event the Option to Renew is exercised by the City, the Concession Fees and Payments due to the City, shall at a minimum, remain at the same rates as Year Five of this Agreement, or as may be negotiated and mutually agreed upon by the City and Concessionaire."

All other sections of ARTICLE III remain unchanged.

3. ARTICLE XVIII of the Agreement is retitled and revised to read as follows:

"ARTICLE XVIII

NONDISCRIMINATION

A. General. In the use and occupation of the Airport, Concessionaire shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or disability. Additionally, for the services provided during the use and occupation of the Airport, Concessionaire shall furnish said services on a reasonable and not unjustly discriminatory basis to all users thereof and charge reasonable and not unjustly discriminatory prices for each unit of service, provided that the Concessionaire may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

B. Civil/Human Rights Laws. In the operation and use of the Airport, Concessionaire shall not, on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of Title 49, Code of Federal Regulations, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and such other Federal, State, or Local laws as may be applicable.

Without limiting the generality of the foregoing, Concessionaire agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or disability. Concessionaire agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin or ancestry, age, or disability. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Concessionaire agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

C. Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assignees, as part of the consideration of this Agreement, does hereby covenant and agree as a covenant running with the land that, in the event improvements are constructed, maintained, or otherwise operated on the Airport for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such improvements and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended.

D. Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assignees, as a part of the consideration of this Agreement, does hereby covenant and agree as a covenant running with the land that:

1) No person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said improvements.

2) No person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the construction of any improvements on, over, or under such land and the furnishing of services thereon.

3) Concessionaire shall use the facilities in compliance with all other requirements imposed by, or pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended.

Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, or such employment activities covered in any applicable State or Local law. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Article XVIII.

E. During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

2) 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of The Civil Rights Act of 1964);

3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal aid programs and projects);

4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

5) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq*.) (prohibits discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, § 47123) as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964,

the Age Discrimination Act of 1975, and § 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);

8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;

9) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP

persons have meaningful access to your programs (70 Federal Regulations at 74087 – 74100);

12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq*.)."

F. That Concessionaire shall furnish its services on a fair, equal, and nondiscriminatory basis to all users thereof, and shall charge fair, reasonable, and nondiscriminatory prices for each unit or service. However, Concessionaire may be allowed to make reasonable discounts or other similar types of price adjustments to purchasers on a nondiscriminatory basis."

4. ARTICLE XIX is added to the Agreement, renumbering/deleting sections of the General Provisions to read as follows:

"ARTICLE XIX

GENERAL PROVISIONS

A. Attorney's Fees. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

B. Operation as Public Airport. City shall, during the term hereof, operate and maintain the Airport and its public facilities, as a public airport consistent with and pursuant to

sponsor's assurances given by the City to the United States Government under the Federal Airport Act.

C. Subordination of Agreement.

1) This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States relative to the administration, operation, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

2) Any mortgagee or beneficiary shall have the right to cure any default on the part of Concessionaire in the payment of the percentage of gross revenues herein, and, in the event of default, to assume the Concessionaire's position under this Agreement; however, the City must receive written notice of the intent to cure. The City in no event shall be liable for the payment of the sum secured by such mortgage or trust indenture, nor for any expenses in connection with the same. Furthermore, such mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary will seek no monetary judgment against the City. The mortgage or trust indenture shall also contain provisions requiring the holder of the indebtedness secured by such mortgage or trust indenture to mail to the City, by certified mail, a copy of each notice of breach of covenant, default, or foreclosure given by the holder or the trustee under such mortgage or deed of trust.

~~D. Non-Discrimination. Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree:~~

~~1) That no person, on the grounds of race, color, creed, political ideas, sex, age, or physical or mental handicap, shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities, or the exercise of its rights and privileges under this Agreement.~~

~~2) That, in the construction of any improvements on behalf of Concessionaire and the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, creed, political ideas, sex, age, or physical or mental handicap.~~

~~3) That Concessionaire shall use the Airport facilities in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.~~

~~4) That Concessionaire shall furnish its services on a fair, equal, and nondiscriminatory basis to all users thereof, and shall charge fair, reasonable, and nondiscriminatory prices for each unit or service. However, Concessionaire may~~

~~be allowed to make reasonable discounts or other similar types of price adjustments to purchasers on a nondiscriminatory basis.~~

D. Modification and Amendments. Changes or modifications to this Agreement will be done in the form of an amendment to be agreed upon and signed by both parties.

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

F. Notices. Notices to the City provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Director of Aviation and Transit
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings, MT 59105

and notices to Concessionaire, if sent by certified mail, postage prepaid, addressed to:

Mr. Zachary Sterngold
VP Business Development
Boingo Wireless
10960 Wilshire Boulevard, Suite 800
Los Angeles, CA 90024
Phone: (310) 586-5190
FAX: (310) 586-4010
E-mail: zsterngold@boingo.com

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

G. Quiet Enjoyment. With Concessionaire's performance of the covenants and terms of the Agreement herein, Concessionaire shall have peaceful possession and quiet enjoyment of the Premises during the term hereof.

H. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto.

I. Effect of Invalid Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

J. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue in any proceedings held hereunder shall be in State of Montana Thirteenth Judicial District Court, Yellowstone County, Montana.

K. Entire Agreement. This Agreement, including all exhibits and documents incorporated by reference, constitutes the entire Agreement and understanding of the parties with respect to matters referenced herein.

L. Force Majeure. Neither party hereto shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to riot, war, hostilities between nations, threatened or actual terrorist acts of any kind or nature, weather conditions, floods, rebellion, sabotage, acts of God, fire, accident, strike, lockout, labor dispute (whether of a general or widespread nature or limited to the Concessionaire's own employees), lack of or failure to obtain sufficient electric power, or, without

limiting any of the foregoing causes, due to any other contingencies of a similar or dissimilar nature beyond the reasonable control of such party.

M. Disclaimer of Warranties. The Concessionaire, its licensors or contractors make no warranties or representations as to the accuracy, truthfulness, usefulness, effectiveness, reliability, or security of the service or content and assumes no liability or responsibility therefore. The Concessionaire will fully cooperate with law enforcement authorities and legal proceedings requiring the disclosure of the identity of users.

The City expressly agrees that use of the service is at the City's sole risk. The service and content are available strictly on an "as is" and "as available" basis without warranties of any kind, either express or implied, including, but not limited to, warranties of title, non-infringement or implied warranties of merchantability or fitness for a particular purpose or otherwise.

Neither party shall be liable for any indirect, incidental, special, consequential, or punitive damages arising out of or related to the service, or content therein including, with limitation, relating to computer viruses or use or inability to use the service or content; any errors, omissions, or defects in the service or content; losses from interruption, termination or failed operation of the service; or any breaches of security."

5. All other terms and conditions of the Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hand this _____ day of _____ 20___.

ATTEST:

BY _____
CITY CLERK

CITY OF BILLINGS

BY _____
MAYOR

APPROVED AS TO FORM

BY _____
CITY ATTORNEY

BOINGO WIRELESS

BY _____
ZACHARY STERNGOLD
VP BUSINESS DEVELOPMENT

Consent **1. F.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: Par 3 Golf Course 2019 Annual Budget

PRESENTED BY: Mike Whitaker, Parks, Recreation & Public Lands Director

Department: Parks/Rec/Public Lands

Presentation: No

PROBLEM/ISSUE STATEMENT

Every year the Exchange City Golf Corporation (ECGC) is required to submit an annual budget to the City Council for approval at the year's start. The proposed budget for the 2019 operating year is being submitted by the ECGC Board of Directors for consideration and approval. The annual distribution of net profit is declared by the ECGC Board of Directors based on: 1st meeting the expenses of the operation; 2nd paying for the debt retirement; 3rd providing reserves for the operating expenses; 4th to provide a reserve for the proposed capital expenditure included in the proposed budget; 5th providing the net profit distribution to the City and the Downtown Exchange Club on a 2/3-1/3 basis, respectively, as outlined in the operating contract between the City of Billings and the ECGC. The 2019 proposed budget was reviewed by the Billing Parks, Recreation, and Cemetery (PRC) Board on November 14th, 2018. The PRC Board recommends the ECGC budget and fee structure for 2019 be adopted as presented.

The proposed budget and fee structure is attached for Council review.

ALTERNATIVES ANALYZED

City Council may:

- Approve the proposed ECGC 2019 annual budget and fee structure, or
- Approve the proposed ECGC 2019 annual budget and fee structure with requested changes.

FINANCIAL IMPACT

The proposed budget and fee structure includes a $1.00 increase in green fees (18 holes and an extra 9 holes). ECGC has indicated that the annual distribution will be $20,000.00 for the City of Billings, the same as it was in 2018.

RECOMMENDATION

Staff recommends approval of the 2019 ECGC annual budget and fee structure as presented.

APPROVED BY CITY ADMINISTRATOR

Attachments

2019 Proposed Budget

2019 Proposed Fee Structure

2019 Proposed Captial Improvements

Exchange City Golf Corporation
Par 3 Golf Course
2019 Proposed Budget

Description	2015 Budget	2015 Actual	2015 Variance	2016 Budget	2016 Actual	2016 Variance	2017 Budget	2017 Actual	2017 Variance	2018 Budget	18-Aug Actual	18-Aug Variance	2019 Budget
Revenue													
Gree Fees & Appropriated	235,000.00	285,007.40	50,007.40	245,000.00	261,275.74	16,275.74	245,000.00	250,326.64	5,326.64	260,000.00	188,362.65	(71,637.35)	255,000.00
Range Revenue	75,000.00	82,804.40	7,804.40	81,000.00	66,155.76	(14,844.24)	81,000.00	59,128.25	(21,871.75)	70,000.00	51,408.50	(18,591.50)	65,000.00
Golf Cart Rental	60,000.00	63,188.00	3,188.00	62,500.00	67,556.55	5,056.55	62,500.00	69,385.94	6,885.94	65,000.00	55,213.50	(9,786.50)	65,000.00
Memberships	32,000.00	44,754.20	12,754.20	46,000.00	46,145.01	145.01	46,000.00	48,346.07	2,346.07	46,000.00	23,268.31	(22,731.69)	46,000.00
Interest & Bench Ads		250.16	250.16			0.00		47.74	47.74		76.82	76.82	
Miscellaneous		11,086.32	11,086.32		11,993.55	11,993.55		9,510.06	9,510.06		7,462.37	7,462.37	
Gain/Loss on Sale of Assets		10,000.00	10,000.00			0.00		6,000.00	6,000.00	3,600.00	1,250.00	(2,350.00)	6,500.00
	402,000.00	497,090.48	95,090.48	434,500.00	453,126.61	18,626.61	434,500.00	442,744.70	8,244.70	444,600.00	327,042.15	(117,557.85)	437,500.00
			0.00			0.00			0.00			0.00	
Range Expenses	18,500.00	15,069.94	(3,430.06)	18,500.00	19,999.42	1,499.42	18,500.00	17,715.79	(784.21)	20,285.00	9,594.54	(10,690.46)	20,000.00
			0.00			0.00			0.00			0.00	
Grounds Operation			0.00			0.00			0.00			0.00	
Salary Superintendent	55,300.00	56,019.72	719.72	60,000.00	61,905.36	1,905.36	61,500.00	63,526.78	2,026.78	61,500.00	42,284.04	(19,215.96)	63,345.00
Salary and Wages	61,700.00	52,462.76	(9,237.24)	52,000.00	49,889.85	(2,110.15)	61,438.00	58,947.92	(2,490.08)	62,608.00	41,319.45	(21,288.55)	62,608.00
Payroll Taxes	14,120.00	13,387.54	(732.46)	17,400.00	10,434.31	(6,965.69)	17,400.00	8,968.03	(8,431.97)	13,550.00	6,397.08	(7,152.92)	9,600.00
Employee Benefits			0.00			0.00			0.00			0.00	
Sub Total	131,120.00	121,870.02	(9,249.98)	129,400.00	122,229.52	(7,170.48)	140,338.00	131,442.73	(8,895.27)	137,658.00	90,000.57	(47,657.43)	135,553.00
			0.00			0.00			0.00			0.00	
General Cost			0.00			0.00			0.00			0.00	
Gas and Oil	14,120.00	10,256.12	(3,863.88)	14,500.00	7,576.42	(6,923.58)	12,800.00	8,569.35	(4,230.65)	12,800.00	6,379.27	(6,420.73)	10,500.00
Utilities	10,755.00	15,827.18	5,072.18	13,400.00	17,499.15	4,099.15	13,400.00	13,976.63	576.63	13,980.00	9,514.59	(4,465.41)	12,610.00
Fertilizer and Seed	18,500.00	17,606.66	(893.34)	18,500.00	14,487.53	(4,012.47)	18,500.00	16,523.19	(1,976.81)	18,500.00	9,407.98	(9,092.02)	17,500.00
Operating Supplies	5,778.00	6,676.09	898.09	6,000.00	5,822.34	(177.66)	6,000.00	9,812.80	3,812.80	7,577.00	5,054.13	(2,522.87)	7,707.00
Repairs and Maintenance	8,000.00	8,415.62	415.62	8,000.00	4,833.02	(3,166.98)	8,000.00	15,664.32	7,664.32	9,350.00	7,218.77	(2,131.23)	9,350.00
Rental Cart Maintenance	600.00	689.26	89.26	600.00	780.34	180.34	600.00	1,331.19	731.19	800.00	807.04	7.04	800.00
Contract Labor	1,400.00	1,699.10	299.10	1,400.00	950.00	(450.00)	1,400.00	1,550.00	150.00	1,400.00	800.00	(600.00)	1,400.00
Sand and Gravel	4,400.00	5,170.20	770.20	4,250.00	4,379.60	129.60	4,250.00	3,669.91	(580.09)	4,250.00	3,773.90	(476.10)	4,250.00
Irrigation	5,500.00	10,691.12	5,191.12	6,500.00	6,933.94	433.94	5,600.00	5,329.40	(270.60)	5,600.00	6,144.65	544.65	5,600.00
Travel and Dues	1,800.00	870.00	(930.00)	1,000.00	867.30	(132.70)	1,000.00	853.15	(146.85)	1,000.00	515.00	(485.00)	1,000.00
Mileage Reimbursement		0.00	0.00	650.00	0.00	(650.00)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Insurance	0.00	3,819.60	3,819.60	3,800.00	5,186.88	1,386.88	3,816.00	4,164.75	348.75	3,816.00	3,225.08	(590.92)	4,452.00
Finance Fees			0.00				0.00	239.35	239.35	0.00	0.00	0.00	0.00
Sub Total	70,853.00	81,720.95	10,867.95	78,600.00	69,316.52	(9,283.48)	75,366.00	81,684.04	6,318.04	79,073.00	52,840.41	(26,232.59)	75,169.00
Grounds Total	201,973.00	203,590.97	1,617.97	208,000.00	191,546.04	(16,453.96)	215,704.00	213,126.77	(2,577.23)	216,731.00	142,840.98	(73,890.02)	210,722.00
Clubhouse Operations			0.00			0.00			0.00			0.00	
Salary Golf Pro	59,900.00	60,551.10	651.10	63,000.00	64,367.86	1,367.86	64,575.00	66,103.25	1,528.25	64,575.00	43,268.31	(21,306.69)	66,500.00
Salaries and Wages	39,700.00	21,222.16	(18,477.84)	41,500.00	17,485.13	(24,014.87)	22,320.00	19,791.84	(2,528.16)	22,320.00	13,036.92	(9,283.08)	19,556.00
Payroll Taxes	11,800.00	9,376.21	(2,423.79)	10,600.00	6,720.41	(3,879.59)	9,456.00	9,177.93	(278.07)	9,956.00	6,352.60	(3,603.40)	9,530.00
Employee Benefits	3,500.00	3,459.11	(40.89)	3,300.00	3,600.00	300.00	3,600.00	3,750.00	150.00	3,600.00	2,400.00	(1,200.00)	3,600.00
Sub-Total	114,900.00	94,608.58	(20,291.42)	118,400.00	**92,173.40**	(26,226.60)	99,951.00	98,823.02	(1,127.98)	100,451.00	65,057.83	(35,393.17)	99,186.00
			0.00			0.00			0.00			0.00	
General Cost			0.00			0.00			0.00			0.00	
Credit Card Fees	10,000.00	10,357.46	357.46	11,500.00	11,789.60	289.60	9,924.00	9,960.09	36.09	11,124.00	7,009.53	(4,114.47)	10,515.00
Offices Expenses	1,200.00	1,265.91	65.91	1,200.00	1,036.54	(163.46)	1,205.00	896.36	(308.64)	1,250.00	753.68	(496.32)	1,131.00
Legal and Accounting	9,200.00	11,495.00	2,295.00	9,800.00	11,428.25	1,628.25	12,091.00	10,500.00	(1,591.00)	12,500.00	7,290.00	(5,210.00)	12,500.00
Miscellaneous	500.00	0.00	(500.00)	500.00		(500.00)	0.00	0.00	0.00	0.00	97.00	97.00	
Bad Dept Expense	0.00	42.00	42.00			0.00			0.00		15.00	15.00	
Cash Over/Short		18.31	18.31		(11.96)	(11.96)	10.00	(0.91)	(10.91)	10.00	(0.26)	(10.26)	
Dues and Subscription	1,800.00	909.00	(891.00)	1,000.00	1,145.00	145.00	1,963.00	1,066.00	(897.00)	1,963.00	1,222.00	(741.00)	1,833.00
Utilities	10,000.00	8,338.17	(1,661.83)	9,400.00	8,054.71	(1,345.29)	8,322.00	8,669.57	347.57	8,722.00	5,618.67	(3,103.33)	8,429.00
Telephone	2,000.00	2,600.82	600.82	2,000.00	1,783.66	(216.34)	2,408.00	1,800.92	(607.08)	2,408.00	1,240.50	(1,167.50)	1,862.00
Insurance	7,000.00	5,838.40	(1,161.60)	7,000.00	7,972.42	972.42	7,692.00	9,295.15	1,603.15	8,192.00	5,384.88	(2,807.12)	8,078.00
Advertising	5,500.00	6,022.80	522.80	5,500.00	6,090.86	590.86	5,824.00	7,091.86	1,267.86	5,824.00	4,015.63	(1,808.37)	6,024.00
Taxes and Licenses			0.00		0.00	0.00			0.00		0.00	0.00	
Travel	500.00	0.00	(500.00)	500.00	0.00	(500.00)	0.00		0.00	0.00	135.00	135.00	203.00
Security			0.00		0.00	0.00			0.00	0.00	0.00	0.00	
Customer Relations			0.00		120.00	120.00	103.00	60.00	(43.00)	103.00	125.00	22.00	188.00
Clubhouse Oper/Main	5,500.00	7,524.17	2,024.17	6,250.00	4,645.55	(1,604.45)	6,911.00	5,529.93	(1,381.07)	6,911.00	6,203.58	(707.42)	9,306.00
Sub-Total	53,200.00	54,412.04	1,212.04	54,650.00	54,054.63	(595.37)	56,453.00	54,868.97	(1,584.03)	59,007.00	39,110.21	(19,896.79)	60,069.00
Clubhouse Total	168,100.00	149,020.62	(19,079.38)	173,050.00	146,228.03	(26,821.97)	156,404.00	153,691.99	(2,712.01)	159,458.00	104,168.04	(55,289.96)	159,255.00
Total Operating Cost	388,573.00	367,681.53	(20,891.47)	399,550.00	357,773.49	(41,776.51)	390,608.00	384,534.55	(6,073.45)	396,474.00	256,603.56	(139,870.44)	389,977.00
			0.00										
Simple Revenue	13,427.00	129,408.95	115,981.95	34,950.00	95,353.12	60,403.12	43,892.00	58,210.15	14,318.15	48,126.00	70,438.59	22,312.59	47,523.00
Capital Expenditures					47,231.23		48,115.00	49,288.23	(1,173.23)	46,859.00	39,791.75	7,067.25	36,851.00

Exchange City Golf Corporation
Par 3 Golf Course
2019 Proposed Fee Structure

		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
		Fee	Fee	Fee	Fee	Fee	Fee	Fee	Fee	Fee	Fee	Fee
Carts 9	**Riders**	$8.00	$9.00	$10.00	$10.00	$12.00	$12.00	$12.00	$12.00	$12.00	$13.00	$13.00
Carts 18	**Riders**	$14.00	$15.00	$15.00	$15.00	$20.00	$20.00	$20.00	$20.00	$20.00	$22.00	$22.00
Green Fees	**18**	$15.00	$17.00	$18.00	$20.00	$20.00	$20.00	$21.00	$21.00	$22.00	$22.00	$23.00
	9	$10.00	$11.00	$12.00	$12.50	$14.00	$14.00	$15.00	$15.00	$15.00	$15.00	$16.00
	Xtra 9	$5.00	$6.00	$6.00	$7.50	$6.00	$6.00	$6.00	$6.00	$7.00	$7.00	$7.00
Range Balls	**Jumbo**	$6.50	$7.00	$7.50	$8.00	$9.00	$9.00	$9.50	$9.50	$9.50	$10.00	$10.00
	Large	$4.50	$4.75	$5.00	$6.00	$7.50	$7.50	$7.50	$7.50	$7.50	$8.00	$8.00
	Med	$3.50	$3.75	$4.00	$4.50	$5.00	$5.00	$5.00	$5.00	$5.00	$5.00	$5.00
	Small	$2.50	$2.75	$3.00	$3.50	$4.00	$4.00	$3.00	$3.00	$3.00	$3.00	$3.00
Yearly Passes												
Senior Single	**55 & Older**								$425.00	$425.00	$450.00	$450.00
Senior Couple	**55 & Older**								$525.00	$525.00	$550.00	$550.00
Junior	**17 & Under**								$199.00	$199.00	$199.00	$199.00
Single									$475.00	$475.00	$500.00	$500.00
Couple									$625.00	$625.00	$650.00	$650.00
Family									$825.00	$825.00	$850.00	$850.00

*New for 2018:

1. Corporate memberships
2. $5 off twilight rate after 5pm

Exchange City Golf Corporation
Par 3 Golf Course
2019 Proposed Captial Improvements

Improvements	Units	Cost	Total
Isolation Valves			$2,000.00
Drainage Issues 7,9,10,14			$1,500.00
Cart Path 10 tee to club			$2,200.00
Total Improvements			**$5,700.00**
Equipment			
Toro 3150 Q Greens Master			$37,651.00
Sell oldest 3150			-$6,500.00
Total Equipment			**$31,151.00**
Total Course Cap Ex			**$36,851.00**
Distributions			
Distribution, City			$20,000.00
Distribution, Exchange Club			$10,000.00
			$30,000.00
Total Cap Ex			**$66,851.00**

Consent **1. G.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: W.O. 18-30: City-County Drain Mitigation Western Sugar Easement

PRESENTED BY: Robbie Neihart

Department: Public Works

Presentation: No

PROBLEM/ISSUE STATEMENT

The stormwater pipeline for the W.O. 18-30: City-County Drain Mitigation Project will cross through Western Sugar's property adjacent to the Yellowstone River. An easement will need to be granted by Western Sugar Co-operative to allow for the construction and maintenance of the stormwater pipeline. An appraisal was completed for the parcel to the north which is similar. A separate appraisal was not done for this property because there was one completed in the immediate vicinity and the value of the easement across Western Sugar was significantly lower due to the small amount of area needed. Western Sugar was offered the per square foot value contained in the appraisal in exchange for an easement. The appraisal for the adjacent property and an exhibit showing the easement are attached to this memo.

ALTERNATIVES ANALYZED

City Council may:

- Approve the easement, or;
- Disapprove the easement. If the easement is not approved by the City, the drain will not be able to be constructed.

FINANCIAL IMPACT

The cost of the easement is $2,900 based on the appraisal for the adjacent property.

RECOMMENDATION

Staff recommends that the City Council approve the easement with Western Sugar Co-operative.

APPROVED BY CITY ADMINISTRATOR

Attachments

Appraisal
Easement Exhibit

Appraisal Report of:

Lot 3, Riverside Acreage Tracts Subdivision
The Marte Nelson Property
Billings, Yellowstone County, Montana

Date of "As Is" Value: November 18, 2018
Date of Report: November 19, 2018

For:

The City of Billings, Montana
Attn: Debi Meling, P.E.
City Engineer – Public Works Department
2224 Montana Avenue
Billings, Montana 59101

By:

Thomas Appraisal Services, Inc.
David C. Thomas, MAI
175 North 27th Street, Suite 1220
Billings, Montana 59101
406-969-1504

David C. Thomas, MAI
Commercial Real Estate

THOMAS APPRAISAL SERVICES, INC.

Barbara D. Thomas
Residential Real Estate

November 19, 2018

The City of Billings, Montana
Attn: Debi Meling, P.E.
City Engineer – Public Works Department
2224 Montana Avenue
Billings, Montana 59101

RE: Appraisal of Lot 3, Riverside Acreage Tracts Subdivision, in Yellowstone County, Montana (Marte Nelson Property).

Dear Ms. Meling:

Pursuant to your request, I have prepared an appraisal of the above-described property. The purpose of this appraisal is to estimate the market value of the proposed easement to be acquired by the City of Billings on Lot 3. I have personally inspected the property valued in this report. I certify that I have no personal interest, present or contemplated, in the subject property, and that this appraisal represents my opinion of the market value of the subject property.

As a result of my investigation, the final estimated market value of the proposed strip easement, as of the date of last inspection, November 18, 2018, is: **$15,950.**

This letter must remain attached to the report, which contains 29 pages plus related exhibits, in order for the value opinion set forth to be considered valid. Further, this letter of transmittal precedes the appraisal report further describing the property and containing the reasoning and most pertinent data leading to the final value estimate. Your attention is directed to the Assumptions and Limiting Conditions and Certification, which are considered usual for this type of assignment and have been included within the text of this report.

Sincerely,

THOMAS APPRAISAL SERVICES, INC.

David C. Thomas, MAI

By: David C. Thomas, MAI
Montana Certified General Appraiser #416

Enclosure: Appraisal Report

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ADDENDA

Location Map
Photographs of Subject Property
Plat Map of Riverside Acreage Tracts Subdivision
Flood Map of General Area
Conceptual Pipeline Plan & Profile Map
Yellowstone County Orion Detail
Land Sales Map
Land Sales Comparables
Copy of State License

Summary of Appraisal

Interest Appraised:	Fee Simple Estate
Location:	The subject property is located along the south side of Riverside Drive at that point where Riverside Drive transitions into Garden Avenue, in Yellowstone County, Montana.
Physical Address:	Vacant Land – Not Applicable
Legal Description:	Lot 3, Riverside Acreage Tracts Subdivision, Less Highway, Yellowstone County, Montana
Tax ID Number:	A13327
Description of Site:	The site has a total area of 2.19 acres and is located entirely within the 100-year floodplain. It has the HC – Highway Commercial zoning classification. There is a city sewer main located in Riverside Drive and a city water main is located near the northeast corner is Garden Avenue. The site is irregular in shape and has about 193' of frontage along Riverside Drive.
Highest and Best Use:	To remain in its "as is" condition and be developed with a use that does not require water (potable or waste). There are simply too many other vacant, buildable sites on the market to justify the costs of annexation, extension of city services, and fill.
Description of Easement:	The City of Billings is wanting to acquire a 20' wide strip easement to be used as part of their stormwater drainage system. The majority of the easement is to parallel the subject's east property line. I have concluded that the easement, as proposed, will not cause a diminution in value to the subject property.

Proposed Easement Area:	0.2333 acres = 10,163 sq. ft.
Market Value of Entire Site:	$157,000 = $1.65 psf
Value of Easement Area:	**$15,950**
Date of Value:	November 18, 2018
Date of Report:	November 19, 2018

CLIENT: City of Billings, Montana
Attn: Debi Meling, PE
City Engineer – Public Works Department
2224 Montana Avenue
Billings, Montana 59101

APPRAISER: David C. Thomas, MAI
Thomas Appraisal Services, Inc.
175 North 27th Street, Suite 1220
Billings, Montana 59101
(406) 969-1504

SUBJECT: Appraisal of Lot 3, Riverside Acreage Tracts Subdivision, in Yellowstone County, Montana (Marte Nelson Property).

INTRODUCTION:

This is an Appraisal Report that is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice. This report is in a format similar to what formally was referred to as a summary report. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraisers' opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraisers' file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. The appraiser is not responsible for unauthorized use of this report.

PURPOSE OF THE APPRAISAL:

The purpose of this appraisal is to provide the appraisers' best estimate of the market value of the subject real property as of the effective date. *Market value* is defined by the federal financial institutions regulatory agencies as follows:

> *Market value* means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
>
> (1) buyer and seller are typically motivated;
> (2) both parties are well informed or well advised, and acting in what they consider their own best interests;
> (3) a reasonable time is allowed for exposure in the open market;
> (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
> (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Source: Office of the Comptroller of the Currency under 12 CFR, Part 34, Subpart C-Appraisals, 34.42 Definitions [f].)

INTENDED USE: The appraisal shall be used by the Client in supporting the value of the subject property for internal decision making purposes.

INTENDED USERS: This appraisal report is prepared for the sole and exclusive use of the appraiser's client: The City of Billings, Montana. No third parties are authorized to rely upon this report without the express written consent of the appraiser.

INTEREST VALUED: The fee simple estate in the above described real estate.

DATE OF INSPECTION: November 18, 2018

EFFECTIVE DATE OF "AS IS" VALUE: November 18, 2018

DATE OF REPORT: November 19, 2018

EXTRAORDINARY ASSUMPTION:

The value of the acquisition set forth in this analysis is based on the extraordinary assumption that the final alignment of the proposed easement is the same as that depicted on the *Conceptual Pipeline Plan & Profile* exhibit located in the addenda. If the final alignment is different than shown on the exhibit, I reserve the right to change this appraisal accordingly.

HYPOTHETICAL CONDITIONS: None

APPRAISAL DEVELOPMENT AND REPORTING PROCESS

The purpose of this appraisal assignment is to assist the City of Billings in acquiring an easement across Lot 3 of Riverside Acreage Tracts Subdivision. This easement shall be used to install an underground pipe approximately 48" in diameter and approximately 10' deep that will be used as part of the City's stormwater drainage system. This appraisal will estimate the market value of Lot 3, which will be used to negotiate the acquisition of this easement to construct this drain.

I have determined that there is no diminution in value to Lot 3 as a result of this easement, therefore, this is not a "before and after" valuation assignment. This appraisal is being conducted to USPAP standards only, as per agreement with the City of Billings.

With that said, the first part of this report consists of describing Lot 3, the immediate neighborhood, and the highest and best of Lot 3. The second part consists of the valuation of Lot 3 and the resulting value of the easement to be acquired.

In developing this appraisal I inspected the subject site on two different occasions: October 16, 2018 and November 18, 2018. The date of valuation is the date of the second site inspection: November 18, 2018. I interviewed Debi Meling with the City of Billings, Public Works Department and Gregory Gabel, P.E., CFM with DOWL. I also interviewed several real estate Brokers in Billings who are actively involved with buying and selling vacant land throughout the city. Their input is always valuable in estimating the value of vacant land.

The only approach to value developed in this report is the Sales Comparison Approach. The Cost Approach and the Income Approach are not applicable in the valuation of vacant land. The omission of these two approaches does not weaken the overall reliability of the final estimate of value.

GENERAL AREA ANALYSIS

The City of Billings, county seat of Yellowstone County, is located in the south central portion of Montana. More specifically, it is situated midway between Seattle, Washington and Minneapolis, Minnesota and approximately 550 miles northwest of Denver, Colorado. Billings is the largest city in Montana with a 2015 population estimate of 110,263 persons. This represents an increase of 8.2% over the 2010 census count of 101,876 persons. U.S. Census figures indicated that the 2015 population of Yellowstone County was 157,048, which represents an increase of 9.9% over the 2010 census count of 142,348 persons.

The City's economy is generally characterized as diverse. The Billings trade area includes 25 Montana counties and eight Wyoming counties and is considered one of the largest geographical trade areas in the nation. As such, the City serves as a major wholesale and retail trade center. Agriculture has also been a traditionally strong part of the Billings economy. Billings has the second largest livestock auction market in the nation and has always served as an important center for the growing and selling of such crops as wheat, barley, sugar beets, corn and oats.

The Billings medical community consists of two major hospitals, several group practices, surgical groups, the Northern Rockies Regional Cancer Treatment Center and the South Central Montana Regional Mental Health Center. These facilities contribute to making Billings the largest major medical center between Spokane and Minneapolis and north of Denver. Tourism and recreation also play an important role in Montana's economy. Billings' proximity to Yellowstone National Park, numerous ski resorts, and excellent hunting, fishing, camping and hiking opportunities make it a likely stop over point for the vacationer in this area.

In summary, the City of Billings is a viable metropolitan area with a diverse economy and a history of healthy, sustained growth. The growing viability of the community as a retail and wholesale trade center, the continued growth in the local medical community, and ever increasing levels of tourism all contributed to predictions by the University of Montana's Bureau of Business and Economic Research that Billings and Yellowstone County will likely be among the leaders in the state in population and economic growth over the next decade.

NEIGHBORHOOD ANALYSIS

The subject is located along the south side of Garden Avenue, about 480 feet west of Sugar Avenue, in Yellowstone County. This location is at the south end of the Billings city limits. For appraisal purposes a neighborhood is defined in terms of common characteristics, trends and groupings of complementary uses. The subject neighborhood is considered to be those properties bounded by Interstate 90 to the north, the Yellowstone River to the south, South Billings Boulevard to the west, and South 27th Street to the east. This is a long narrow strip that parallels Interstate 90 between these two interstate interchanges.

The neighborhood is a unique mixture of residential, commercial, and public uses. The westernmost one-quarter of this distance is developed primarily with light industrial properties, including: IState Truck Center, Auto Auction of Montana, Old Dominion Freight Line, and Intermountain Distributing. The next one-quarter is vacant and undeveloped, of which the subject is a part. The eastern one-half of the neighborhood consists of older residential housing, two RV campgrounds (KOA and Yellowstone River Campground), several greenhouse/nurseries, and several commercial properties near the South 27th Street interchange.

The one drawback to the area is the fact that it is mostly located in an identified flood hazard zone. Given the proximity of the Yellowstone River, most of the eastern half of the neighborhood is located in the floodplain. This makes development with well and septic systems difficult and has been a hindrance to development. Until city water and sewer lines are extended to the area, development will be slow in coming to the vacant land south of the interstate.

SITE ANALYSIS

The following information is based on my physical inspection of the subject property and data taken from public records.

Location: The subject is located along the south side of Riverside Drive, at that point where Riverside Drive transitions into Garden Avenue. The northeast corner of Lot 3 is located about 540 feet west of where Sugar Avenue intersects Garden Avenue. The subject is located outside the city limits of Billings in Yellowstone County.

Address: Vacant Land – Not Applicable

Tax ID #: A13327

Legal Desc: Lot 3, Riverside Acreage Tracts Subdivision, Less Highway, Yellowstone County, Montana.

Size: 2.19 acres = 95,396 sf

Shape: The subject is irregular in shape. Please see the plat in the addenda that shows the shape and location of this parcel.

Frontages: 193'± along Riverside Drive

Improvmnts: None – this site is unimproved.

Easements: Williston Basin Interstate Pipeline Company has a pipeline easement that crosses the subject in an east to west direction toward the south end of the

site. More specifically, the pipeline easement is immediately north of the berm that runs along the south boundary. This is a perpetual easement that transfers with the land. The pipeline is at least 42 inches deep and the width of the easement is 25 feet. I was unable to find a recorded survey showing the location of the line, however, the Conceptual Pipeline Plan & Profile exhibit for the subject easement shows the location of the Williston Basin easement. The impacts of this easement are discussed in Highest and Best Use.

The only other apparent easements are typical utility easements that do not have an adverse impact on value.

Zoning: HC – Highway Commercial

The HC zone is intended to provide areas for commercial and service enterprises which are intended primarily to serve the needs of the tourist, traveler, recreationist or the general traveling public. Areas designated as Highway Commercial should be located in the vicinity of, and accessible from interstate interchanges, intersections on limited access highways, or adjacent to primary or secondary highway. The manner in which the services and commercial activities are offered should be carefully planned in order to minimize the hazard to the safety of the surrounding community and those who use such facilities.

Utilities: There is a 48" City of Billings sewer main that runs along Riverside Drive adjacent to the subject. There is a 12" water main located in Riverside Drive at/near the subject's northeast property line. This main is located in Garden Avenue and crosses Interstate 90 at this location. Other utilities including electricity, natural gas, and telephone are readily available to the parcel.

Access: There is a developed approach off of Riverside Drive/Garden Avenue at the northeast corner of the site. Riverside Drive is a two lane, asphalt paved county road. It is very lightly traveled. The closest traffic count site is east of the subject where Sugar Avenue dead ends into Garden Avenue. The count is along Garden Avenue, immediately west of Sugar. As per the 2017 traffic count data, there were 2,140 vehicles per day at this location. The amount of traffic past the subject is assumed to be lower than this number.

Flood Hazard: The subject is located entirely in the 100-year floodplain. A copy of the floodplain map, as per Yellowstone County, is located in the addenda.

Topography: The majority of this lot is flat and the vegetative cover is improved pasture grasses. The exception is the southeast corner of the site that has a small amount of mature deciduous trees and brush. Given the proximity of the Yellowstone River, which is less than 50 feet south of the south boundary line, riparian habitat is located along this section of the property. The most notable feature at the south end of the site is a grassed over berm that is about 5 to 6 feet in height. This berm was undoubtedly made years ago to prevent flooding from the Yellowstone River. Other than the vegetation and berm at the south end of the site, there are no distinguishing topographical features on this property.

Hazardous or Toxic Materials:

A visual inspection of the site did not reveal any unusual soil conditions or hazardous waste material that may be present on or under the sites. A Phase 1 Environmental Assessment was not provided; thus, I cannot comment on actual soil conditions or the existence of hazardous wastes, if any, on/under the site. I am not an expert in detecting hazardous materials that may be present on/under the site, which materials may affect the value of the property.

The value estimate is predicated upon the assumption that there is no such material on the property. Any such environmental risk discovered at a later date may require a revised estimate of value that may or may not be simply a reduction of the value by the estimated cost to cure the environmental condition. Properties known to have environmental risk may also carry a stigma in the marketplace that may or may not affect the value. If future soil tests should reveal the existence of any unusual soil conditions or hazardous wastes, I reserve the right to review and modify this appraisal accordingly.

PROPERTY OWNERSHIP

The subject is under the ownership of Marte M. Nelson and Steven D. Nelson, as Trustees of the Marte M. Nelson Trust. The Marte Nelson Trust acquired ownership of the subject from Steven D. Nelson and Marte M. Nelson, as recorded by Quitclaim Deed #3463624 on April 30, 2008. The Nelson's acquired ownership of the subject from Gayle A. Stewart, etal in July, 2007. The purchase price associated with this transaction is unknown.

To the best of my knowledge, the subject is not listed for sale, nor is it under contract for sale, as of the date of valuation.

HIGHEST AND BEST USE

In estimating the site's highest and best use, legal controls, such as zoning, must be considered, along with investor attitudes and the financial feasibility of the alternative uses. Major types of real estate uses, consisting of agricultural, residential, recreational, industrial, commercial and public use, were considered. It is obvious that several of these uses can be immediately eliminated due to zoning restrictions or unsuitability of the site for such a use.

"As Vacant":

The subject is located in Yellowstone County, immediately south of Interstate 90. It has the HC – Highway Commercial zoning classification, which allows both commercial and residential development. The site adjacent to the east is developed with an older single family residence and is zoned Residential 15000 while the land adjacent to the west is vacant and also zoned HC. From a zoning standpoint, very few uses are excluded from development so this is not a factor in determining highest and best use.

The two factors that have an impact on value, and largely determine highest and best use, are: proximity to city services and the floodplain. The subject is located outside the city limits, therefore, any development would require a well and septic system/drainfield. Because the subject is located in the floodplain, however, wells and septic systems are not allowed. Therefore, any development of the site requiring water (potable and waste) will need to be via municipal water and sewer services. In other words, the subject will need to be annexed, connected to city services, and the base elevation of the building site/sites raised to a level two feet above the flood plain.

With that said, development of this site with a building requiring water will be expensive and time consuming. About the only use that would not require water is self storage,

however, this is not considered an ideal site for self storage. This property type (self stoage) is most successful when it is surrounded by rooftops – either residential and/or commercial. The subject does not fit this description. Also, there is a 124 unit self storage facility located directly across Interstate 90 from the subject. This facility was constructed in 2013 and does not have any buildings requiring water or sewer. This is exactly the type of property that could be developed on the subject without annexation and extension of services, however, the base elevation of the buildings would still need to be 2' above the base flood elevation.

A final element that plays into highest and best use is supply and demand. There is currently an adequate supply of vacant lots available for sale that have similar locational attributes as the subject: frontage along a frontage road with good exposure from Interstate 90. Lot 3 of Riverfront Business Park, located about 3/4th mile west of the subject along the south side of Riverside Drive, has been for sale for a number of years. This lot is just over 8 acres in size, has all city services to the lot line, and is priced at $4.00 psf. The owner, Rick Dorn, says there is periodic interest in the site, however, at 8 acres the pool of buyers for a site this large is limited.

There are three lots for sale at the southwest quadrant of the Lockwood/I90 interchange. They are 2.85 acres, 3.25 acres, and 5.30 acres in size. All three are zoned Highway Commercial and city services have been extended to each lot. The asking price has been lowered over the years and is currently at $2.95 psf. These lots have been for sale for about three years. Other lots include those in the Cabela's subdivision at the northeast quadrant of the South Billings Boulevard/I90 interchange, and a handful of lots south of I90 between Mullowney Lane and Zoo Drive. The bottom line is that there is no shortage of Interstate 90 "frontage" lots that are listed for sale. Some have city services and some do not.

In conclusion, the options for development are limited for the subject property in its "as is" condition. Any building that is constructed, whether it requires water service or not, will have to be elevated 24" above the base flood elevation. If the subject is not annexed, about the only logical use is self storage. If the subject is annexed, services are extended, and the elevation raised 24" above flood, it will join the pool of other vacant sites having similar attributes that are listed for sale.

Based on the above information, I have concluded that the highest and best use of the subject site is to remain in its "as is" condition and be developed with a use that does not require water (potable or waste). There are simply too many other vacant, buildable sites on the market to justify the costs of annexation, extension, and fill.

The Williston Basin pipeline easement at the south end of the site does not have an adverse impact on value. This easement does not preclude development of the site to its highest and best use.

VALUATION

Sales Comparison Approach

The value of a property tends to be set by the cost of acquiring an equally desirable substitute property. Therefore, in the Sales Comparison Approach market data obtained from sales of properties with a reasonable degree of similarity to the subject property are analyzed and adjusted to arrive at a value indication. The reliability and similarity of comparable sales data tends to determine the reliability and accuracy of this approach.

Four sales have been gathered that are considered relevant in the valuation of the subject property. One is adjacent to the subject and the other three are clustered near the Interstate 90/South 27th Street interchange.

These sales differ from the subject in various ways, i.e. location, time of sale, and physical characteristics. The dissimilarities are adjusted for by adding to the price of the comparable when it is inferior to the subject, and conversely, subtracting from the price of the comparable when it is superior to the subject. In practice it is very difficult to isolate each factor and accurately assess the amount of adjustment required. In most areas there is simply not sufficient data; thus, an appraiser must use subjective judgment in analysis.

The chart on the following page shows the pertinent facts for each transaction. A complete analysis of each sale, along with a map showing its location, is located in the addenda.

Land Sales Chart					
Element:	**Subject**	**Sale 1**	**Sale 2**	**Sale 3**	**Sale 4**
Date of Sale:	N/A	04-2018	06-2017	12-2015	04-2015
Location:	Riverside Dr. near Garden Avenue	Riverside Dr. near Garden Avenue	Kimble Drive, W. of Garden Ave.	S. 27th St., North of Interstate 90	Interstate 90 & S. 27th St.
Grantor:	N/A	Normajean Pippin	Dawna Geiger etal	GSA Billings, L.C.	Carol K. Linde etal.
Grantee:	N/A	James Brown	Mountain West Vet.	Nelson Family Enterprises, LLC	James & Tracy Johnson
H & B Use:	Commercial	Residential	Commercial	Commercial	Commercial
City/County	County	County	County	City	County
Utilities:	Well & Septic	Well & Septic	Well & Septic	All City	Well & Septic
Zoning:	HC	R15000	A1 - Ag. Open	CI	R15000
Flood Zone:	All	All	Partial	None	All
Sales Price:	N/A	$175,000	$237,580	$205,000	$390,000
Size/Sq. Ft.:	95,396	110,642	123,255	126,713	162,479
Price/SF:	**N/A**	**$1.58**	**$1.93**	**$1.62**	**$2.40**
Prop. Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing:	Cash to Seller	Cash to Seller	Cash to Seller	Cash to Seller	Cash to Seller
Cond. Sale:	Typical	Typical	Typical	Typical	Typical
Market Cond.	Current	Similar	Similar	Similar	Similar
Adjustment:	N/A	$0.00	$0.00	$0.00	$0.00
Adj. Price/SF:	**N/A**	**$1.58**	**$1.93**	**$1.62**	**$2.40**
Location:	Average	Inferior	Superior	Inferior	Superior
Size/SF:	95,396	Similar	Similar	Similar	Similar
Utilities:	Well & Septic	Similar	Similar	Superior	Similar
Zoning:	HC	Inferior	Inferior	Similar	Inferior
Flood Zone:	All	Similar	Superior	Superior	Similar
Overall Comparability	**N/A**	**Inferior**	**Superior**	**Similar**	**Superior**

Adjustments Made to Sales:

Transactional: No adjustments were necessary to any of the sales for transactional

characteristics: property rights conveyed, financing terms, conditions of sale, or market conditions. These four sales occurred between April, 2015 and April, 2018 and there is no evidence of either appreciation or depreciation among these four sales over this period of time. The value of properties having locational characteristics similar to the subject and these sales have remained static over the past five years.

Property: Property adjustments that have been analyzed for adjustment include location, size, utilities, zoning, and flood zone. Following is a discussion of each of these elements of comparison and the reasoning for the adjustments made to the sales.

Discussion of Sales – Overall Comparability:

Sale 1 is located adjacent to the east of the subject. This property is developed with an older single family residence and several outbuildings. It has the R15 zoning classification and the buyer purchased the property for continued use as a residence. Subsequent to purchase he remodeled the house. The entire property is located within the floodplain, however, the wells and septic system/drainfield are grandfathered. This property was on the market for 196 days before it went under contract. The listing brochure had the following statement: *Property is being sold for the value of the land and any other miscellaneous structures on the land. Will not go VA or FHA*. The contributory value of the improvements was estimated to be $75,000.

This property has no frontage and poor visibility from the interstate and is inferior to the subject in location. This properties residential zoning classification is also inferior to the subject's commercial zoning classification. It is similar in the other elements of comparison. This sale is inferior to the subject in overall comparability.

Sale 2 is located along the south side of Kimble Drive, about 240' west of Garden Avenue. This location is immediately south of the I90/South 27th Street interchange. This site has been developed with a large animal (equine) veterinary clinic. At the time of sale

the easternmost 32% of the site was outside the 100-year floodplain while the westernmost 68% was inside the floodplain. This parcel parallels the interstate and has excellent visibility from the interstate.

Given this properties proximity to the interchange, it has a superior location to the subject. This sale is also superior to the subject in flood zone as the eastern third is outside the flood zone, which is where the vet clinic was constructed. This sales ag zoning classification, however, is inferior to the subject's commercial zoning classification. It is similar in the other elements of comparison. This sale is superior to the subject in overall comparability.

Sale 3 is located along the west side of South 27th Street and immediately north of Interstate 90. This property has extensive frontage along South 27th Street, however, it does not have access from South 27th Street. It is this lack of direct access from South 27th Street that results in a value of $1.56 psf. Access is very roundabout as follows, from the site to South 27th Street: Nall Avenue via Kimble Drive via Sugar Avenue via State Avenue. After turning off of South 27th Street, this is a distance of about 3/4th mile. As a result, this property was only suitable to a handful of businesses. The site has been developed with a Frito Lays warehouse/distribution building. The selling Broker had the property listed for sale for over 2 years.

This is the only sale that was adjacent to city services and is superior to the subject in utilities. This sale is also outside the flood plain and superior in this element of comparison. This property has poor visibility from the interstate and access to the interchange is not direct, therefore, it is inferior to the subject in location. It is similar in the other elements of comparison. I have concluded that inferior location offsets superior utilities and flood plain and that this sale is similar to the subject in overall comparability.

Sale 4 is located at the southeast quadrant of Interstate 90 and South 27th Street. This site has been developed with Jim & Tracy's Alignment. At the time of sale this property was inside the floodplain and zoned R15000 by Yellowstone County. This property has an excellent location, which is the primary reason this particular business purchased this site - it has excellent visibility and accessibility from Interstate 90. Similar to the subject it is 100% located in the floodplain.

This property has a superior location to the subject but had an inferior zoning classification at the time of sale. It is similar in the other elements of comparison. I have concluded that location outweighs zoning in this instance and that this sale is superior to the subject in overall comparability.

Conclusion of Value:

Sales 2 and 4 are clearly superior to the subject in comparability. Sale 4 sets the high end of value and rightly so given its location at the interchange. Sale 2 is adjacent to the south of Sale 4 and while not as desirable a location, it is still superior to the subject. The subject should clearly command a value lower than $1.93 psf exhibited by Sale 2.

Sales 1 and 3 basically exhibit the same value per square foot at $1.58 and $1.62, respectively. I concluded that Sale 1 is inferior to the subject which suggests the subject should command a value higher than $1.58 psf, however, the overall reliability of this sale is somewhat weakened by the fact that the contributory value of improvements were subtracted from the overall sales price to arrive at land value. This is never as desirable as having a pure land sale. I have only included this sale given its proximity to the subject property. I concluded that Sale 3 is similar to the subject in comparability which suggests a value for the subject of between $1.60 to $1.65 psf.

Based on the above information I have estimated the market value of the subject property to be $1.65 per square foot. The overall value of Lot 3 is calculated as follows:

95,396 sf	x	$1.65 psf	=	$157,403
		Rounded to:		**$157,000**

Description of Easement to Be Acquired:

The proposed easement is to originate immediately west of the main approach to the site off of Riverside Drive and diagonal toward the east property line. Please see the *Conceptual Pipeline Plan and Profile* exhibit in the addenda to better visualize the alignment of the proposed easement. As per the exhibit, the easement will touch the east property line about 70 feet south of the north property line. From that point southward it parallels the property line. The width of the easement is to be 20 feet and all building types are prohibited from being placed within this area. It is my understanding that roads, parking lots, storage yards, etc. are not a prohibited use. The total area of the easement is 0.2333 acres, or 10,163 square feet.

Analysis "After" Acquisition

The City of Billings is desiring to acquire a 20 foot wide strip easement that is to run in a north to south direction along the majority of the eastern boundary line of Lot 3. The easement will prohibit the construction of any type of structure (commercial building, house, garage, shed, kennels, etc.) within the easement right-of-way. The question to be answered is this: does the proposed easement have a negative impact on the market value of the property?

The first step in answering this question is determining what the setback requirements are under the HC zoning classification. Almost all zoning classifications have setback requirements that establish how far from the property line a new building must be located. The following chart shows the front and side setbacks under HC zoning.

Front:	**20 feet**
Side:	0 feet
	15 feet – when contiguous with a residentially zoned property

Because the subject's east property line is contiguous with a residentially zoned tract, the setback is 15 feet along the east property line. The net impact of the easement, therefore, is 5 feet. The subject has a width of just over 193 feet. It would be almost impossible to prove that the additional 5 feet of setback as a result of the easement would cause a loss in value to this property. If the subject had a total area of say 30,000 sf, this might become an issue. With a total area of 2.19 acres, however, I have concluded that the additional 5 feet of setback along the east boundary due to the easement does not cause a loss in market value. The utility of the site "after" acquisition is the same as the utility of the site "before" acquisition.

Value of the Acquisition:

The final step in this analysis is the determination of the value of the acquisition. This is found by multiplying the area of the easement (the acquisition) by the market value of the land, which is estimated to be $1.65 per square foot. Because this is not a total taking of the land, only an easement, the landowner does not relinquish his entire bundle of rights. For this reason, I have determined that compensation is limited to 95% of the fee value. The value of the easement is calculated as follows:

Easement Area:		10,163 sf
Market Value of Land:	x	$ 1.65/sf
% of Rights Relinquished:	x	0.95
Value of Easement Acquired:		$15,931
Rounded to:		**$15,950**

Market Value "After" Acquisition:

The market value of the subject property after acquiring the easement is calculated as follows:

Market Value "Before" Acquisition:	$157,000
Less Value of the Acquisition:	(15,950)
Market Value "After" Acquisition:	**$141,050**

CORRELATION ANALYSIS
AND
FINAL VALUE ESTIMATE

The Sales Comparison Approach indicates the following value estimates for the subject property:

Value of Subject "Before" Acquisition:	$157,000
Value of Subject "After" Acquisition:	$141,050
Value of Acquisition:	**$ 15,950**

The four sales used in the valuation of the subject are considered to provide excellent support for the market value of the subject site. These sales are all located in the immediate area and have fairly similar locational attributes. The prices exhibited by these sales range from a low of $1.58 psf to a high of $2.40 psf. It would be very difficult to argue that market value should be anywhere other than within this range for the subject property. Sale 4 exhibited the high end of value at $2.40 psf. Excluding this sale, the range narrows substantially to $1.58 to $1.93. Given the subject's location within the floodplain and distance from the interchanges, I concluded that market value should be toward the lower end of this range. In the end, I consider the estimate of market value to be very well supported.

I have also determined that the proposed easement does not cause a diminution in value after acquisition, which greatly simplifies the remainder of the analysis. Because the easement essentially parallels the east boundary line of the site, the utility of the subject remains the same before and after acquisition.

Based on my analysis of the data and information presented in this report, the final estimated market value of the proposed easement, as of the date of last inspection, November 18, 2018, is:

Fifteen Thousand Nine Hundred Fifty Dollars

($15,950)

CERTIFICATION

I hereby certify to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- the engagement in this assignment was not contingent upon developing or reporting predetermined results.
- the compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- the analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have made a personal inspection of the property that is the subject of this report.
- no one provided significant professional assistance to the persons signing this report.

I further certify that the final estimated market values of the proposed easement, as of the date of last inspection, November 18, 2018, is: **$15,950.** This appraisal was made in accordance with the Codes of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute. As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute. The use of this report is subject to the requirements of The Appraisal Institute relating to review by their duly authorized representatives.

THOMAS APPRAISAL SERVICES, INC.

David C. Thomas, MAI

By: David C. Thomas, MAI
Montana Certified General Appraiser #416

QUALIFICATIONS/RESUME FOR DAVID C. THOMAS

Designation & Professional Affiliations

Member (MAI) The Appraisal Institute
Montana Certified General Appraiser #416

Business Address

Thomas Appraisal Services, Inc.
175 North 27th Street, Suite 1220
Billings, MT 59101

Phone: 406-969-1504
Cell: 406-366-1159
E-Mail: dave@tas.net

Employment History

Independent Fee Appraiser... Thomas Appraisal Services, Inc.
Lewistown, MT... April 1993 to Present

Independent Contractor... Ferro Appraisal Services, Inc.
Great Falls, MT... April 1993 to June 2001

Independent Fee Appraiser... Pardue, Heide, Church, Smith and Waller of Brevard, Inc.
Titusville, Florida... September 1991 to February 1993

Education

Bachelor of Science, May 1989
Arizona State University, Tempe, Arizona
Double Major: Finance and Real Estate

Partial Listing of Clients

Basin State Bank of Lewistown
CB Richard Ellis/Metec Due Diligence
Continental National Bank, Harlowton
Farm Credit Services
Fergus County Federal Credit Union
ABN AMRO
First Interstate Bank
First National Bank of Lewistown
JP Realty Inc., Hialeah, Florida
Judith Basin County
Lewistown Airport Authority
Metropolitan Mortgage & Securities
Montana Department of Transportation
Mountain West Bank
State of Montana, Compensation Ins. Fund
Stockman Bank of Montana
US Dept of Agriculture, Rural Development
US Dept. of Agriculture, NRCS
Western Security Bank
Wells Fargo Bank
Wells Fargo Bank Public Finance
Numerous private investors, attorneys, accountants.

Continuing Education Courses

2018 – Forecasting Revenue	Appraisal Institute
2018 – Real Estate Finance, Value, & Investment Performance	Appraisal Institute
2017 – Marketability Studies – Basic & Advanced Applications	Appraisal Institute
2016 - 7-Hour National USPAP Update Course	Appraisal Institute
2014 - General Appraiser Market Analysis & H. & B. Use	Appraisal Institute
2014 - Online Cool Tools New Technology for R.E. Appraisers	Appraisal Institute
2014 - 7-Hour National USPAP Update Course	Appraisal Institute
2014 - 2014 Montana Economic Outlook Seminar	University of Montana
2013 - Business Practices & Ethics	Appraisal Institute
2012 - Appraising the Appraisal: Appraisal Review	Appraisal Institute
2012 – 7-Hour National USPAP Update Course	Appraisal Institute
2011 – Advanced Spreadsheet Modeling for Valuation Appl.	Appraisal Institute
2010 - DCF Model: Concepts, Issues, Applications	Appraisal Institute
2010 - Using Spreadsheet Programs in Appraisals	Appraisal Institute
2010 - Valuation for Financial Reporting	Appraisal Institute
2010 - Standards of Professional Practice, Part C	Appraisal Institute
2009 - Business Practices & Ethics	Appraisal Institute
2008 - Office Building Valuation - Cont. Perspective	Appraisal Institute
2008 - Standards of Professional Practice, Part C	Appraisal Institute
2007 - Analyzing Distressed Real Estate	Appraisal Institute
2007 - Feas., Mark. Val., Timing: Option Value	Appraisal Institute
2007 - Effective Appraisal Writing	Appraisal Institute
2007 - Standards of Professional Practice, Part C	Appraisal Institute
2006 - Subdivision Valuation	Appraisal Institute
2006 - Code of Professional Ethics	Appraisal Institute
2006 - Standards of Professional Practice, Part C	Appraisal Institute
2005 - Scope of Work, Exp. Your Services	Appraisal Institute
2004 - Evaluating Commercial Construction	Appraisal Institute
2004 - Standards of Professional Practice, Part C	Appraisal Institute
2003 - Separating Real & Personal Property from Intangible Business Assets	Appraisal Institute
2003 - Uniform Stan. for Fed. Land Acquisitions	Appraisal Institute
2002 - Partial Interest Valuation - Undivided	Appraisal Institute
2002 - Standards of Professional Practice, Part C	Appraisal Institute
2001 - Partial Interest Valuation - Divided	Appraisal Institute
2001 - Passed Comprehensive Examination	Appraisal Institute
2001 - The Comprehensive Appraisal Workshop	Ted Whitmer, MAI Attorney
2000 - Advanced Applications	Appraisal Institute
2000 - Case Studies/Highest and Best Use	Appraisal Institute
2000 - Litigation Skills for the Appraiser	Appraisal Institute
2000 - Standards of Prof. App. Practice, Part C	Appraisal Institute
1999 - Nonres. Demo. Report Writing Seminar	Appraisal Institute
1999 - Highest and Best Use and Market Analysis	Appraisal Institute
1999 - Advanced Income Capitalization	Appraisal Institute
1999 - Standards of Professional Practice, Part B	Appraisal Institute
1999 - Analysis of Small Mixed Use Properties	Appraisal Institute
1998 - Advanced Sales Comp. & Cost Approaches	Appraisal Institute
1998 - Small Hotel/Motel Evaluation	Appraisal Institute
1998 - Report Writing and Valuation Analysis	Appraisal Institute
1998 - Standards of Professional Practice, Part C	Appraisal Institute
1997 - Timberland Valuation: General	Appraisal Institute
1997 - Understanding Limited Appraisals	Appraisal Institute
1996 - Principles of Rural Appraisal (A-20)	Society Farm Mngrs & Rural Appr.
1995 - 30 Specialized Appraisal Issues	Appraisal Institute
1995 - Standards of Professional Practice, Part A	Appraisal Institute

ASSUMPTIONS AND LIMITING CONDITIONS

This Appraisal Report, the Letter of Transmittal and the Certification of Value are made expressly subject to the following assumptions and limiting conditions, and any special limiting conditions contained in the report which are incorporated herein by reference.

1. The legal description furnished is assumed to be correct. I assume no responsibility for matters legal in character nor do I render any opinion as to the Title, which is assumed to be good. All existing liens and encumbrances, if any, have been disregarded, and the property is appraised as though free and clear, under responsible ownership and competent management.

2. The sketch in this report is included to assist the reader in visualizing the property. I have made no survey of the property and assume no responsibility in connection with such matters.

3. No responsibility is assumed for accuracy of information furnished by work of others, the client, his designee or public records. I am not liable for such information, nor the work of possible subcontractors. The comparable data relied upon in this report has been confirmed with one or more parties familiar with the transaction or from affidavit or other source thought reasonable; all are considered appropriate for inclusion to the best of my factual judgment and knowledge. An impractical and uneconomic expenditure of time would be required in attempting to furnish unimpeachable verification in all instances, particularly as to engineering and market-related information. It is suggested that the client consider independent verification as a prerequisite to any transaction involving, sale, lease or other significant commitment of funds or subject property.

4. This appraisal has been prepared for the exclusive benefit of the client. It may not be used or relied upon by any other party. Any party who uses or relies upon any information in this report, without the preparer's written consent, does so at his own risk. Possession of this report, or a copy thereof, does not carry with it the right of publication, nor may it be used for any purpose by any but the applicant without the previous written consent of the appraiser or the applicant, and then only with proper qualification.

5. The contract for appraisal, consultation or analytical service is fulfilled and the total fee payable upon completion of the report. The appraiser or those assisting in preparation of the report will not be asked or required to give testimony in court or hearing because of having made the appraisal, in full or in part, nor engage in post appraisal consultation with client or third parties except under separate and special arrangement and at additional fee. If testimony or deposition is required because of any subpoena, the client shall be responsible for any additional time, fees and charges regardless of issuing party.

6. Subsurface rights (minerals and oils) were not considered in making this appraisal.

7. The appraisal is based on there being no hidden, unapparent, or apparent conditions of the property site, subsoil or structures, nor toxic materials which would render it more or less valuable. No responsibility is assumed for any such conditions, nor for any expertise or engineering required to discover them.

8. The comparable sales data relied upon in this appraisal is believed to be from reliable sources; however, it was not possible to inspect the comparables completely, and it was necessary to rely on information furnished by others as to said data; therefore, the value conclusions are subject to the correctness and verification of said data.

9. The appraiser assumes no responsibility for any costs or consequences arising from the need or lack of need for flood hazard insurance. An Agent for the Federal Flood Insurance Program should be contacted to determine the actual need for Flood Hazard Insurance.

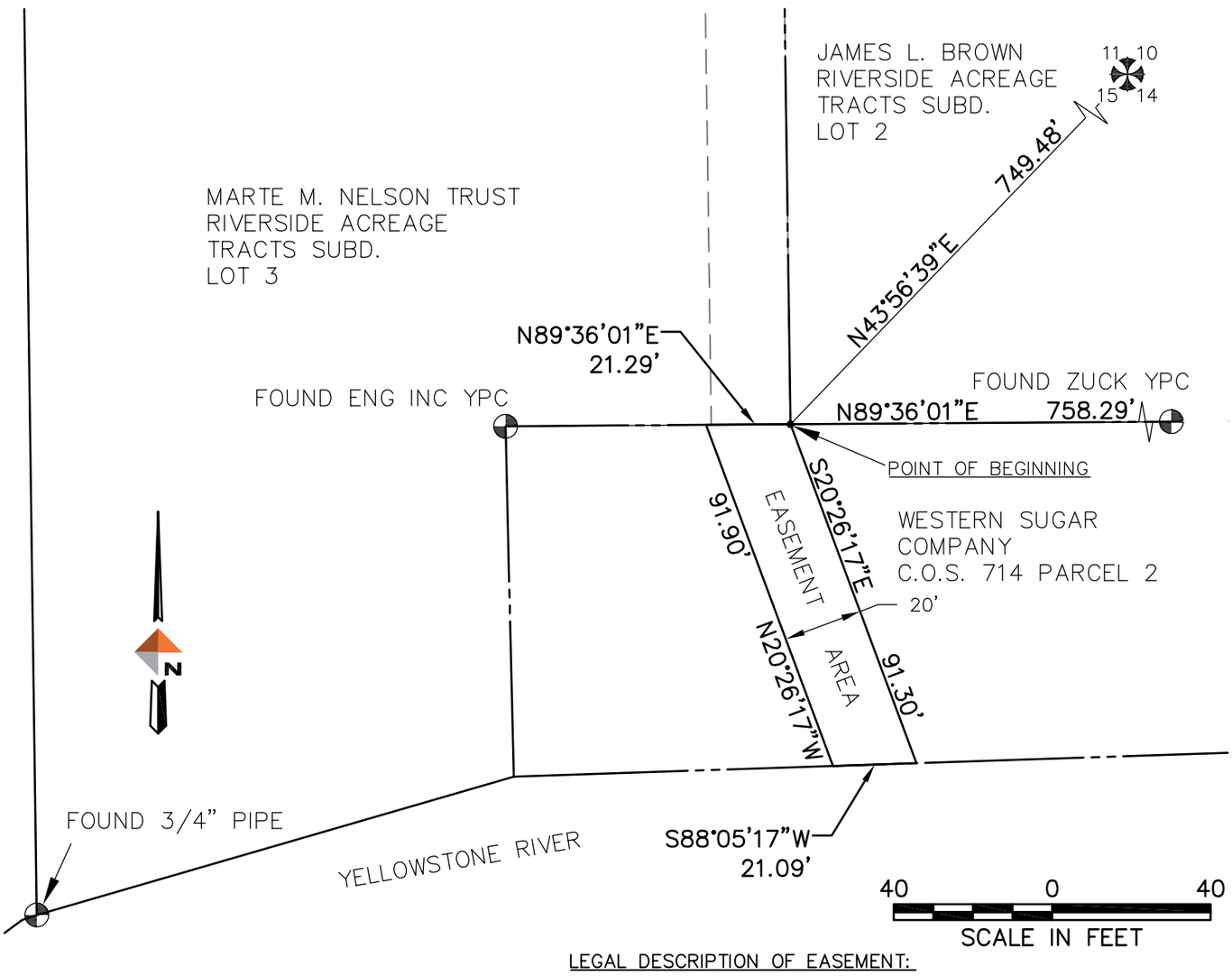
10. Neither all nor any part of the contents of this report shall be conveyed to any person or entity other than the appraiser's or firm's client, through advertising, solicitation materials, public relations, news, sales, or other media without the written consent and approval of the authors, particularly as to valuation conclusions, the identity of the appraiser or firm with which the appraiser is connected, or any reference to the Appraisal Institute. Further, the appraiser or firm assumes no obligation, liability, or accountability to any third party. If this report is placed in the hands of anyone but the client, the client shall make such party aware of all the assumptions and limiting conditions of the assignment.

11. The appraisal is based on the premise that there is full compliance with all applicable federal, state and local environmental regulations and laws unless otherwise stated in this report; further that all applicable zoning, building and use regulations and restrictions of all types have been complied with unless otherwise stated in the report. Furthermore, it is assumed that all required licenses, consents, permits, or other legislative or administrative authority, local, state, federal and/or private entity or organization have been or can be obtained or renewed for any use considered in the value estimate.

17. The appraiser reserves the right to re-evaluate statements, analysis, conclusions or any value estimate in the appraisal if facts become known that are pertinent to the appraisal process and which were unknown when the report was finished.

18. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The appraiser assumes no responsibility for any costs incurred to discover or correct any deficiencies of any type present in the property; physically, financially, economically or legally.

ACCEPTANCE OF, AND/OR USE OF THIS APPRAISAL REPORT BY THE CLIENT OR ANY THIRD PARTY CONSTITUTES ACCEPTANCE OF THE ABOVE CONDITIONS.



LEGAL DESCRIPTION OF EASEMENT:

A 20-FOOT STRIP EASEMENT BEING LOCATED IN PARCEL 2 OF CERTIFICATE OF SURVEY 714 IN THE NE 1/4 OF SECTION 15, T. 1S. R. 26 E., P.M.M. YELLOWSTONE COUNTY, MONTANA, THE PERIMETER OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF RIVERSIDE ACREAGE TRACTS SUBDIVISION LOT 2; FROM WHICH THE NORTHEAST CORNER OF SECTION 15 BEARS N43°56'39"E 749.48 FT.; THENCE S20°26'17"E 91.30 FT., MORE OR LESS, TO THE SOUTH LINE OF SAID PARCEL 2 OF CERTIFICATE OF 714, THIS LINE BEING COMMON TO THE RIPARIAN BOUNDARY OF THE YELLOWSTONE RIVER; THENCE S88°05'17"W 21.09 FT. ALONG THE SOUTH LINE OF SAID PARCEL 2 AND THE RIPARIAN BOUNDARY OF THE YELLOWSTONE RIVER; THENCE N20°26'17"W 91.90 FT., MORE OR LESS TO THE NORTH LINE OF SAID PARCEL 2; THENCE N89°36'01"E 21.29 FT. ALONG THE NORTH LINE OF SAID PARCEL 2 TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINS AN AREA OF 1832 SQ. FT., MORE OR LESS.

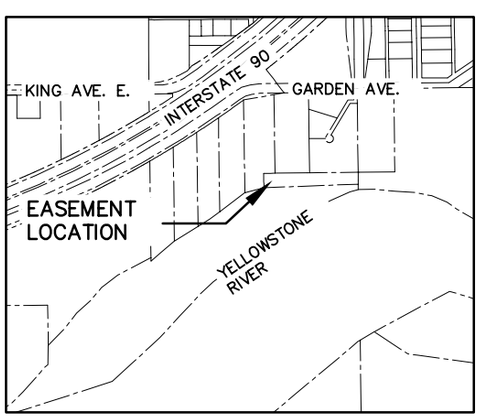
BASIS OF BEARINGS:

BEARINGS ARE MONTANA STATE PLANE NAD83-2011. DISTANCES SHOWN HEREON ARE GROUND DISTANCES BASED ON APPLYING A COMBINED SCALE FACTOR OF 0.99947271. AREAS SHOWN HEREON RELY ON THE GROUND DISTANCES.

SURVEYOR'S NOTE:

CERTIFICATE OF SURVEY NO. 714 PARCEL 2 AND RIVERSIDE ACREAGE TRACTS SUBDIVISION LOTS WEST OF PARCEL 2 ARE DESCRIBED WITH THEIR SOUTHERLY BOUNDARIES BEING THE BANK OF THE YELLOWSTONE RIVER. THIS SURVEY ASSUMES THE INTENT OF THOSE PLATS WAS TO MAKE THESE LOTS RIPARIAN. LOT LINES SHOWN HEREON REFLECT RECORD PLATTED LOCATIONS AND DO NOT DEFINE THE AMBULATORY RIPARIAN BOUNDARY.

VICINITY MAP - NOT TO SCALE



DOWL
WWW.DOWL.COM

CITY-COUNTY DRAIN
WESTERN SUGAR COMPANY EASEMENT

LOCATED IN NE1/4 SEC. 15, T. 1S. R 26 E., P.M.M.
YELLOWSTONE COUNTY, MT

PROJECT	4036.21707.01
DATE	11/29/2018

EXHIBIT A

Consent **1. H.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: W.O. 18-30 City County Drain Nelson Easement

PRESENTED BY: David Mumford, Public Works Director

Department: Public Works

Presentation: No

PROBLEM/ISSUE STATEMENT

The stormwater pipeline for the W.O. 18-30 City-County Drain Mitigation Project will cross through Marte Nelson's property. An easement between the City of Billings and Marte Nelson Trust is needed to allow for the construction and maintenance of the stormwater pipeline. An appraisal was completed for the parcel and the property owner was offered the appraised value plus 5% in exchange for an easement. The appraisal and an exhibit showing the easement are attached to this memo.

ALTERNATIVES ANALYZED

City Council may:

- Approve the easement, or;
- Disapprove the easement. If the easement is not approved, the drain cannot be constructed and stormwater from the city will not drain to the river during much of the year.

FINANCIAL IMPACT

An appraisal of the parcel was completed and the value of the easement was determined to be $15,950. City code authorizes the City to pay 5% above appraisal which would be $16,747.50.

RECOMMENDATION

Staff recommends Council approve the easement for the Marte Nelson Trust property in the amount of $16,747.50.

APPROVED BY CITY ADMINISTRATOR

Attachments

Easement Exhibit
Nelson Appraisal

LEGAL DESCRIPTION OF EASEMENT:

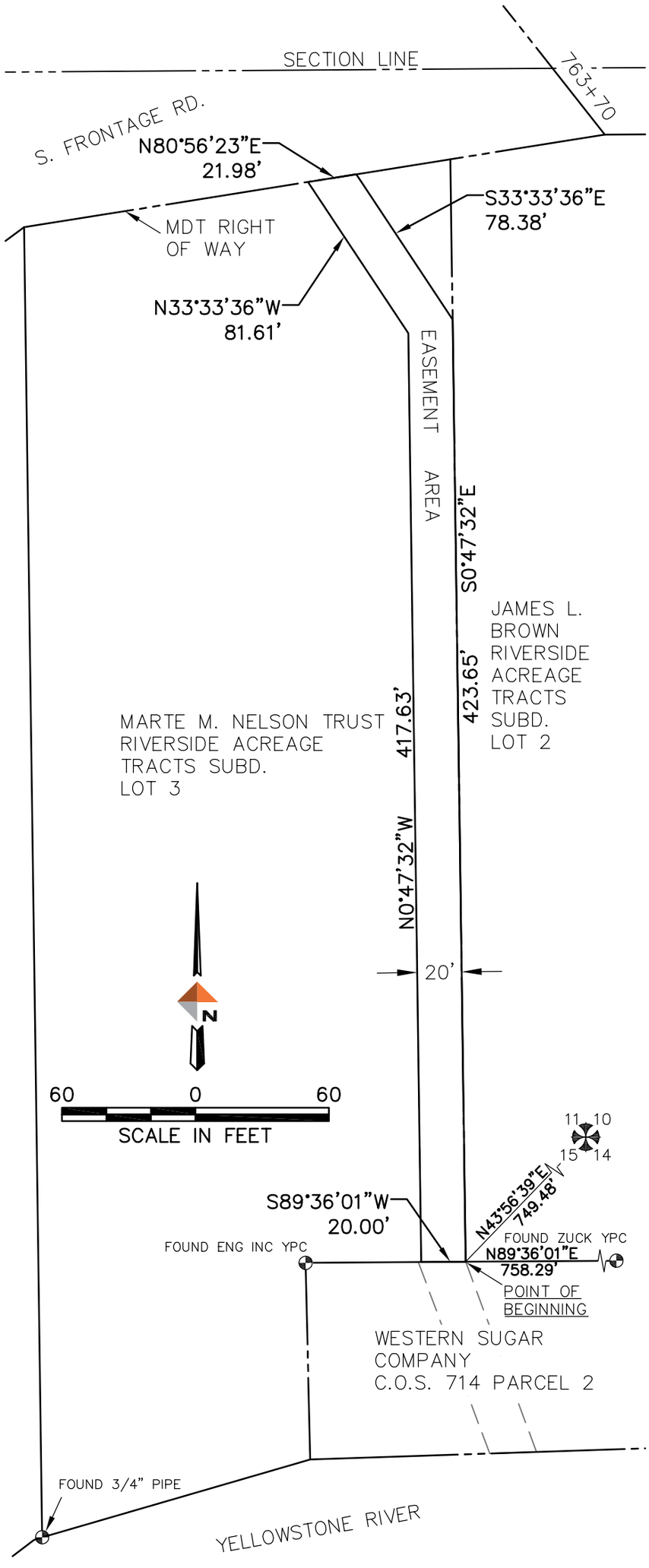
A 20-FOOT STRIP EASEMENT BEING LOCATED IN LOT 3 OF RIVERSIDE ACREAGE TRACTS SUBDIVISION IN THE NE 1/4 OF SECTION 15, T. 1S. R. 26 E., P.M.M. YELLOWSTONE COUNTY, MONTANA, THE PERIMETER OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF RIVERSIDE ACREAGE TRACTS SUBDIVISION LOT 2, FROM WHICH THE NORTHEAST CORNER OF SECTION 15 BEARS N43°56'39"E 749.48 FT.; THENCE S89°36'01"W 20.00 FT. ALONG THE NORTH LINE OF PARCEL 2 OF CERTIFICATE OF SURVEY 714; THENCE N0°47'32"W 417.63 FT.; THENCE N33°33'36"W 81.61 FT. TO THE SOUTHEASTERLY HIGHWAY RIGHT OF WAY; THENCE N80°56'23"E 21.98 FT. ALONG THE HIGHWAY RIGHT OF WAY; THENCE S33°33'36"E 78.38 FT. TO THE WEST LINE OF LOT 2 OF RIVERSIDE ACREAGE TRACTS; THENCE ALONG THE WEST LINE OF SAID LOT 2 S0°47'32"E 423.65 FT. TO THE POINT OF BEGINNING.

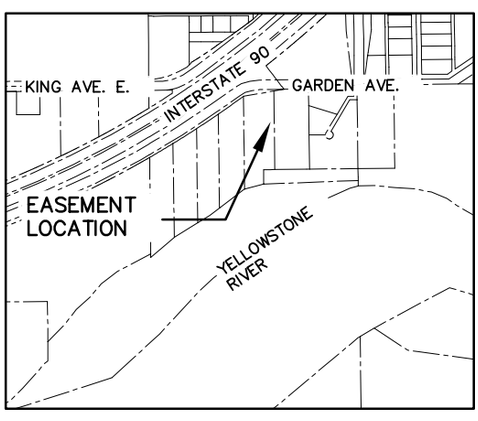
SAID EASEMENT CONTAINS AN AREA OF 10,014 SQ. FT. OR 0.230 ACRES, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE MONTANA STATE PLANE NAD83-2011. DISTANCES SHOWN HEREON ARE GROUND DISTANCES BASED ON APPLYING A COMBINED SCALE FACTOR OF 0.99947271. AREAS SHOWN HEREON RELY ON THE GROUND DISTANCES.



VICINITY MAP - NOT TO SCALE



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CITY-COUNTY DRAIN
MARTE M. NELSON TRUST EASEMENT

LOCATED IN NE1/4 SEC. 15, T. 1S. R 26 E., P.M.M.
YELLOWSTONE COUNTY, MT

PROJECT	4036.21707.01
DATE	11/30/2018

EXHIBIT A

Appraisal Report of:

Lot 3, Riverside Acreage Tracts Subdivision
The Marte Nelson Property
Billings, Yellowstone County, Montana

Date of "As Is" Value: November 18, 2018
Date of Report: November 19, 2018

For:

The City of Billings, Montana
Attn: Debi Meling, P.E.
City Engineer – Public Works Department
2224 Montana Avenue
Billings, Montana 59101

By:

Thomas Appraisal Services, Inc.
David C. Thomas, MAI
175 North 27th Street, Suite 1220
Billings, Montana 59101
406-969-1504

David C. Thomas, MAI
Commercial Real Estate

THOMAS APPRAISAL SERVICES, INC.

Barbara D. Thomas
Residential Real Estate

November 19, 2018

The City of Billings, Montana
Attn: Debi Meling, P.E.
City Engineer – Public Works Department
2224 Montana Avenue
Billings, Montana 59101

RE: Appraisal of Lot 3, Riverside Acreage Tracts Subdivision, in Yellowstone County, Montana (Marte Nelson Property).

Dear Ms. Meling:

Pursuant to your request, I have prepared an appraisal of the above-described property. The purpose of this appraisal is to estimate the market value of the proposed easement to be acquired by the City of Billings on Lot 3. I have personally inspected the property valued in this report. I certify that I have no personal interest, present or contemplated, in the subject property, and that this appraisal represents my opinion of the market value of the subject property.

As a result of my investigation, the final estimated market value of the proposed strip easement, as of the date of last inspection, November 18, 2018, is: **$15,950.**

This letter must remain attached to the report, which contains 29 pages plus related exhibits, in order for the value opinion set forth to be considered valid. Further, this letter of transmittal precedes the appraisal report further describing the property and containing the reasoning and most pertinent data leading to the final value estimate. Your attention is directed to the Assumptions and Limiting Conditions and Certification, which are considered usual for this type of assignment and have been included within the text of this report.

Sincerely,

THOMAS APPRAISAL SERVICES, INC.

David C. Thomas, MAI

By: David C. Thomas, MAI
Montana Certified General Appraiser #416

Enclosure: Appraisal Report

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ADDENDA

Location Map
Photographs of Subject Property
Plat Map of Riverside Acreage Tracts Subdivision
Flood Map of General Area
Conceptual Pipeline Plan & Profile Map
Yellowstone County Orion Detail
Land Sales Map
Land Sales Comparables
Copy of State License

Summary of Appraisal

Interest Appraised:	Fee Simple Estate
Location:	The subject property is located along the south side of Riverside Drive at that point where Riverside Drive transitions into Garden Avenue, in Yellowstone County, Montana.
Physical Address:	Vacant Land – Not Applicable
Legal Description:	Lot 3, Riverside Acreage Tracts Subdivision, Less Highway, Yellowstone County, Montana
Tax ID Number:	A13327
Description of Site:	The site has a total area of 2.19 acres and is located entirely within the 100-year floodplain. It has the HC – Highway Commercial zoning classification. There is a city sewer main located in Riverside Drive and a city water main is located near the northeast corner is Garden Avenue. The site is irregular in shape and has about 193' of frontage along Riverside Drive.
Highest and Best Use:	To remain in its "as is" condition and be developed with a use that does not require water (potable or waste). There are simply too many other vacant, buildable sites on the market to justify the costs of annexation, extension of city services, and fill.
Description of Easement:	The City of Billings is wanting to acquire a 20' wide strip easement to be used as part of their stormwater drainage system. The majority of the easement is to parallel the subject's east property line. I have concluded that the easement, as proposed, will not cause a diminution in value to the subject property.

Proposed Easement Area:	0.2333 acres = 10,163 sq. ft.
Market Value of Entire Site:	$157,000 = $1.65 psf
Value of Easement Area:	**$15,950**
Date of Value:	November 18, 2018
Date of Report:	November 19, 2018

CLIENT: City of Billings, Montana
Attn: Debi Meling, PE
City Engineer – Public Works Department
2224 Montana Avenue
Billings, Montana 59101

APPRAISER: David C. Thomas, MAI
Thomas Appraisal Services, Inc.
175 North 27th Street, Suite 1220
Billings, Montana 59101
(406) 969-1504

SUBJECT: Appraisal of Lot 3, Riverside Acreage Tracts Subdivision, in Yellowstone County, Montana (Marte Nelson Property).

INTRODUCTION:

This is an Appraisal Report that is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice. This report is in a format similar to what formally was referred to as a summary report. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraisers' opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraisers' file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. The appraiser is not responsible for unauthorized use of this report.

PURPOSE OF THE APPRAISAL:

The purpose of this appraisal is to provide the appraisers' best estimate of the market value of the subject real property as of the effective date. *Market value* is defined by the federal financial institutions regulatory agencies as follows:

> *Market value* means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
>
> (1) buyer and seller are typically motivated;
> (2) both parties are well informed or well advised, and acting in what they consider their own best interests;
> (3) a reasonable time is allowed for exposure in the open market;
> (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
> (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Source: Office of the Comptroller of the Currency under 12 CFR, Part 34, Subpart C-Appraisals, 34.42 Definitions [f].)

INTENDED USE: The appraisal shall be used by the Client in supporting the value of the subject property for internal decision making purposes.

INTENDED USERS: This appraisal report is prepared for the sole and exclusive use of the appraiser's client: The City of Billings, Montana. No third parties are authorized to rely upon this report without the express written consent of the appraiser.

INTEREST VALUED: The fee simple estate in the above described real estate.

DATE OF INSPECTION: November 18, 2018

EFFECTIVE DATE OF "AS IS" VALUE: November 18, 2018

DATE OF REPORT: November 19, 2018

EXTRAORDINARY ASSUMPTION:

The value of the acquisition set forth in this analysis is based on the extraordinary assumption that the final alignment of the proposed easement is the same as that depicted on the *Conceptual Pipeline Plan & Profile* exhibit located in the addenda. If the final alignment is different than shown on the exhibit, I reserve the right to change this appraisal accordingly.

HYPOTHETICAL CONDITIONS: None

APPRAISAL DEVELOPMENT AND REPORTING PROCESS

The purpose of this appraisal assignment is to assist the City of Billings in acquiring an easement across Lot 3 of Riverside Acreage Tracts Subdivision. This easement shall be used to install an underground pipe approximately 48" in diameter and approximately 10' deep that will be used as part of the City's stormwater drainage system. This appraisal will estimate the market value of Lot 3, which will be used to negotiate the acquisition of this easement to construct this drain.

I have determined that there is no diminution in value to Lot 3 as a result of this easement, therefore, this is not a "before and after" valuation assignment. This appraisal is being conducted to USPAP standards only, as per agreement with the City of Billings.

With that said, the first part of this report consists of describing Lot 3, the immediate neighborhood, and the highest and best of Lot 3. The second part consists of the valuation of Lot 3 and the resulting value of the easement to be acquired.

In developing this appraisal I inspected the subject site on two different occasions: October 16, 2018 and November 18, 2018. The date of valuation is the date of the second site inspection: November 18, 2018. I interviewed Debi Meling with the City of Billings, Public Works Department and Gregory Gabel, P.E., CFM with DOWL. I also interviewed several real estate Brokers in Billings who are actively involved with buying and selling vacant land throughout the city. Their input is always valuable in estimating the value of vacant land.

The only approach to value developed in this report is the Sales Comparison Approach. The Cost Approach and the Income Approach are not applicable in the valuation of vacant land. The omission of these two approaches does not weaken the overall reliability of the final estimate of value.

GENERAL AREA ANALYSIS

The City of Billings, county seat of Yellowstone County, is located in the south central portion of Montana. More specifically, it is situated midway between Seattle, Washington and Minneapolis, Minnesota and approximately 550 miles northwest of Denver, Colorado. Billings is the largest city in Montana with a 2015 population estimate of 110,263 persons. This represents an increase of 8.2% over the 2010 census count of 101,876 persons. U.S. Census figures indicated that the 2015 population of Yellowstone County was 157,048, which represents an increase of 9.9% over the 2010 census count of 142,348 persons.

The City's economy is generally characterized as diverse. The Billings trade area includes 25 Montana counties and eight Wyoming counties and is considered one of the largest geographical trade areas in the nation. As such, the City serves as a major wholesale and retail trade center. Agriculture has also been a traditionally strong part of the Billings economy. Billings has the second largest livestock auction market in the nation and has always served as an important center for the growing and selling of such crops as wheat, barley, sugar beets, corn and oats.

The Billings medical community consists of two major hospitals, several group practices, surgical groups, the Northern Rockies Regional Cancer Treatment Center and the South Central Montana Regional Mental Health Center. These facilities contribute to making Billings the largest major medical center between Spokane and Minneapolis and north of Denver. Tourism and recreation also play an important role in Montana's economy. Billings' proximity to Yellowstone National Park, numerous ski resorts, and excellent hunting, fishing, camping and hiking opportunities make it a likely stop over point for the vacationer in this area.

In summary, the City of Billings is a viable metropolitan area with a diverse economy and a history of healthy, sustained growth. The growing viability of the community as a retail and wholesale trade center, the continued growth in the local medical community, and ever increasing levels of tourism all contributed to predictions by the University of Montana's Bureau of Business and Economic Research that Billings and Yellowstone County will likely be among the leaders in the state in population and economic growth over the next decade.

NEIGHBORHOOD ANALYSIS

The subject is located along the south side of Garden Avenue, about 480 feet west of Sugar Avenue, in Yellowstone County. This location is at the south end of the Billings city limits. For appraisal purposes a neighborhood is defined in terms of common characteristics, trends and groupings of complementary uses. The subject neighborhood is considered to be those properties bounded by Interstate 90 to the north, the Yellowstone River to the south, South Billings Boulevard to the west, and South 27th Street to the east. This is a long narrow strip that parallels Interstate 90 between these two interstate interchanges.

The neighborhood is a unique mixture of residential, commercial, and public uses. The westernmost one-quarter of this distance is developed primarily with light industrial properties, including: IState Truck Center, Auto Auction of Montana, Old Dominion Freight Line, and Intermountain Distributing. The next one-quarter is vacant and undeveloped, of which the subject is a part. The eastern one-half of the neighborhood consists of older residential housing, two RV campgrounds (KOA and Yellowstone River Campground), several greenhouse/nurseries, and several commercial properties near the South 27th Street interchange.

The one drawback to the area is the fact that it is mostly located in an identified flood hazard zone. Given the proximity of the Yellowstone River, most of the eastern half of the neighborhood is located in the floodplain. This makes development with well and septic systems difficult and has been a hindrance to development. Until city water and sewer lines are extended to the area, development will be slow in coming to the vacant land south of the interstate.

SITE ANALYSIS

The following information is based on my physical inspection of the subject property and data taken from public records.

Location: The subject is located along the south side of Riverside Drive, at that point where Riverside Drive transitions into Garden Avenue. The northeast corner of Lot 3 is located about 540 feet west of where Sugar Avenue intersects Garden Avenue. The subject is located outside the city limits of Billings in Yellowstone County.

Address: Vacant Land – Not Applicable

Tax ID #: A13327

Legal Desc: Lot 3, Riverside Acreage Tracts Subdivision, Less Highway, Yellowstone County, Montana.

Size: 2.19 acres = 95,396 sf

Shape: The subject is irregular in shape. Please see the plat in the addenda that shows the shape and location of this parcel.

Frontages: 193'± along Riverside Drive

Improvmnts: None – this site is unimproved.

Easements: Williston Basin Interstate Pipeline Company has a pipeline easement that crosses the subject in an east to west direction toward the south end of the

site. More specifically, the pipeline easement is immediately north of the berm that runs along the south boundary. This is a perpetual easement that transfers with the land. The pipeline is at least 42 inches deep and the width of the easement is 25 feet. I was unable to find a recorded survey showing the location of the line, however, the Conceptual Pipeline Plan & Profile exhibit for the subject easement shows the location of the Williston Basin easement. The impacts of this easement are discussed in Highest and Best Use.

The only other apparent easements are typical utility easements that do not have an adverse impact on value.

Zoning: HC – Highway Commercial

The HC zone is intended to provide areas for commercial and service enterprises which are intended primarily to serve the needs of the tourist, traveler, recreationist or the general traveling public. Areas designated as Highway Commercial should be located in the vicinity of, and accessible from interstate interchanges, intersections on limited access highways, or adjacent to primary or secondary highway. The manner in which the services and commercial activities are offered should be carefully planned in order to minimize the hazard to the safety of the surrounding community and those who use such facilities.

Utilities: There is a 48" City of Billings sewer main that runs along Riverside Drive adjacent to the subject. There is a 12" water main located in Riverside Drive at/near the subject's northeast property line. This main is located in Garden Avenue and crosses Interstate 90 at this location. Other utilities including electricity, natural gas, and telephone are readily available to the parcel.

Access: There is a developed approach off of Riverside Drive/Garden Avenue at the northeast corner of the site. Riverside Drive is a two lane, asphalt paved county road. It is very lightly traveled. The closest traffic count site is east of the subject where Sugar Avenue dead ends into Garden Avenue. The count is along Garden Avenue, immediately west of Sugar. As per the 2017 traffic count data, there were 2,140 vehicles per day at this location. The amount of traffic past the subject is assumed to be lower than this number.

Flood Hazard: The subject is located entirely in the 100-year floodplain. A copy of the floodplain map, as per Yellowstone County, is located in the addenda.

Topography: The majority of this lot is flat and the vegetative cover is improved pasture grasses. The exception is the southeast corner of the site that has a small amount of mature deciduous trees and brush. Given the proximity of the Yellowstone River, which is less than 50 feet south of the south boundary line, riparian habitat is located along this section of the property. The most notable feature at the south end of the site is a grassed over berm that is about 5 to 6 feet in height. This berm was undoubtedly made years ago to prevent flooding from the Yellowstone River. Other than the vegetation and berm at the south end of the site, there are no distinguishing topographical features on this property.

Hazardous or Toxic Materials:

A visual inspection of the site did not reveal any unusual soil conditions or hazardous waste material that may be present on or under the sites. A Phase 1 Environmental Assessment was not provided; thus, I cannot comment on actual soil conditions or the existence of hazardous wastes, if any, on/under the site. I am not an expert in detecting hazardous materials that may be present on/under the site, which materials may affect the value of the property.

The value estimate is predicated upon the assumption that there is no such material on the property. Any such environmental risk discovered at a later date may require a revised estimate of value that may or may not be simply a reduction of the value by the estimated cost to cure the environmental condition. Properties known to have environmental risk may also carry a stigma in the marketplace that may or may not affect the value. If future soil tests should reveal the existence of any unusual soil conditions or hazardous wastes, I reserve the right to review and modify this appraisal accordingly.

PROPERTY OWNERSHIP

The subject is under the ownership of Marte M. Nelson and Steven D. Nelson, as Trustees of the Marte M. Nelson Trust. The Marte Nelson Trust acquired ownership of the subject from Steven D. Nelson and Marte M. Nelson, as recorded by Quitclaim Deed #3463624 on April 30, 2008. The Nelson's acquired ownership of the subject from Gayle A. Stewart, etal in July, 2007. The purchase price associated with this transaction is unknown.

To the best of my knowledge, the subject is not listed for sale, nor is it under contract for sale, as of the date of valuation.

HIGHEST AND BEST USE

In estimating the site's highest and best use, legal controls, such as zoning, must be considered, along with investor attitudes and the financial feasibility of the alternative uses. Major types of real estate uses, consisting of agricultural, residential, recreational, industrial, commercial and public use, were considered. It is obvious that several of these uses can be immediately eliminated due to zoning restrictions or unsuitability of the site for such a use.

"As Vacant":

The subject is located in Yellowstone County, immediately south of Interstate 90. It has the HC – Highway Commercial zoning classification, which allows both commercial and residential development. The site adjacent to the east is developed with an older single family residence and is zoned Residential 15000 while the land adjacent to the west is vacant and also zoned HC. From a zoning standpoint, very few uses are excluded from development so this is not a factor in determining highest and best use.

The two factors that have an impact on value, and largely determine highest and best use, are: proximity to city services and the floodplain. The subject is located outside the city limits, therefore, any development would require a well and septic system/drainfield. Because the subject is located in the floodplain, however, wells and septic systems are not allowed. Therefore, any development of the site requiring water (potable and waste) will need to be via municipal water and sewer services. In other words, the subject will need to be annexed, connected to city services, and the base elevation of the building site/sites raised to a level two feet above the flood plain.

With that said, development of this site with a building requiring water will be expensive and time consuming. About the only use that would not require water is self storage,

however, this is not considered an ideal site for self storage. This property type (self stoage) is most successful when it is surrounded by rooftops – either residential and/or commercial. The subject does not fit this description. Also, there is a 124 unit self storage facility located directly across Interstate 90 from the subject. This facility was constructed in 2013 and does not have any buildings requiring water or sewer. This is exactly the type of property that could be developed on the subject without annexation and extension of services, however, the base elevation of the buildings would still need to be 2' above the base flood elevation.

A final element that plays into highest and best use is supply and demand. There is currently an adequate supply of vacant lots available for sale that have similar locational attributes as the subject: frontage along a frontage road with good exposure from Interstate 90. Lot 3 of Riverfront Business Park, located about 3/4th mile west of the subject along the south side of Riverside Drive, has been for sale for a number of years. This lot is just over 8 acres in size, has all city services to the lot line, and is priced at $4.00 psf. The owner, Rick Dorn, says there is periodic interest in the site, however, at 8 acres the pool of buyers for a site this large is limited.

There are three lots for sale at the southwest quadrant of the Lockwood/I90 interchange. They are 2.85 acres, 3.25 acres, and 5.30 acres in size. All three are zoned Highway Commercial and city services have been extended to each lot. The asking price has been lowered over the years and is currently at $2.95 psf. These lots have been for sale for about three years. Other lots include those in the Cabela's subdivision at the northeast quadrant of the South Billings Boulevard/I90 interchange, and a handful of lots south of I90 between Mullowney Lane and Zoo Drive. The bottom line is that there is no shortage of Interstate 90 "frontage" lots that are listed for sale. Some have city services and some do not.

In conclusion, the options for development are limited for the subject property in its "as is" condition. Any building that is constructed, whether it requires water service or not, will have to be elevated 24" above the base flood elevation. If the subject is not annexed, about the only logical use is self storage. If the subject is annexed, services are extended, and the elevation raised 24" above flood, it will join the pool of other vacant sites having similar attributes that are listed for sale.

Based on the above information, I have concluded that the highest and best use of the subject site is to remain in its "as is" condition and be developed with a use that does not require water (potable or waste). There are simply too many other vacant, buildable sites on the market to justify the costs of annexation, extension, and fill.

The Williston Basin pipeline easement at the south end of the site does not have an adverse impact on value. This easement does not preclude development of the site to its highest and best use.

VALUATION

Sales Comparison Approach

The value of a property tends to be set by the cost of acquiring an equally desirable substitute property. Therefore, in the Sales Comparison Approach market data obtained from sales of properties with a reasonable degree of similarity to the subject property are analyzed and adjusted to arrive at a value indication. The reliability and similarity of comparable sales data tends to determine the reliability and accuracy of this approach.

Four sales have been gathered that are considered relevant in the valuation of the subject property. One is adjacent to the subject and the other three are clustered near the Interstate 90/South 27th Street interchange.

These sales differ from the subject in various ways, i.e. location, time of sale, and physical characteristics. The dissimilarities are adjusted for by adding to the price of the comparable when it is inferior to the subject, and conversely, subtracting from the price of the comparable when it is superior to the subject. In practice it is very difficult to isolate each factor and accurately assess the amount of adjustment required. In most areas there is simply not sufficient data; thus, an appraiser must use subjective judgment in analysis.

The chart on the following page shows the pertinent facts for each transaction. A complete analysis of each sale, along with a map showing its location, is located in the addenda.

Land Sales Chart					
Element:	**Subject**	**Sale 1**	**Sale 2**	**Sale 3**	**Sale 4**
Date of Sale:	N/A	04-2018	06-2017	12-2015	04-2015
Location:	Riverside Dr. near Garden Avenue	Riverside Dr. near Garden Avenue	Kimble Drive, W. of Garden Ave.	S. 27th St., North of Interstate 90	Interstate 90 & S. 27th St.
Grantor:	N/A	Normajean Pippin	Dawna Geiger etal	GSA Billings, L.C.	Carol K. Linde etal.
Grantee:	N/A	James Brown	Mountain West Vet.	Nelson Family Enterprises, LLC	James & Tracy Johnson
H & B Use:	Commercial	Residential	Commercial	Commercial	Commercial
City/County	County	County	County	City	County
Utilities:	Well & Septic	Well & Septic	Well & Septic	All City	Well & Septic
Zoning:	HC	R15000	A1 - Ag. Open	CI	R15000
Flood Zone:	All	All	Partial	None	All
Sales Price:	N/A	$175,000	$237,580	$205,000	$390,000
Size/Sq. Ft.:	95,396	110,642	123,255	126,713	162,479
Price/SF:	**N/A**	**$1.58**	**$1.93**	**$1.62**	**$2.40**
Prop. Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing:	Cash to Seller	Cash to Seller	Cash to Seller	Cash to Seller	Cash to Seller
Cond. Sale:	Typical	Typical	Typical	Typical	Typical
Market Cond.	Current	Similar	Similar	Similar	Similar
Adjustment:	N/A	$0.00	$0.00	$0.00	$0.00
Adj. Price/SF:	**N/A**	**$1.58**	**$1.93**	**$1.62**	**$2.40**
Location:	Average	Inferior	Superior	Inferior	Superior
Size/SF:	95,396	Similar	Similar	Similar	Similar
Utilities:	Well & Septic	Similar	Similar	Superior	Similar
Zoning:	HC	Inferior	Inferior	Similar	Inferior
Flood Zone:	All	Similar	Superior	Superior	Similar
Overall Comparability	**N/A**	**Inferior**	**Superior**	**Similar**	**Superior**

Adjustments Made to Sales:

Transactional: No adjustments were necessary to any of the sales for transactional

characteristics: property rights conveyed, financing terms, conditions of sale, or market conditions. These four sales occurred between April, 2015 and April, 2018 and there is no evidence of either appreciation or depreciation among these four sales over this period of time. The value of properties having locational characteristics similar to the subject and these sales have remained static over the past five years.

Property: Property adjustments that have been analyzed for adjustment include location, size, utilities, zoning, and flood zone. Following is a discussion of each of these elements of comparison and the reasoning for the adjustments made to the sales.

Discussion of Sales – Overall Comparability:

Sale 1 is located adjacent to the east of the subject. This property is developed with an older single family residence and several outbuildings. It has the R15 zoning classification and the buyer purchased the property for continued use as a residence. Subsequent to purchase he remodeled the house. The entire property is located within the floodplain, however, the wells and septic system/drainfield are grandfathered. This property was on the market for 196 days before it went under contract. The listing brochure had the following statement: *Property is being sold for the value of the land and any other miscellaneous structures on the land. Will not go VA or FHA*. The contributory value of the improvements was estimated to be $75,000.

This property has no frontage and poor visibility from the interstate and is inferior to the subject in location. This properties residential zoning classification is also inferior to the subject's commercial zoning classification. It is similar in the other elements of comparison. This sale is inferior to the subject in overall comparability.

Sale 2 is located along the south side of Kimble Drive, about 240' west of Garden Avenue. This location is immediately south of the I90/South 27th Street interchange. This site has been developed with a large animal (equine) veterinary clinic. At the time of sale

the easternmost 32% of the site was outside the 100-year floodplain while the westernmost 68% was inside the floodplain. This parcel parallels the interstate and has excellent visibility from the interstate.

Given this properties proximity to the interchange, it has a superior location to the subject. This sale is also superior to the subject in flood zone as the eastern third is outside the flood zone, which is where the vet clinic was constructed. This sales ag zoning classification, however, is inferior to the subject's commercial zoning classification. It is similar in the other elements of comparison. This sale is superior to the subject in overall comparability.

Sale 3 is located along the west side of South 27th Street and immediately north of Interstate 90. This property has extensive frontage along South 27th Street, however, it does not have access from South 27th Street. It is this lack of direct access from South 27th Street that results in a value of $1.56 psf. Access is very roundabout as follows, from the site to South 27th Street: Nall Avenue via Kimble Drive via Sugar Avenue via State Avenue. After turning off of South 27th Street, this is a distance of about 3/4th mile. As a result, this property was only suitable to a handful of businesses. The site has been developed with a Frito Lays warehouse/distribution building. The selling Broker had the property listed for sale for over 2 years.

This is the only sale that was adjacent to city services and is superior to the subject in utilities. This sale is also outside the flood plain and superior in this element of comparison. This property has poor visibility from the interstate and access to the interchange is not direct, therefore, it is inferior to the subject in location. It is similar in the other elements of comparison. I have concluded that inferior location offsets superior utilities and flood plain and that this sale is similar to the subject in overall comparability.

Sale 4 is located at the southeast quadrant of Interstate 90 and South 27th Street. This site has been developed with Jim & Tracy's Alignment. At the time of sale this property was inside the floodplain and zoned R15000 by Yellowstone County. This property has an excellent location, which is the primary reason this particular business purchased this site - it has excellent visibility and accessibility from Interstate 90. Similar to the subject it is 100% located in the floodplain.

This property has a superior location to the subject but had an inferior zoning classification at the time of sale. It is similar in the other elements of comparison. I have concluded that location outweighs zoning in this instance and that this sale is superior to the subject in overall comparability.

Conclusion of Value:

Sales 2 and 4 are clearly superior to the subject in comparability. Sale 4 sets the high end of value and rightly so given its location at the interchange. Sale 2 is adjacent to the south of Sale 4 and while not as desirable a location, it is still superior to the subject. The subject should clearly command a value lower than $1.93 psf exhibited by Sale 2.

Sales 1 and 3 basically exhibit the same value per square foot at $1.58 and $1.62, respectively. I concluded that Sale 1 is inferior to the subject which suggests the subject should command a value higher than $1.58 psf, however, the overall reliability of this sale is somewhat weakened by the fact that the contributory value of improvements were subtracted from the overall sales price to arrive at land value. This is never as desirable as having a pure land sale. I have only included this sale given its proximity to the subject property. I concluded that Sale 3 is similar to the subject in comparability which suggests a value for the subject of between $1.60 to $1.65 psf.

Based on the above information I have estimated the market value of the subject property to be $1.65 per square foot. The overall value of Lot 3 is calculated as follows:

95,396 sf	x	$1.65 psf	=	$157,403
		Rounded to:		**$157,000**

Description of Easement to Be Acquired:

The proposed easement is to originate immediately west of the main approach to the site off of Riverside Drive and diagonal toward the east property line. Please see the *Conceptual Pipeline Plan and Profile* exhibit in the addenda to better visualize the alignment of the proposed easement. As per the exhibit, the easement will touch the east property line about 70 feet south of the north property line. From that point southward it parallels the property line. The width of the easement is to be 20 feet and all building types are prohibited from being placed within this area. It is my understanding that roads, parking lots, storage yards, etc. are not a prohibited use. The total area of the easement is 0.2333 acres, or 10,163 square feet.

Analysis "After" Acquisition

The City of Billings is desiring to acquire a 20 foot wide strip easement that is to run in a north to south direction along the majority of the eastern boundary line of Lot 3. The easement will prohibit the construction of any type of structure (commercial building, house, garage, shed, kennels, etc.) within the easement right-of-way. The question to be answered is this: does the proposed easement have a negative impact on the market value of the property?

The first step in answering this question is determining what the setback requirements are under the HC zoning classification. Almost all zoning classifications have setback requirements that establish how far from the property line a new building must be located. The following chart shows the front and side setbacks under HC zoning.

Front:	**20 feet**
Side:	0 feet
	15 feet – when contiguous with a residentially zoned property

Because the subject's east property line is contiguous with a residentially zoned tract, the setback is 15 feet along the east property line. The net impact of the easement, therefore, is 5 feet. The subject has a width of just over 193 feet. It would be almost impossible to prove that the additional 5 feet of setback as a result of the easement would cause a loss in value to this property. If the subject had a total area of say 30,000 sf, this might become an issue. With a total area of 2.19 acres, however, I have concluded that the additional 5 feet of setback along the east boundary due to the easement does not cause a loss in market value. The utility of the site "after" acquisition is the same as the utility of the site "before" acquisition.

Value of the Acquisition:

The final step in this analysis is the determination of the value of the acquisition. This is found by multiplying the area of the easement (the acquisition) by the market value of the land, which is estimated to be $1.65 per square foot. Because this is not a total taking of the land, only an easement, the landowner does not relinquish his entire bundle of rights. For this reason, I have determined that compensation is limited to 95% of the fee value. The value of the easement is calculated as follows:

Easement Area:		10,163 sf
Market Value of Land:	x	$ 1.65/sf
% of Rights Relinquished:	x	0.95
Value of Easement Acquired:		$15,931
Rounded to:		**$15,950**

Market Value "After" Acquisition:

The market value of the subject property after acquiring the easement is calculated as follows:

Market Value "Before" Acquisition:	$157,000
Less Value of the Acquisition:	(15,950)
Market Value "After" Acquisition:	**$141,050**

CORRELATION ANALYSIS
AND
FINAL VALUE ESTIMATE

The Sales Comparison Approach indicates the following value estimates for the subject property:

Value of Subject "Before" Acquisition:	$157,000
Value of Subject "After" Acquisition:	$141,050
Value of Acquisition:	**$ 15,950**

The four sales used in the valuation of the subject are considered to provide excellent support for the market value of the subject site. These sales are all located in the immediate area and have fairly similar locational attributes. The prices exhibited by these sales range from a low of $1.58 psf to a high of $2.40 psf. It would be very difficult to argue that market value should be anywhere other than within this range for the subject property. Sale 4 exhibited the high end of value at $2.40 psf. Excluding this sale, the range narrows substantially to $1.58 to $1.93. Given the subject's location within the floodplain and distance from the interchanges, I concluded that market value should be toward the lower end of this range. In the end, I consider the estimate of market value to be very well supported.

I have also determined that the proposed easement does not cause a diminution in value after acquisition, which greatly simplifies the remainder of the analysis. Because the easement essentially parallels the east boundary line of the site, the utility of the subject remains the same before and after acquisition.

Based on my analysis of the data and information presented in this report, the final estimated market value of the proposed easement, as of the date of last inspection, November 18, 2018, is:

Fifteen Thousand Nine Hundred Fifty Dollars

($15,950)

CERTIFICATION

I hereby certify to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- the engagement in this assignment was not contingent upon developing or reporting predetermined results.
- the compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- the analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have made a personal inspection of the property that is the subject of this report.
- no one provided significant professional assistance to the persons signing this report.

I further certify that the final estimated market values of the proposed easement, as of the date of last inspection, November 18, 2018, is: **$15,950.** This appraisal was made in accordance with the Codes of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute. As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute. The use of this report is subject to the requirements of The Appraisal Institute relating to review by their duly authorized representatives.

THOMAS APPRAISAL SERVICES, INC.

David C. Thomas, MAI

By: David C. Thomas, MAI
Montana Certified General Appraiser #416

QUALIFICATIONS/RESUME FOR DAVID C. THOMAS

Designation & Professional Affiliations

Member (MAI) The Appraisal Institute
Montana Certified General Appraiser #416

Business Address

Thomas Appraisal Services, Inc.
175 North 27th Street, Suite 1220
Billings, MT 59101

Phone: 406-969-1504
Cell: 406-366-1159
E-Mail: dave@tas.net

Employment History

Independent Fee Appraiser... Thomas Appraisal Services, Inc.
Lewistown, MT... April 1993 to Present

Independent Contractor... Ferro Appraisal Services, Inc.
Great Falls, MT... April 1993 to June 2001

Independent Fee Appraiser... Pardue, Heide, Church, Smith and Waller of Brevard, Inc.
Titusville, Florida... September 1991 to February 1993

Education

Bachelor of Science, May 1989
Arizona State University, Tempe, Arizona
Double Major: Finance and Real Estate

Partial Listing of Clients

Basin State Bank of Lewistown
CB Richard Ellis/Metec Due Diligence
Continental National Bank, Harlowton
Farm Credit Services
Fergus County Federal Credit Union
ABN AMRO
First Interstate Bank
First National Bank of Lewistown
JP Realty Inc., Hialeah, Florida
Judith Basin County
Lewistown Airport Authority
Metropolitan Mortgage & Securities
Montana Department of Transportation
Mountain West Bank
State of Montana, Compensation Ins. Fund
Stockman Bank of Montana
US Dept of Agriculture, Rural Development
US Dept. of Agriculture, NRCS
Western Security Bank
Wells Fargo Bank
Wells Fargo Bank Public Finance
Numerous private investors, attorneys, accountants.

Continuing Education Courses

2018 – Forecasting Revenue	Appraisal Institute
2018 – Real Estate Finance, Value, & Investment Performance	Appraisal Institute
2017 – Marketability Studies – Basic & Advanced Applications	Appraisal Institute
2016 - 7-Hour National USPAP Update Course	Appraisal Institute
2014 - General Appraiser Market Analysis & H. & B. Use	Appraisal Institute
2014 - Online Cool Tools New Technology for R.E. Appraisers	Appraisal Institute
2014 - 7-Hour National USPAP Update Course	Appraisal Institute
2014 - 2014 Montana Economic Outlook Seminar	University of Montana
2013 - Business Practices & Ethics	Appraisal Institute
2012 - Appraising the Appraisal: Appraisal Review	Appraisal Institute
2012 – 7-Hour National USPAP Update Course	Appraisal Institute
2011 – Advanced Spreadsheet Modeling for Valuation Appl.	Appraisal Institute
2010 - DCF Model: Concepts, Issues, Applications	Appraisal Institute
2010 - Using Spreadsheet Programs in Appraisals	Appraisal Institute
2010 - Valuation for Financial Reporting	Appraisal Institute
2010 - Standards of Professional Practice, Part C	Appraisal Institute
2009 - Business Practices & Ethics	Appraisal Institute
2008 - Office Building Valuation - Cont. Perspective	Appraisal Institute
2008 - Standards of Professional Practice, Part C	Appraisal Institute
2007 - Analyzing Distressed Real Estate	Appraisal Institute
2007 - Feas., Mark. Val., Timing: Option Value	Appraisal Institute
2007 - Effective Appraisal Writing	Appraisal Institute
2007 - Standards of Professional Practice, Part C	Appraisal Institute
2006 - Subdivision Valuation	Appraisal Institute
2006 - Code of Professional Ethics	Appraisal Institute
2006 - Standards of Professional Practice, Part C	Appraisal Institute
2005 - Scope of Work, Exp. Your Services	Appraisal Institute
2004 - Evaluating Commercial Construction	Appraisal Institute
2004 - Standards of Professional Practice, Part C	Appraisal Institute
2003 - Separating Real & Personal Property from Intangible Business Assets	Appraisal Institute
2003 - Uniform Stan. for Fed. Land Acquisitions	Appraisal Institute
2002 - Partial Interest Valuation - Undivided	Appraisal Institute
2002 - Standards of Professional Practice, Part C	Appraisal Institute
2001 - Partial Interest Valuation - Divided	Appraisal Institute
2001 - Passed Comprehensive Examination	Appraisal Institute
2001 - The Comprehensive Appraisal Workshop	Ted Whitmer, MAI Attorney
2000 - Advanced Applications	Appraisal Institute
2000 - Case Studies/Highest and Best Use	Appraisal Institute
2000 - Litigation Skills for the Appraiser	Appraisal Institute
2000 - Standards of Prof. App. Practice, Part C	Appraisal Institute
1999 - Nonres. Demo. Report Writing Seminar	Appraisal Institute
1999 - Highest and Best Use and Market Analysis	Appraisal Institute
1999 - Advanced Income Capitalization	Appraisal Institute
1999 - Standards of Professional Practice, Part B	Appraisal Institute
1999 - Analysis of Small Mixed Use Properties	Appraisal Institute
1998 - Advanced Sales Comp. & Cost Approaches	Appraisal Institute
1998 - Small Hotel/Motel Evaluation	Appraisal Institute
1998 - Report Writing and Valuation Analysis	Appraisal Institute
1998 - Standards of Professional Practice, Part C	Appraisal Institute
1997 - Timberland Valuation: General	Appraisal Institute
1997 - Understanding Limited Appraisals	Appraisal Institute
1996 - Principles of Rural Appraisal (A-20)	Society Farm Mngrs & Rural Appr.
1995 - 30 Specialized Appraisal Issues	Appraisal Institute
1995 - Standards of Professional Practice, Part A	Appraisal Institute

ASSUMPTIONS AND LIMITING CONDITIONS

This Appraisal Report, the Letter of Transmittal and the Certification of Value are made expressly subject to the following assumptions and limiting conditions, and any special limiting conditions contained in the report which are incorporated herein by reference.

1. The legal description furnished is assumed to be correct. I assume no responsibility for matters legal in character nor do I render any opinion as to the Title, which is assumed to be good. All existing liens and encumbrances, if any, have been disregarded, and the property is appraised as though free and clear, under responsible ownership and competent management.

2. The sketch in this report is included to assist the reader in visualizing the property. I have made no survey of the property and assume no responsibility in connection with such matters.

3. No responsibility is assumed for accuracy of information furnished by work of others, the client, his designee or public records. I am not liable for such information, nor the work of possible subcontractors. The comparable data relied upon in this report has been confirmed with one or more parties familiar with the transaction or from affidavit or other source thought reasonable; all are considered appropriate for inclusion to the best of my factual judgment and knowledge. An impractical and uneconomic expenditure of time would be required in attempting to furnish unimpeachable verification in all instances, particularly as to engineering and market-related information. It is suggested that the client consider independent verification as a prerequisite to any transaction involving, sale, lease or other significant commitment of funds or subject property.

4. This appraisal has been prepared for the exclusive benefit of the client. It may not be used or relied upon by any other party. Any party who uses or relies upon any information in this report, without the preparer's written consent, does so at his own risk. Possession of this report, or a copy thereof, does not carry with it the right of publication, nor may it be used for any purpose by any but the applicant without the previous written consent of the appraiser or the applicant, and then only with proper qualification.

5. The contract for appraisal, consultation or analytical service is fulfilled and the total fee payable upon completion of the report. The appraiser or those assisting in preparation of the report will not be asked or required to give testimony in court or hearing because of having made the appraisal, in full or in part, nor engage in post appraisal consultation with client or third parties except under separate and special arrangement and at additional fee. If testimony or deposition is required because of any subpoena, the client shall be responsible for any additional time, fees and charges regardless of issuing party.

6. Subsurface rights (minerals and oils) were not considered in making this appraisal.

7. The appraisal is based on there being no hidden, unapparent, or apparent conditions of the property site, subsoil or structures, nor toxic materials which would render it more or less valuable. No responsibility is assumed for any such conditions, nor for any expertise or engineering required to discover them.

8. The comparable sales data relied upon in this appraisal is believed to be from reliable sources; however, it was not possible to inspect the comparables completely, and it was necessary to rely on information furnished by others as to said data; therefore, the value conclusions are subject to the correctness and verification of said data.

9. The appraiser assumes no responsibility for any costs or consequences arising from the need or lack of need for flood hazard insurance. An Agent for the Federal Flood Insurance Program should be contacted to determine the actual need for Flood Hazard Insurance.

10. Neither all nor any part of the contents of this report shall be conveyed to any person or entity other than the appraiser's or firm's client, through advertising, solicitation materials, public relations, news, sales, or other media without the written consent and approval of the authors, particularly as to valuation conclusions, the identity of the appraiser or firm with which the appraiser is connected, or any reference to the Appraisal Institute. Further, the appraiser or firm assumes no obligation, liability, or accountability to any third party. If this report is placed in the hands of anyone but the client, the client shall make such party aware of all the assumptions and limiting conditions of the assignment.

11. The appraisal is based on the premise that there is full compliance with all applicable federal, state and local environmental regulations and laws unless otherwise stated in this report; further that all applicable zoning, building and use regulations and restrictions of all types have been complied with unless otherwise stated in the report. Furthermore, it is assumed that all required licenses, consents, permits, or other legislative or administrative authority, local, state, federal and/or private entity or organization have been or can be obtained or renewed for any use considered in the value estimate.

17. The appraiser reserves the right to re-evaluate statements, analysis, conclusions or any value estimate in the appraisal if facts become known that are pertinent to the appraisal process and which were unknown when the report was finished.

18. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The appraiser assumes no responsibility for any costs incurred to discover or correct any deficiencies of any type present in the property; physically, financially, economically or legally.

ACCEPTANCE OF, AND/OR USE OF THIS APPRAISAL REPORT BY THE CLIENT OR ANY THIRD PARTY CONSTITUTES ACCEPTANCE OF THE ABOVE CONDITIONS.

Consent **1. I.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: Encroachment Permit Appeal for Alberta Bair Theater

PRESENTED BY: David Mumford, Public Works Director

Department: Public Works

Presentation: No

PROBLEM/ISSUE STATEMENT

The Alberta Bair Theater (ABT) submitted an encroachment permit to add a plaza/landscaping area on the north side of the theater along 3rd Ave. N. City staff denied the permit for several reasons which are detailed in the attached letter. ABT submitted a request for an appeal which was heard at the November 26, 2018 council meeting. Council directed staff to work with the ABT to review options to reduce impact to the right of way. The modified plan is included for the Council's consideration.

Generally, the changes that were made include moving the curb line in toward the building two additional feet from what was proposed and moving the landscaping and benches back to 18" behind the curb. In addition, the striping for lanes will begin to taper east of the intersection to create a very gentle skew in the travel lanes. These changes will help with snow removal by widening the lanes by a foot each and giving 18" behind curb for snow storage. Also, moving the curb and encroachments back will help to create wider lanes for the traveling public as well as reducing the skew in the road. There was additional discussion about modifying the landscape and seating concept to address concerns about maintenance. Staff and the ABT both agree that the modified design will work well if the encroachment is approved. The exhibits that are attached show a concept for the landscaped area but details may change during site plan review. If details change, the area granted for the encroachment will remain consistent.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the encroachment permit for the ABT, or;
- Disapprove the encroachment permit for the ABT. If the permit is not approved, the design for the site will need to conform to the available land.

FINANCIAL IMPACT

The administrative cost for the permit is covered by the permit fee. If the encroachment permit is approved, the annual cost is $1/sq. ft. for a total annual cost of $320. Because the City of Billings is the actual property owner, the fee would be assessed to the City.

RECOMMENDATION

Staff recommends that the City Council approve the encroachment permit.

APPROVED BY CITY ADMINISTRATOR

Attachments

Letter Denying Permit
ABT Appeal Letter
ABT Encroachment Permit Application
Street view #1
Street View #2
Site Plan

PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
2224 Montana Ave
Billings, MT 59101
Office (406) 657-8231
Fax (406) 237-6291

City of Billings

November 8, 2018

Mr. Michael Sanderson
Sanderson Stewart
1300 N. Transtech Way
Billings, MT 59102

Re: Alberta Bair Encroachment Permit

Dear Michael:

We received the encroachment permit application for the Alberta Bair on October 30, 2018. After review, city staff is denying the application for a couple of reasons. First, when the public right of way was vacated in April 2016, the City Council was presented with a plan for what the site would look like upon completion and this request utilizes right of way beyond that plan. City staff is hesitant to approve additional use of the right of way that was not part of the vacation discussion with City Council.

More generally, when we review encroachment permits, we weigh the request to use the public right of way for a private use against the public's need for the right of way. The encroachment that was requested in the application was for sidewalk/plaza improvements adjacent to the Alberta Bair Theater. The improvements would extend into one of the driving lanes thereby requiring the road to be "skewed" through the intersection and for approximately one block before moving back into its alignment. An alignment as requested is not in the best interests of the public as it makes for an unexpected driving situation. The skew of the road would also create maintenance challenges for striping, plowing, and sweeping. In addition, there would be a loss of several parking spaces for that block.

In short, city staff determined that the encroachment could not be justified from a technical standpoint when using the private use versus the public need basis.

The appeal process is lined out in city code and I've included it below.

Sec. 22-407. - Encroachment permit required.

(a) No encroachment on any public right-of-way or public property shall be allowed except by authority of an encroachment permit issued by the city administrator or his designee. Application for an encroachment permit shall be made on the forms and in accordance with the procedure prescribed by the city administrator. A fee for the permit application shall be charged to cover the administrative costs of

processing as prescribed by council resolution. If the issuance of the permit is approved, the city administrator or his designee shall issue the permit. If the permit is denied, the applicant shall be provided with a statement of the reasons therefore, which reasons shall be entered in writing on the application. The applicant shall be entitled to appeal the denial of the permit to the city council as provided in subsection (b) below.

(b) From the date of denial of the permit, the applicant shall have ten (10) days in which to submit a written notice appealing such denial to the city council. The notice of appeal shall be filed with the city clerk and shall state reasons supporting the grant of the encroachment permit, the applicant's correct mailing address and telephone number, shall be signed by the applicant and shall be accompanied by the processing fee as prescribed by council resolution. The appeal shall be placed on a city council agenda not more than twenty-one (21) days after receipt of notice. The applicant shall be notified in writing by certified mail, return receipt requested, of the date and time the matter will be considered on the agenda. In addition, notice of the hearing shall be published once in the official city legal newspaper prior to the hearing. The notice shall include the proposed encroachment encroaches, the extent of the encroachment and the duration. The applicant and all other interested persons may appear at the time and place and be heard either for or against.

(Code 1967, §§ 3.20.001, 3.20.050; Ord. No. 85-4671, § 3, 10-21-85)

You can consider this the statement of reasons which you need in order to appeal the decision. This letter will start the 10 day period for the city to receive the appeal. In anticipation of this denial, you did include a request for appeal of the decision so I delivered this letter along with the encroachment application to the City Clerk to start the appeal process. If you would like to discuss this further, you can call me at (406) 657-3097 or email me at melingd@ci.billings.mt.us. City staff will keep you updated on the status of the appeal and when it will be heard by the City Council.

Sincerely,

Debi Meling, P.E.

City Engineer

SANDERSON STEWART

October 30, 2018

Ms. Debi Meling, City Engineer
City of Billings Public Works
2224 Montana Ave.
Billings, MT 59101

Subject: Appeal to City Council for Approval of Encroachment Permit for Alberta Bair Theater

Dear Debi:

In anticipation of a denial of the Encroachment Permit application for the sidewalk and plaza expansion and other streetscape improvements adjacent to the Alberta Bair Theater, we would like to formally request that the application be submitted to the City Clerk so that we may appeal the final decision to the City Council.

The proposed improvements are driven by the pending expansion of the Alberta Bair Theater and are necessary to create an attractive and safe environment for the potentially high volume of pedestrians entering and exiting the Alberta Bair Theater during events. We respectfully request the opportunity to appeal the merits of the proposed improvements to the City Council.

Please let me know if you need any additional information.

Sincerely,

Michael P. Sanderson, PE, PTOE
President/CEO

MPS/bc
O:2018_Meling_Appeal_Ltr_103018_SC

PROCEDURE FOR ENCROACHMENT PERMIT APPLICATION

EFFECTIVE November 29, 1999

1. Application and Permit form with "special provision" can be obtained from the City Engineering Division.

2. Complete original form and one copy must be returned to the Engineering Division with the $50.00 application fee to cover administrative review costs. The original application will be retained by the City Engineering Division; the duplicate will be the applicant's file copy.

3. The application must be signed by the **Property Owner** of record.

4. At least two weeks review time by the Engineering Division should be allowed. It shall be the applicant's responsibility to coordinate with all appropriate utilities. The application fee of $50.00 and the annual fee (typically $1.00 per square foot of encroachment area is billed annually on the owner's property tax statement) must be completed on the Application and Permit form and the fee submitted to the City Engineer. If there is any question on the fee, please contact the Engineering Division at 657-8231.

5. If the Engineering Division recommends the approval of the application, the Permit Clerk will contact the applicant.

6. If the Engineering Division recommends denial of the application, the copy will be returned to the property owner, who may elect as an individual to submit the application to the City Clerk and the City Council for the appeal process.

7. If the City Council approves the Encroachment Permit, the City will forward an executed copy of the Permit to the Public Works Account Clerk for the annual assessment to be placed on the tax rolls.

8. The Public Works Account Clerk will forward the original to Engineering for filing, and will forward an executed copy of the Permit to the property owner.

CITY ENGINEERING DIVISION
2224 MONTANA AVE
BILLINGS, MT 59102

STRUCTURE ENCROACHMENT APPLICATION AND PERMIT

$50.00 / _____ _____
Application Annual Fee Tax Code Number

APPLICATION FOR PERMIT TO

Install streetscape improvements in Public R/W (3rd Avenue N.)
(Insert Nature of Permit)

1. Name of Applicant: Alberta Bair Theater (for City of Billings)
2. Address of Applicant: 2801 3rd Avenue N., Billings, MT 59101
3. Telephone number of applicant: (406) 256-8915
4. Legal Description: Subdivision: Original Town of Billings, Am.
   Lot(s): 1A Block: 45 Address: 2801 3rd Ave. N.
5. Property Owner: City of Billings
   (Permittee)
6. Property Owner's Address: 210 N. 27th Street, Billings, MT 59101
7. If Permittee is a Corporation, give State of Incorporation and names of President and Secretary: _____
8. Nature of Permit desired: (Give sufficient detail to permit thorough understanding, and submit blue prints or sketches, in duplicate.)
   Install sidewalk/plaza improvements including planters, landscaping and related improvements to provide a safe pedestrian space near the theater entrance/exit. (See attached exhibit).
9. Location of installations or structures to be installed: North side of 3rd Ave. N. adjacent to Alberta Bair Theater
10. For how long a period is the permit desired: Permanent

REMARKS: _____

Dated at Billings, Montana, this 30th day of October, 2018

Frank S. Murphy
SIGNATURE OF PERMITTEE

SPECIAL PROVISIONS
PERMIT

Subject to the following terms and conditions, this provision is included and is part of the attached permit, is hereby granted:

1. TERM. This permit shall be in force and effect from the date hereof until revoked as herein provided.

2. RENTAL OR FEES. Fees shall be $1.00 / sq. ft. / year or as established by ordinance.

3. REVOCATION. This permit may be revoked by the City upon written notice to Permittee, at the address shown in the application hereto attached, but the City reserves the right to revoke this permit without giving said notice in the event Permittee breaks any of the conditions or terms set forth herein.

4. COMMENCEMENT OF WORK. No work shall be commenced until Permittee notifies the City Engineer when he proposes to commence work.

5. CHANGES IN STREET. If City changes street necessitating changes in structure or installations installed under this permit, Permittee shall make necessary changes without expense to City.

6. CITY SAVED HARMLESS FROM CLAIMS. In accepting this permit, the Permittee, its/his successors or assigns, agree to protect the City and save it harmless from all claims, actions or damage of every kind and description which may accrue to, or be suffered by, any person or persons, corporations or property by reason of the performance of any such work, character of materials used or manner of installations, maintenance and operation or by the improper occupancy of said street right-of-way, and in case any suit and or action is brought against the City and arising out of, or by reason of, any of the above causes, the Permittee, its/his successors or assigns, will, upon notice to it/ him of the commencement of such action defend the same at its/his sole cost and expense and satisfy any judgement which may be rendered against the City in any such suit or action.

7. PROTECTION OF TRAFFIC. Insofar as the interests of the City and the traveling public are concerned, all work performed under this permit shall be done under the supervision of the City Engineer of the City of Billings and his authorized representatives, and he/they shall indicate barriers to be erected, the lighting thereof at night, placing of flagmen and watchmen, manner which traffic is to be handled, shall specify to Permittee new road surfaces to be replaced if it is disturbed during operations, but said supervision shall in no way operate to relieve or discharge Permitttee from any of the obligations assumed by acceptance of this permit, and especially those set forth under Section 6, hereof.

8. STREET AND DRAINAGE. If the work done under this permit interferes in any way with the drainage of the City streets or alleys affected, Permittee shall, at their own expense, make such provisions as the City may direct to take care of drainage.

9. RUBBISH AND DEBRIS. Upon completion of work contemplated under this permit, all rubbish and debris shall be immediately removed and the roadway and roadside left in a neat and presentable condition satisfactory to the City.

10. WORK TO BE SUPERVISED BY THE CITY. All work contemplated under this permit shall be done under the supervision of, and to the satisfaction of, an authorized representative of the City, and the City hereby reserves the right to order the change of location or removal of any structure or installation authorized by this permit at any time, said changes or removal to be made at the sole expense of the Permittee.

11. CITY RIGHT NOT TO BE INTERFERED WITH. All such changes, reconstruction or relocation shall be done by Permittee in such a manner as will cause the least interference with any of the City's work, and the City shall not be liable for any damage to the Permittee by reasons of any such work by the City, its agents, contractors or representatives, or by the installations or structures placed under this permit.

12. REMOVAL OF INSTALLATIONS OR STRUCTURES. Unless waived by the City upon termination of this permit, the Permittee shall remove the installations or structures contemplated by this permit and restore the premises to the condition existing at the time of entering upon the same under this permit, reasonable and ordinary wear and tear and damage by the elements, or by circumstances over which the Permittee has no control, excepted.

13. MAINTENANCE AT EXPENSE OF PERMITTEE. Permittee shall maintain, at its/ his sole expense the installations and structures for which this permit is granted, in a condition satisfactory to the City.

14. CITY NOT LIABLE FOR DAMAGE TO INSTALLATIONS. In accepting this permit, the Permittee agrees that the City shall not be held liable for any damage or injury done to said installations or structures by any City employee engaged in construction, alteration, repair, maintenance or improvement of the City street or alley.

15. CITY TO BE REIMBURSED FOR REPAIRING ROADWAY. Upon being billed therefore Permittee agrees to promptly reimburse City for any expense incurred in repairing surface of roadway due to settlement at installation, or for any damage to roadway or structure as a result of the work performed under this permit.

16. OTHER CONDITIONS AND/OR REMARKS. If this encroachment involves excavation in the public right-of-way, (1) a licensed and bonded contractor must obtain a right-of-way permit from the City Engineer's Office prior to start of work; and (2) applicant must maintain a subscription to Montana One-Call System for locating utility lines and underground facilities.

Dated at Billings, Montana, this 30th day of October, 2018.

The undersigned, the "Permittee" mentioned in the foregoing instrument, hereby accepts this permit, together with all of the terms and conditions set forth therein.

_____

(PERMITTEE)

City Engineering Division of the Public Works Department

BY:_____

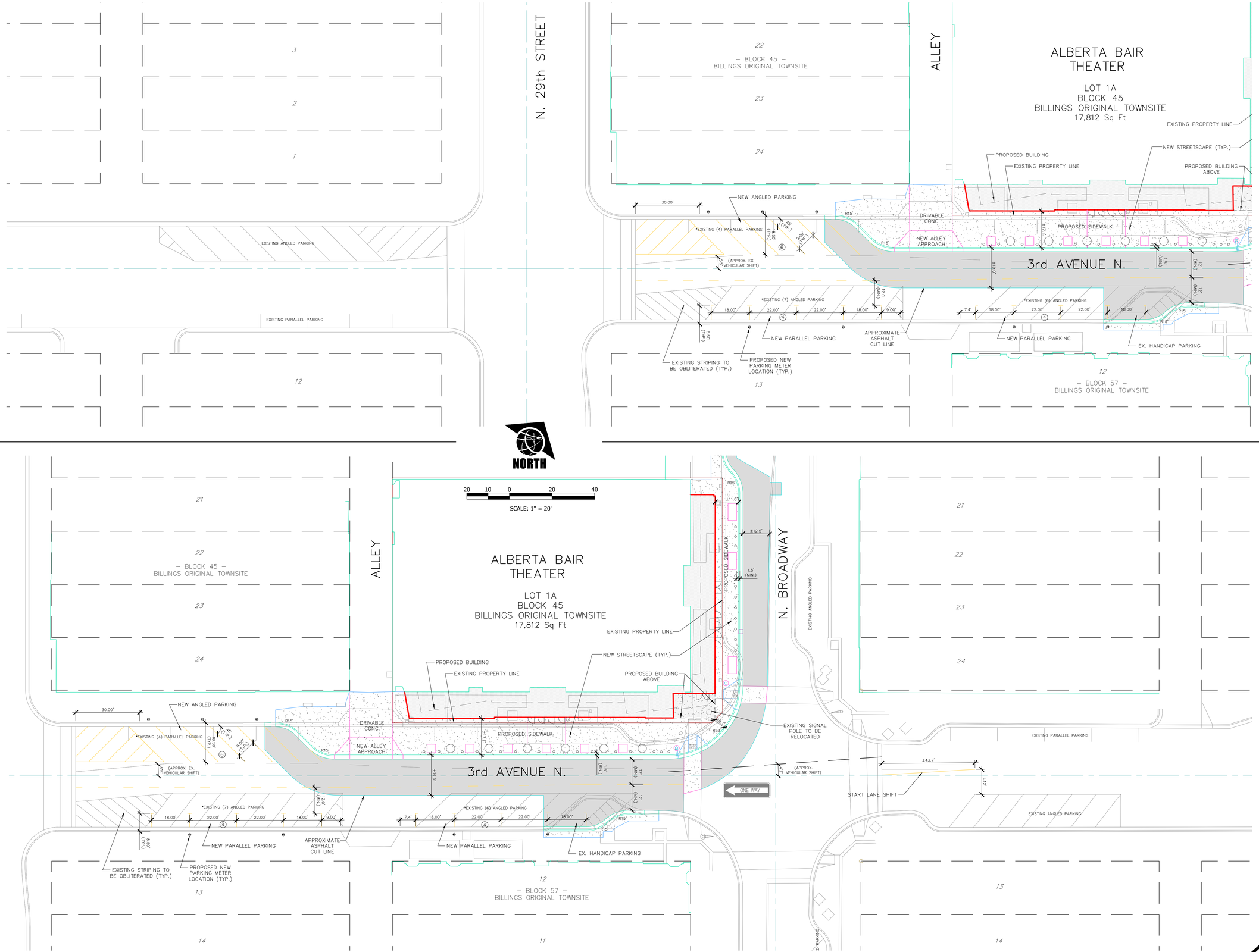
(CITY ENGINEER)

_____

(DATE)

N BROADWAY
Blue Man Group - 7pm
alberta bair
theater

Blue Man Group - 7pm



PRELIMINARY - FOR REVIEW

ALBERTA BAIR THEATER - REMODEL

LOT 1A, BLOCK 45, BILLINGS ORIGINAL TOWNSITE, AM.
2801 3RD AVE. NORTH
BILLINGS, MONTANA

SITE EXHIBIT

C1.0

SANDERSON STEWART
www.sandersonstewart.com

FILE: 01010_03_CITY_EXHIBIT.DWG
PROJECT NO: 01010.03
CAD: ATV/JAZ/MAT
QUALITY ASSURANCE: -

DRAWING HISTORY

DATE	DESCRIPTION
08/02/18	DD SUBMITAL
10/05/18	35% CD
10/24/18	50% CD
11/19/18	75% CD

TO PLAN AND DESIGN ENDURING COMMUNITIES...

© 2018 ALL RIGHTS RESERVED

P:\01010_03_Alberta_Bair_Design_LS_CAD\ACAD_CD\PRODUCTION_DWGS\01010_03_CITY_EXHIBIT.dwg, 24X36-EXHIBIT, 12/5/2018 12:43:33 PM, averthasalt, 1:1

Consent **1. J.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: $30,000 Donation from Phillips 66/Backup Generator Fire Station #6

PRESENTED BY: William Rash, Fire Chief

Department: Fire

Presentation: No

PROBLEM/ISSUE STATEMENT

Fire Station #6 serves a response area of approximately 30,000 people. Currently this fire station has absolutely no back-up power capability which during a time of crisis or inclement weather, would render the station useless in terms of operational capability. Overhead doors, fuel pumps, HVAC systems, etc wouldn't operate. In addition, in the event of a man-made or natural disaster, it can function as a place of refuge for those citizens seeking assistance during times of disaster or post disaster. Without this back-up power generator, the station is vulnerable in the winter months to freeze up of not only the facility, but fire apparatus as well.

ALTERNATIVES ANALYZED

City Council may approve or disapprove accepting this $30,000 donation from Phillips 66 for the purchase and installation of a standby/back-up generator for Fire Station #6 (heights).

FINANCIAL IMPACT

Accepting this donation provides the funds needed to purchase and install a standby/back-up generator at Fire Station #6.

RECOMMENDATION

Staff recommends accepting the $30,000 from Phillips 66 for the purchase and installation of standby/back-up generator for Fire Station #6.

APPROVED BY CITY ADMINISTRATOR

Consent **1. K.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: Acceptance and Approval of Additional funds to the 2018 HIDTA Award in the Amount of $606,450

PRESENTED BY: Rich St. John, Police Chief

Department: Police

Presentation: No

PROBLEM/ISSUE STATEMENT

In 2002, Montana was designated as a High Intensity Drug Traffic Area (HIDTA). The Office of National Drug Control Policy (ONDCP) has awarded grants to the Eastern Montana Drug Task Force for sixteen years and the City of Billings is the recipient and administrative agency for the grants. The ONDCP has offered a $223,812 grant for the calendar year 2018. The HIDTA Task Force consists of personnel from U.S. Marshal's Service, FBI, Drug Enforcement Administration (DEA), Alcohol, Tobacco & Firearms (ATF), Immigration & Customs Enforcement (ICE), Department of Criminal Investigation (DCI), Yellowstone County Sheriff's Office, and the Billings Police Department. The Task Force is managed by a Sergeant from the Billings Police Department. The 2018 HIDTA Award will be used to pay for a Support Specialist position for the HIDTA task force, all task force overtime, administrative and investigative travel, cell phones, copier maintenance agreement, investigative/office supplies, and informant costs.

In October, 2018 the Rocky Mountain HIDTA Executive Board approved additional monies to fund a local coalition of service providers designed to address addiction issues. The Billings Police Department is the fiduciary for Eastern Montana HIDTA. The additional funds awarded are $382,638 and are earmarked for treatment solutions. The total of new award is $606,450.

ALTERNATIVES ANALYZED

The City Council may:

- Approve and accept the new 2018 HIDTA Award in the amount of $606,450, or
- Not accept the new 2018 HIDTA Award in the amount of $606,450, which would result in less resources to address addiction issues.

FINANCIAL IMPACT

The 2018 HIDTA Award in the amount of $606,450 will require no City match.

RECOMMENDATION

Staff recommends that the City Council approve and accept the new 2018 HIDTA award from the Executive Office of the President, Office of National Drug Control Policy, in the amount of $606,450, and authorize the Mayor to sign the necessary award documents, when they are received.

APPROVED BY CITY ADMINISTRATOR

Attachments

Award Letter

October 26, 2018

Mayor William Cole
City of Billings
210 N 27TH ST
Billings, MT 59101-1938

Dear Mayor Cole:

Grant number G18RM0038A has been increased and now totals $582,553.00.

The original of Modification 2 is enclosed. If you accept this Modification, sign the Modification and return a copy to the Assistance Center in Miami. Keep the original Modification for your file.

All terms and conditions of the original award apply to the Modification. If you have any questions pertaining to this grant award, please contact Andrew Coffey at (202) 395-4694.

Sincerely,

Michael K. Gottlieb

Michael K. Gottlieb
Associate Director

Enclosures

Executive Office of the President **Office of National Drug Control Policy**	AWARD Grant	Page 1 of 1
1. Recipient Name and Address Mayor William Cole City of Billings 210 N 27TH ST Billings, MT 59101-1938	4. Award Number: G18RM0038A 5. Grant Period: From 01/01/2018 to 12/31/2019	
2. Total Amount of the Federal Funds Obligated: $582,553	6. Federal Award Date: 10/26/2018	7. Action Initial [X] Supplemental
2A. Budget Approved by the Federal Awarding Agency $582,553	8. Supplement Number 2	
3. CFDA Name and Number: *High Intensity Drug Trafficking Areas Program - 95.001*	9. Previous Award Amount: $223,812.00	
3A. Project Description *High Intensity Drug Trafficking Areas (HIDTA) Program*	10. Amount of Federal Funds Obligated by this Action: $358,741.00 11. Total Amount of Federal Award: $582,553.00	
12. The above grant is approved subject to such conditions or limitation as are set forth in the original Grant.		
13. Statutory Authority for Grant: Public Law:115-141		
AGENCY APPROVAL	**RECIPIENT ACCEPTANCE**	
14. Typed Name and Title of Approving Official Michael K. Gottlieb Associate Director Office of National Drug Control Policy	15. Typed Name and Title of Authorized Official William Cole City of Billings	
16. Signature of Approving ONDCP Official Michael K. Gottlieb	17. Signature of Authorized Recipient/Date	
AGENCY USE ONLY		
18. Accounting Classification Code DUNS: 838638369 EIN: 1816001237A4	19. HIDTA AWARD OND1070DB1819XX OND6113 OND2000000000 OC 410001	

Budget Detail

2018 - Rocky Mountain

Initiative - SP - Connect Coalition — Prevention

Award Recipient - City of Billings (G18RM0038A)

Resource Recipient - Billings Police Department

Indirect Cost: 0.0%

Current Budget (net of reprogrammed funds)		***$358,741.00***
Travel	**Quantity**	**Amount**
Treatment, prevention, demand reduction		$2,998.00
Total Travel		**$2,998.00**
Services	**Quantity**	**Amount**
Contractor - Administrative staff		$6,250.00
Contractor - Coordinator		$84,000.00
Contractor - Training Coordinator		$15,000.00
Service contracts		$39,000.00
Service contracts: treatment/prevention/demand red		$55,000.00
Total Services		**$199,250.00**
Supplies	**Quantity**	**Amount**
Communications - mobile phones & pagers		$450.00
Computers - desktop, laptop & notebook		$2,500.00
Office		$5,000.00
Total Supplies		**$7,950.00**
Other	**Quantity**	**Amount**
Administrative costs		$41,543.00
Treatment, prevention, demand reduction		$107,000.00
Total Other		**$148,543.00**
Total Budget		**$358,741.00**

Initiative Cash by HIDTA

FY 2018

Awarded Budget (as approved by ONDCP)

HIDTA	Agency Name	Initiative	Cash	Type	Grant
Rocky Mountain	**City of Billings**	Eastern Montana HIDTA Drug Task Force	223,812.00	Investigation	G18RM0038A
		SP - Connect Coalition	358,741.00	Prevention	G18RM0038A
	Agency Total : City of Billings		**582,553.00**		
Total			**582,553.00**		

BPD HIDTA

10/26/2018 3:11:00 PM

Consent **1. L. 1.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: Payment of Claims November 26 and 28, 2018

PRESENTED BY: Andy Zoeller

Department: City Hall Administration

Presentation: No

PROBLEM/ISSUE STATEMENT

Claims in the amount of $540,535.76 have been audited and are presented for City Council payment approval. A complete listing of the claims dated November 26th and 28th, 2018, are 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 approves the Payment of Claims.

APPROVED BY CITY ADMINISTRATOR

Attachments

councilmemo_11262018

Check Date	Check#	Name	Fund Name	Amount	Item Desc
11/26/2018	818907	360 Office Solutions Inc	Water	$ 913.20	271203-0; CHAIRS
11/26/2018	818907	360 Office Solutions Inc	Wastewater	$ 608.80	271203-0; CHAIRS
11/26/2018	818907	360 Office Solutions Inc	Water	$ 1,804.80	274294-0;CONFERENCE ROOM CHAIRS
11/26/2018	818907	360 Office Solutions Inc	Wastewater	$ 1,203.20	274294-0;CONFERENCE ROOM CHAIRS
11/26/2018	818907	360 Office Solutions Inc	Public Safety	$ 60.18	HOPPEL: 760505 APPT BOOK AND HIGHLIGHTERS
11/26/2018	818908	A & I Distributors	Airport	$ 1,325.50	Invoice #3207093. Motor Oil for Operations
11/26/2018	818908	A & I Distributors	Solid Waste	$ 97.91	Oil and Funnel for Collection 3198713
11/26/2018	818908	A & I Distributors	Solid Waste	$ 986.28	DEF and oil for the Landfill Equipment 3199251
11/26/2018	818908	A & I Distributors	Solid Waste	$ 557.70	DEF for the garbage trucks 3197957
11/26/2018	818908	A & I Distributors	Solid Waste	$ 991.65	DEF for the garbage trucks 320805
11/26/2018	818908	A & I Distributors	Transit	$ 753.33	3193210 PO NUM 306302
11/26/2018	818908	A & I Distributors	Fleet	$ 3,019.70	3195913 PO NUM 306875
11/26/2018	818908	A & I Distributors	Fleet	$ 2,773.17	3200367 PO NUM 306875
11/26/2018	818908	A & I Distributors	Transit	$ 1,171.73	3204039 PO NUM 306875
11/26/2018	818908	A & I Distributors	Solid Waste	$ 83.88	3207098
11/26/2018	818908	A & I Distributors	Street/Traffic Oper	$ 278.85	3208050
11/26/2018	818908	A & I Distributors	Water	$ 259.90	WATER PARTS AND SUPPLIES PO NUM 306930
11/26/2018	818908	A & I Distributors	Transit	$ 93.00	3193043
11/26/2018	818908	A & I Distributors	Public Safety	$ 40.34	3195913
11/26/2018	818908	A & I Distributors	Fleet	$ 548.40	3204839 PO NUM 306875
11/26/2018	818908	A & I Distributors	Transit	$ 92.96	3193210
11/26/2018	818908	A & I Distributors	Street/Traffic Oper	$ 39.79	3195913
11/26/2018	818908	A & I Distributors	Fleet	$ 1,184.78	3204839 PO NUM 306875
11/26/2018	818908	A & I Distributors	Solid Waste	$ 39.79	3195913
11/26/2018	818908	A & I Distributors	Fleet	$ 70.44	3204839 PO NUM 306875
11/26/2018	818923	Billings Carpet Cleaning	Transit	$ 3,396.16	Water Extraction & hazardous mold cleaning
11/26/2018	818929	Billings Gazette	General	$ 1,239.00	Finance 102-60001620
11/26/2018	818929	Billings Gazette	General	$ 1,500.00	Finance 102-60001620
11/26/2018	818929	Billings Gazette	General	$ 294.00	Finance 102-60001620
11/26/2018	818929	Billings Gazette	Water	$ 1,490.00	Finance 102-60001620
11/26/2018	818935	Border States Electric	Wastewater	$ 587.20	916251805; WIRE
11/26/2018	818935	Border States Electric	Water	$ 315.10	916259556; WIRE FOR 24VDC PLC CABINET
11/26/2018	818935	Border States Electric	Wastewater	$ 315.10	916259556; WIRE FOR 24VDC PLC CABINET
11/26/2018	818935	Border States Electric	Wastewater	$ 170.00	916280598; #2 FEED PUMP PROJECT
11/26/2018	818935	Border States Electric	Wastewater	$ 208.97	916280948; CP100 UPS PROJECT
11/26/2018	818935	Border States Electric	Water	$ 229.00	916291126; SIGNAL CONVERTER-STAPLES
11/26/2018	818935	Border States Electric	Wastewater	$ 1,537.55	916294440; REPLACEMENT ANALOG CARD
11/26/2018	818935	Border States Electric	Wastewater	$ 26.12	916311448; #2 FEED PUMP PROJECT
11/26/2018	818935	Border States Electric	Water	$ 146.20	916320876; CONTACT BLOCKS-WTP BLOWERS
11/26/2018	818935	Border States Electric	Wastewater	$ 34.54	916331065; SUPPLIES FOR UPS PROJECT
11/26/2018	818935	Border States Electric	Wastewater	$ 58.85	916352558; WATER HEATER INSTALL

Check Date	Check#	Name	Fund Name	Amount	Item Desc
11/26/2018	818935	Border States Electric	Wastewater	$ 2,778.78	916365092; REPLACEMENT COMPACT LOGIC
11/26/2018	818935	Border States Electric	Water	$ 51.76	916365094; CODE CLASS BOOK
11/26/2018	818935	Border States Electric	Wastewater	$ 51.77	916365094; CODE CLASS BOOK
11/26/2018	818935	Border States Electric	Wastewater	$ 148.42	916384016; WRF BATTERY PROJECT
11/26/2018	818935	Border States Electric	Wastewater	$ 56.86	916385829 UPS PROJECT
11/26/2018	818935	Border States Electric	Wastewater	$ 48.68	916391865; WIRE-FEED PUMP PROJECT
11/26/2018	818935	Border States Electric	Wastewater	$ 65.54	916401483; FEEDER PUMP 2
11/26/2018	818935	Border States Electric	Wastewater	$ 172.63	916402929; REPLACE BULBS -WRF NIGHT LIGHTS
11/26/2018	818935	Border States Electric	Wastewater	$ 212.00	916403710; FUSES-UV SYSTEM
11/26/2018	818935	Border States Electric	Wastewater	$ 973.79	916406832; UPS PROJECT
11/26/2018	818935	Border States Electric	Wastewater	$ 46.71	916414945; TERMINAL-BATTERY PROJECT
11/26/2018	818935	Border States Electric	Wastewater	$ 33.69	CORD CONNECT-TEMP GENERATOR @ IRONWOOD
11/26/2018	818935	Border States Electric	Water	$ 34.61	916424314; WIRE UPS PROJECT-WRF & TOOL TOTE
11/26/2018	818935	Border States Electric	Wastewater	$ 41.74	916424314; WIRE UPS PROJECT-WRF & TOOL TOTE
11/26/2018	818935	Border States Electric	Wastewater	$ 34.61	916424314; WIRE UPS PROJECT-WRF & TOOL TOTE
11/26/2018	818935	Border States Electric	Wastewater	$ 182.43	916435084; CORD GRIP-IRONWOOD STANDBY
11/26/2018	818935	Border States Electric	Wastewater	$ 589.16	CONDUIT FITTINGS- IRONCLAD BATTERY PROJECT
11/26/2018	818935	Border States Electric	Water	$ 29.77	916444153; REPLACEMENT TIMER SWITCH
11/26/2018	818935	Border States Electric	Wastewater	$ 49.68	916444215; MATERIALS TO CONNECT BACKUP
11/26/2018	818935	Border States Electric	Wastewater	$ 102.93	Lables for centrifuge feed & terminal blocks
11/26/2018	818935	Border States Electric	Wastewater	$ 1,180.56	916455937; RELAYS FOR CENTRIFUGE PROJECT
11/26/2018	818935	Border States Electric	Water	$ 196.62	916456043; LABELS FOR PLC 7 NETWORK PROJECT
11/26/2018	818935	Border States Electric	Wastewater	$ 59.77	916475563; BOX CAR BATTERY PROJECT
11/26/2018	818935	Border States Electric	Water	$ 264.23	916477292; WIRE-CHEMICAL BUILDING PTZ CAMERA
11/26/2018	818937	Bradford Roof	Transit	$ 2,178.61	Install new roof drain pan
11/26/2018	818937	Bradford Roof	Facilities Mngmt	$ 664.22	Inv. 2018 466
11/26/2018	818939	Business Tax Section	Transit	$ 66.89	Phase One roof replacement at METroplex
11/26/2018	818939	Business Tax Section	Storm Sewer	$ 709.94	Hilltop Rd & Aronson Ave Storm Drain
11/26/2018	818939	Business Tax Section	Solid Waste	$ 364.69	WO 17-18 Water Treatment Plant Rip Rap; 1F WO1718
11/26/2018	818939	Business Tax Section	Wastewater	$ 323.33	WO 17-20 Lift Station Backup Power; WO1720
11/26/2018	818939	Business Tax Section	Gas Tax	$ 34.45	SID 1403 Gleneagles Blvd & Lake Hills Drive
11/26/2018	818939	Business Tax Section	Water	$ 252.36	derailed car removal & repair damaged track @WTP
11/26/2018	818939	Business Tax Section	SID Construction	$ 343.47	SID 1403 Gleneagles Blvd & Lake Hills Drive
11/26/2018	818939	Business Tax Section	Water	$ 733.71	WO 17-18 Water Treatment Plant Rip Rap; 1F WO1718
11/26/2018	818939	Business Tax Section	Sidewalk Construction	$ 634.66	WO 18-10 Poet Streets - Overlay & Curb; 6 WO1810
11/26/2018	818939	Business Tax Section	Gas Tax	$ 2,674.69	WO 18-10 Poet Streets - Overlay & Curb; 6 WO1810
11/26/2018	818939	Business Tax Section	Public Safety	$ 70.19	REMODEL OLD 911 AREA FOR FIRE MARSHAL
11/26/2018	818939	Business Tax Section	Water	$ 221.50	221852-SUNSET; CURB VALVE REPAIR LISE #3
11/26/2018	818945	Cellebrite USA Corp	Police Programs	$ 3,700.00	City of Billings CCSIU/EMHIDTA UFED SW renewal
11/26/2018	818946	Century Link	EOC 911	$ 47.55	406-245-2296 911
11/26/2018	818946	Century Link	EOC 911	$ 45.65	406-245-3107 911

Check Date	Check#	Name	Fund Name	Amount	Item Desc
11/26/2018	818946	Century Link	Water	$ 39.44	406-245-3659 PUD Alarm Water Tower
11/26/2018	818946	Century Link	EOC 911	$ 45.65	406-245-3108 911
11/26/2018	818946	Century Link	Airport	$ 45.66	406-245-5834 Airport Alarm
11/26/2018	818946	Century Link	Public Safety	$ 119.32	406-245-7469 Fire
11/26/2018	818946	Century Link	Public Safety	$ 45.66	406-245-7481 Police
11/26/2018	818946	Century Link	Telephone System	$ 228.20	406-248-3049 Main System T1 City/County Tie
11/26/2018	818946	Century Link	Radio	$ 311.26	406-248-3635 Fire Airport Radio Tower WCK
11/26/2018	818946	Century Link	Radio	$ 311.26	406-248-3636 Fire Airport Radio Tower Jellison
11/26/2018	818946	Century Link	Parking	$ 49.43	406-252-2041 Park 2 Elevator Phone
11/26/2018	818946	Century Link	Fleet	$ 55.14	406-256-5047 Motor Pool
11/26/2018	818946	Century Link	Airport	$ 54.19	406-256-7070 Airport
11/26/2018	818946	Century Link	Wastewater	$ 39.06	406-259-2328 PUD Sahara Sand Lift Station
11/26/2018	818946	Century Link	Engineering	$ 105.59	406-259-7758 Measured Lines Depot
11/26/2018	818946	Century Link	P.W. Admin	$ 70.40	406-259-7758 Measured Lines Depot
11/26/2018	818946	Century Link	Street/Traffic Oper	$ 50.83	406-259-3298 PW Traffic 3728 McDougall
11/26/2018	818946	Century Link	Public Safety	$ 118.32	406-373-3742 Fire RR Crossing Alarm
11/26/2018	818946	Century Link	Public Safety	$ 49.43	406-651-0282 Fire 5 911 Line
11/26/2018	818946	Century Link	City County Planning	$ 39.06	406-656-9578 Planning Traffic Central Broadwater
11/26/2018	818946	Century Link	Airport	$ 58.30	406-256-6014 Airport P9 Building
11/26/2018	818946	Century Link	Airport	$ 58.30	406-252-0721 Airport 1FB Line
11/26/2018	818946	Century Link	City County Planning	$ 39.06	406-656-9604 Planning Traffic Central 9th
11/26/2018	818946	Century Link	EOC 911	$ 311.26	406-245-7101 9-1-1 Center Landfill #2
11/26/2018	818946	Century Link	EOC 911	$ 311.26	406-245-7102 9-1-1 Center Fox Reservoir #2
11/26/2018	818946	Century Link	EOC 911	$ 419.71	406-245-5527 New 9-1-1 Center
11/26/2018	818946	Century Link	Solid Waste	$ 50.83	406-256-7001 Solid Waste Scale House
11/28/2018	819097	Chicago Title of MT	CDBG	$ 10,000.00	FTHB Jeremy Berg purchasing 455 Bench Blvd
11/26/2018	818951	Commercial Roofing	Transit	$ 6,622.46	Phase One roof replacement at Metroplex (Transit Office
11/26/2018	818959	Desert Mountain Corp	Street/Traffic Oper	$ 4,532.35	ice slicer used to melt snow on the streets
11/26/2018	818959	Desert Mountain Corp	Street/Traffic Oper	$ 4,870.96	ice slicer used to melt snow on streets
11/26/2018	818959	Desert Mountain Corp	Street/Traffic Oper	$ 5,364.00	ice slicer used to melt snow on streets
11/26/2018	818961	Econo Print Inc.	Solid Waste	$ 3,417.52	Landfill invoices 286560
11/28/2018	819098	First Montana Title	CDBG	$ 15,000.00	FTHB Theodore Sandall purchasing 3390 Canyon Drive
11/26/2018	818969	Galles Filter Service	Fleet	$ 76.47	P-82380-01 PO NUM 306305
11/26/2018	818969	Galles Filter Service	Transit	$ 212.84	P-82392-01 PO NUM 306878
11/26/2018	818969	Galles Filter Service	Fleet	$ 509.26	P-82395.01 PO NUM 306305
11/26/2018	818969	Galles Filter Service	Public Safety	$ 41.04	P-82410-01
11/26/2018	818969	Galles Filter Service	Street/Traffic Oper	$ 40.48	P-82748-01
11/26/2018	818969	Galles Filter Service	Fleet	$ 272.94	P-82794-01 PO NUM 306878
11/26/2018	818969	Galles Filter Service	Transit	$ 350.22	P-82796-01 PO NUM 306878
11/26/2018	818969	Galles Filter Service	Fleet	$ 132.88	P-83018-01 PO NUM 306878
11/26/2018	818969	Galles Filter Service	Transit	$ 75.44	P-83110-01 PO NUM 306878

Check Date	Check#	Name	Fund Name	Amount	Item Desc
11/26/2018	818969	Galles Filter Service	Transit	$ 39.28	BUS MET PO NUM 306878
11/26/2018	818969	Galles Filter Service	Solid Waste	$ 636.24	Filters for Landfill equipment P82479-01
11/26/2018	818969	Galles Filter Service	Solid Waste	$ 356.39	Filters for Landfill equipment P83019-01
11/26/2018	818969	Galles Filter Service	Solid Waste	$ 23.40	Filters for the Landfill equipment T78508
11/26/2018	818969	Galles Filter Service	Solid Waste	$ 747.38	Parts for Landfill Equipment P82676-01
11/26/2018	818969	Galles Filter Service	Water	$ 180.94	WATER PARTS AND SUPPLIES PO NUM 306929
11/26/2018	818969	Galles Filter Service	Fleet	$ (20.52)	T-78802
11/26/2018	818969	Galles Filter Service	Fleet	$ 271.25	P-82478.01 PO NUM 306305
11/26/2018	818969	Galles Filter Service	Street/Traffic Oper	$ 89.44	P-82613.01
11/26/2018	818969	Galles Filter Service	Fleet	$ 43.77	P-82795-01 PO NUM 306878
11/26/2018	818969	Galles Filter Service	Transit	$ 60.09	P-82796-01
11/26/2018	818969	Galles Filter Service	Transit	$ 56.40	P-83110-01
11/26/2018	818969	Galles Filter Service	Fleet	$ 421.92	P-83128-01 PO NUM 306878
11/26/2018	818969	Galles Filter Service	Fleet	$ 282.31	P-82955-01 PO NUM 306878
11/26/2018	818969	Galles Filter Service	Fleet	$ 317.76	P-82675.01 PO NUM 306305
11/26/2018	818969	Galles Filter Service	Fleet	$ 7.67	P-82852-01 PO NUM 306878
11/26/2018	818969	Galles Filter Service	Fleet	$ 112.82	P-82614.01 PO NUM 306305
11/26/2018	818969	Galles Filter Service	Fleet	$ 184.09	P-82851-01 PO NUM 306878
11/26/2018	818970	Gary Weber Construction	Water	$ 4,181.00	7187; EXCAVATOR RENTAL
11/26/2018	818971	Gillig Corporation	Transit	$ 766.24	40517233 PO NUM 307146
11/26/2018	818971	Gillig Corporation	Transit	$ 1,797.78	40517233
11/26/2018	818981	Iaff	Sidewalk Debt Svc	$ 4,809.66	Payroll Summary
11/26/2018	818983	Ingram Library Services	Library	$ 15.59	37105584
11/26/2018	818983	Ingram Library Services	Library	$ 10.80	37105584
11/26/2018	818983	Ingram Library Services	Library	$ 21.22	37105584
11/26/2018	818983	Ingram Library Services	Library	$ 15.90	37105583
11/26/2018	818983	Ingram Library Services	Library	$ 40.49	37105589
11/26/2018	818983	Ingram Library Services	Library	$ 40.12	37105589
11/26/2018	818983	Ingram Library Services	Library	$ 15.92	37105590
11/26/2018	818983	Ingram Library Services	Library	$ 35.40	37105590
11/26/2018	818983	Ingram Library Services	Library	$ 8.23	37105592
11/26/2018	818983	Ingram Library Services	Library	$ 117.33	37105588
11/26/2018	818983	Ingram Library Services	Library	$ 32.92	37105591
11/26/2018	818983	Ingram Library Services	Library	$ 487.93	37105593
11/26/2018	818983	Ingram Library Services	Library	$ 85.56	37105593
11/26/2018	818983	Ingram Library Services	Library	$ 348.95	37105593
11/26/2018	818983	Ingram Library Services	Library	$ 24.75	37105594
11/26/2018	818983	Ingram Library Services	Library	$ 17.10	37105594
11/26/2018	818983	Ingram Library Services	Library	$ 16.51	37105595
11/26/2018	818983	Ingram Library Services	Library	$ 13.79	37112511
11/26/2018	818983	Ingram Library Services	Library	$ 41.43	37105596

Check Date	Check#	Name	Fund Name	Amount	Item Desc
11/26/2018	818983	Ingram Library Services	Library	$ 16.51	37105596
11/26/2018	818983	Ingram Library Services	Library	$ 16.51	37105587
11/26/2018	818983	Ingram Library Services	Library	$ 37.99	37105587
11/26/2018	818983	Ingram Library Services	Library	$ 22.50	37105586
11/26/2018	818983	Ingram Library Services	Library	$ 9.59	37105586
11/26/2018	818983	Ingram Library Services	Library	$ 50.08	37105582
11/26/2018	818983	Ingram Library Services	Library	$ 7.79	37105582
11/26/2018	818983	Ingram Library Services	Library	$ 312.54	37206808
11/26/2018	818983	Ingram Library Services	Library	$ 32.99	37206808
11/26/2018	818983	Ingram Library Services	Library	$ 44.09	37206809
11/26/2018	818983	Ingram Library Services	Library	$ 9.59	37206809
11/26/2018	818983	Ingram Library Services	Library	$ 134.36	37216600
11/26/2018	818983	Ingram Library Services	Library	$ 877.46	37216600
11/26/2018	818983	Ingram Library Services	Library	$ 151.47	37216600
11/26/2018	818983	Ingram Library Services	Library	$ 159.18	37216600
11/26/2018	818983	Ingram Library Services	Library	$ 59.13	37216600
11/26/2018	818983	Ingram Library Services	Library	$ 9.59	37262036
11/26/2018	818983	Ingram Library Services	Library	$ 31.99	37262037
11/26/2018	818983	Ingram Library Services	Library	$ 16.47	37262038
11/26/2018	818983	Ingram Library Services	Library	$ 180.66	37262038
11/26/2018	818983	Ingram Library Services	Library	$ 14.25	37262038
11/26/2018	818983	Ingram Library Services	Library	$ 68.42	37262038
11/26/2018	818983	Ingram Library Services	Library	$ 34.53	37262039
11/26/2018	818983	Ingram Library Services	Library	$ 164.24	37262039
11/26/2018	818983	Ingram Library Services	Library	$ 32.38	37262039
11/26/2018	818983	Ingram Library Services	Library	$ 14.72	37262039
11/26/2018	818983	Ingram Library Services	Library	$ 33.58	37262039
11/26/2018	818983	Ingram Library Services	Library	$ 34.16	37262040
11/26/2018	818983	Ingram Library Services	Library	$ 30.99	37262041
11/26/2018	818983	Ingram Library Services	Library	$ 14.99	37262042
11/26/2018	818983	Ingram Library Services	Library	$ 44.64	37268561
11/26/2018	818983	Ingram Library Services	Library	$ 18.35	37268561
11/26/2018	818983	Ingram Library Services	Library	$ 16.49	37206807
11/26/2018	818983	Ingram Library Services	Library	$ 60.73	37206807
11/26/2018	818983	Ingram Library Services	Library	$ 15.93	37206807
11/26/2018	818983	Ingram Library Services	Library	$ 25.50	37206806
11/26/2018	818983	Ingram Library Services	Library	$ 50.15	37206803
11/26/2018	818983	Ingram Library Services	Library	$ 22.00	37206805
11/26/2018	818983	Ingram Library Services	Library	$ 4.79	37206805
11/26/2018	818983	Ingram Library Services	Library	$ 17.67	37206805
11/26/2018	818983	Ingram Library Services	Library	$ 23.96	37206804

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11/26/2018	818983	Ingram Library Services	Library	$ 56.85	37206804
11/26/2018	818983	Ingram Library Services	Library	$ 10.19	37206804
11/26/2018	818983	Ingram Library Services	Library	$ 21.22	37206804
11/26/2018	818983	Ingram Library Services	Library	$ 78.13	37121851
11/26/2018	818983	Ingram Library Services	Library	$ 26.66	37121851
11/26/2018	818983	Ingram Library Services	Library	$ 32.99	37112516
11/26/2018	818983	Ingram Library Services	Library	$ 32.99	37112515
11/26/2018	818983	Ingram Library Services	Library	$ 19.80	37112512
11/26/2018	818983	Ingram Library Services	Library	$ 29.71	37112512
11/26/2018	818983	Ingram Library Services	Library	$ 46.55	37112514
11/26/2018	818983	Ingram Library Services	Library	$ 189.30	37112514
11/26/2018	818983	Ingram Library Services	Library	$ 13.79	37112514
11/26/2018	818983	Ingram Library Services	Library	$ 5.99	37112514
11/26/2018	818983	Ingram Library Services	Library	$ 100.59	37112514
11/26/2018	818983	Ingram Library Services	Library	$ 35.98	37112513
11/26/2018	818983	Ingram Library Services	Library	$ 8.99	37112513
11/26/2018	818983	Ingram Library Services	Library	$ 160.47	37112513
11/26/2018	818980	I-State Truck	Solid Waste	$ 4,309.89	C251254485.01
11/26/2018	818980	I-State Truck	Solid Waste	$ 691.77	C251254550.01
11/26/2018	818980	I-State Truck	Solid Waste	$ 190.66	C251254560.01
11/26/2018	818980	I-State Truck	Solid Waste	$ 25.84	C251254560.01
11/26/2018	818980	I-State Truck	Street/Traffic Oper	$ (685.28)	C251254958.01
11/26/2018	818980	I-State Truck	Street/Traffic Oper	$ 685.28	C251254845.01
11/26/2018	818980	I-State Truck	Solid Waste	$ 328.24	C251254768.01
11/26/2018	818980	I-State Truck	Solid Waste	$ 52.98	C251254723.01
11/26/2018	818980	I-State Truck	Solid Waste	$ (1,359.30)	C251254581.01
11/26/2018	818980	I-State Truck	Solid Waste	$ 77.25	C251254560.02
11/26/2018	818980	I-State Truck	Solid Waste	$ 31.60	C251254292.01
11/26/2018	818980	I-State Truck	Street/Traffic Oper	$ 685.28	seat for unit 1190
11/26/2018	818980	I-State Truck	Water	$ 31.60	NONSTOCKING ITEMS-P.U.D.
11/26/2018	818990	Junkermier, Clark, Campanella, Stevens	General	$ 25,000.00	795938 FY 18 audit
11/26/2018	818991	Kadrmas Lee & Jackson	Storm Sewer	$ 5,410.00	Hilltop Rd & Aronson Ave Storm Drain Extension
11/26/2018	818997	Knife River (JTL Group Inc.)	Gas Tax	$ 2,872.00	WO1813 Kyhl Lane Sidewalk; 28181004-4
11/26/2018	818997	Knife River (JTL Group Inc.)	Street/Traffic Oper	$ 3,024.54	asphalt
11/26/2018	818997	Knife River (JTL Group Inc.)	Street/Traffic Oper	$ 116.10	asphalt
11/26/2018	818997	Knife River (JTL Group Inc.)	Street/Traffic Oper	$ 1,537.92	asphalt
11/26/2018	819000	L N Curtis	Public Safety	$ 4,785.00	SUPRAFLEX PULL ON FIRE BOOTS- CORNELIUSEN
11/26/2018	819000	L N Curtis	Public Safety	$ 33.13	ESTIMATED SHIPPING
11/26/2018	819000	L N Curtis	Public Safety	$ 630.00	RH-6 FIRE HOOKS, ROOF HOOKS, STEEL (QUOTE
11/26/2018	819005	Mahoney & Associates Consulting	General	$ 3,399.00	FY18-Field
11/26/2018	819007	Marketing Specialties Inc	Public Safety	$ 2,541.50	FIRE3: REPLACED MAG PLUS PROBE/DIESEL TANK

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11/26/2018	819014	Montana CSED	Sidewalk Debt Svc	$ 3,660.24	Payroll Summary
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 112.07	595 580 1000 4. Aero Interiors. November 2018
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 191.56	185 580 1000 7. TSA Building. November 2018
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 105.14	160 723 3573 6. USDA. November 2018
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 1,077.15	889 373 1000 6. Car Wash. November 2018
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 479.68	129 573 1000 1. Mud Wash. November 2018
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 23.52	529 573 1000 7. Detail Bay 5 Thrifty/Dollar. November
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 101.93	429 573 1000 8. Detail Bay 4 Avis/Budget. November
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 67.27	329 573 1000 9. Detail Bay 3 Enterprise. November 2018
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 74.73	629 573 1000 6. Detail Bay 2 National/Alamo. November
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 121.66	229 573 1000 0. Detail Bay 1 Hertz. November 2018
11/26/2018	819015	Montana Dakota Utilities Co	CDBG	$ 37.63	FORECLOSURE Program - 215 19th St W
11/26/2018	819015	Montana Dakota Utilities Co	CDBG	$ 28.79	FORECLOSURE Program - 30 S Plainview Street
11/26/2018	819015	Montana Dakota Utilities Co	Airport	$ 104.08	283 116 0655 3. IP-12 Alpine. November 2018
11/26/2018	819016	MT State Fireman's Assoc	Sidewalk Debt Svc	$ 4,292.30	Payroll Summary
11/26/2018	819018	Morrison Maierle Inc	Wastewater	$ 2,310.00	WO 18-01 2018 Water & Sewer Replacement Sch 3;
11/26/2018	819018	Morrison Maierle Inc	Airport	$ 12,161.43	Terminal Building Expansion Amend #2 - Local Share
11/26/2018	819018	Morrison Maierle Inc	Airport	$ 6,193.26	Terminal Expansion Project - Local Share - Design
11/26/2018	819018	Morrison Maierle Inc	Airport	$ 48,951.27	Terminal Building Expansion Amend#2 - Federal Share
11/26/2018	819018	Morrison Maierle Inc	Airport	$ 55,739.34	Terminal Expansion Project - Federal Share - Design
11/26/2018	819020	MT Police Protective Assoc	Sidewalk Debt Svc	$ 3,180.80	Payroll Summary
11/26/2018	819027	Neil Drywall Inc	Public Safety	$ 3,236.31	FRAME, HANG AND TAPE WALLS DONE
11/26/2018	819027	Neil Drywall Inc	Public Safety	$ 3,712.50	DRYWALL, TAPING, CEILING TILES REPLACED
11/26/2018	819029	NorMont Equipment Company	Street/Traffic Oper	$ 2,688.00	emulsion for road patcher
11/26/2018	819029	NorMont Equipment Company	Street/Traffic Oper	$ 2,386.13	broom wire for sweepers
11/26/2018	819031	Northwest Pipe Fittings	Street/Traffic Oper	$ 13.40	nipple/couplings for Shiloh irrigation
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 212.00	M J TEE HEAD BOLTS 3/4 X - 4 1/2 IN
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 325.47	NW PIPE; PCV SLIP/THREAD BALL VALVE
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 180.40	NW PIPE; POLYMER TRANS.LINE & CENTRIFUGE
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 46.50	5/8" CI BOTTOM CAP 2011 P/N: 2032524
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 13,745.00	5/8" E-CODER WALL CU.FT. - METER
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 9.25	SHIPPING NOT PAID ON INVOICE-I19-008629
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 160.00	551617; WASHERS FOR WATER REPAIR CLAMPS
11/26/2018	819031	Northwest Pipe Fittings	Public Safety	$ 6.74	FIRE: MISC PLUMBING SUPPLIES
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 63.74	1" SWEAT FULL PORT BRASS - BALL VALVE
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 4,557.60	1-1/2 TD ARB 5 METER T-10 - W/O - FLGS MGDR
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 483.26	2 INCH TD TRU-FLO STRAINER P/N: 2037128
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 2,171.00	136904; REG-E-CODER PIT
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 19.00	139550-1; SEAL PIN
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 28.80	144305; LAUNDRY FCT., LVR HNDL HOSE END
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 19.20	144305; LAUNDRY FCT., LVR HNDL HOSE END

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11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 1,066.22	148031; SRP PUMP
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 172.96	Adapter,Bushing,& Nipple for hot water heater
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 371.18	Copper adapter, Heat System union ball valve, pvc pipe
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 33.92	151460; PVC, PD DRAIN FIX
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 197.48	152565; PD PROJECT & VALVES IN SECONDARY
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 29.04	152745; PVC COUPLING
11/26/2018	819031	Northwest Pipe Fittings	Public Safety	$ 66.69	152812
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 378.14	152855; TEMP GAS LINE TO INTAKE
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 263.06	153038; PVC PRIMER, CEMENT & ELBOW
11/26/2018	819031	Northwest Pipe Fittings	Fleet	$ 41.93	154909 PO NUM 306881
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 96.88	156402; BOLT-PAK SET
11/26/2018	819031	Northwest Pipe Fittings	Wastewater	$ 69.70	158234; BOLT-PAK SET
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 1,139.52	159448; HEATER REPLACEMENT-FILTER FLOOR
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 13,745.00	5/8 X 3/4 T10 METERS W/AR - B MAG REG-CU FT
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 446.25	5/8" X 3/4" CHAMBER 2011 STYLE P/N: 2032554
11/26/2018	819031	Northwest Pipe Fittings	Public Safety	$ 26.25	154909
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 4,979.80	2 INCH T10 ECODER WALL - METER CUFT FLG.
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 5,950.00	R-900 ENHANCED WALL RR - MIU P/N: 2030905
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 99.72	RECTOR SEAL PIPE THREAD COMPOUND
11/26/2018	819031	Northwest Pipe Fittings	Water	$ (1,700.42)	Return Parts
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 53.68	5/8" T-10 BOTTOM CAP CAST IRON P/N: 2032522
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 16.50	5/8" T-10 BOTTOM CAP GASKET P/N: 2031879
11/26/2018	819031	Northwest Pipe Fittings	Water	$ 23.52	5/8" T-10 BOTTOM CAP LINER P/N: 2032538
11/26/2018	819032	NorthWestern Energy	Airport	$ 436.73	0712809-3. IP-11. November 2018
11/26/2018	819032	NorthWestern Energy	Airport	$ 939.43	0712800-2. IP-9. November 2018
11/26/2018	819032	NorthWestern Energy	Airport	$ 390.83	0712792-1. IP-7. November 2018
11/26/2018	819032	NorthWestern Energy	Airport	$ 50.71	1647695-4. De Icer. November 2018
11/26/2018	819032	NorthWestern Energy	Public Safety	$ 2,059.64	0100476-1: STATION #1 - MONTHLY ELECTRICAL
11/26/2018	819032	NorthWestern Energy	Airport	$ 63.32	0719616-5. ARFF Facility Lights. November 2018
11/26/2018	819032	NorthWestern Energy	General	$ 1,130.09	Electrical charges for PRPL office
11/26/2018	819037	Paddock Heating & Cooling	Public Safety	$ 2,800.00	NEW FURNACE TO REPLACE EXISTING RHEEM
11/26/2018	819037	Paddock Heating & Cooling	Public Safety	$ 120.00	Engine exhaust system, clean carbon from magnets
11/26/2018	819039	PeopleReady Inc	Solid Waste	$ 1,244.33	Paper Pickers for the Landfill 24126034
11/26/2018	819039	PeopleReady Inc	Solid Waste	$ 1,915.03	Paper Pickers for the Landfill 24129555
11/26/2018	819043	Public Works-Administration	Water	$ 3,760.00	PWU Oct 2018 Engineering Permits - Watermain Repair
11/26/2018	819043	Public Works-Administration	Water	$ 5,590.00	PWU Oct 2018 Engineering Permits - WSRP
11/26/2018	819054	SHI International Corp	Information Resources	$ 9,200.00	1000-1999 Sopho Licenses -Three year Subscription
11/26/2018	819055	Simply Family Magazine Inc	General	$ 2,600.00	Advertising insert in Family Magazine-winter 2018
11/26/2018	819066	The Babcock LLC	General	$ 2,915.92	Unit 1A October 2018 Expenses
11/26/2018	819067	Thomas Appraisal Services Inc	Storm Sewer	$ 7,500.00	WO1830 City County Drain Flood Mitigation
11/26/2018	819069	Tire-Rama	Solid Waste	$ 153.54	Tire For the trailer 1050311936

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11/26/2018	819069	Tire-Rama	Solid Waste	$ 3,340.00	Tire Repairs for garbage trucks 1050311779
11/26/2018	819069	Tire-Rama	Solid Waste	$ 4,952.50	Tire repairs for the garbage trucks 1050312296
11/26/2018	819069	Tire-Rama	Solid Waste	$ 482.02	Tires for Landfill equipment 1050312067
11/26/2018	819069	Tire-Rama	Solid Waste	$ 791.48	Tires for unit #0026 1050311822
11/26/2018	819069	Tire-Rama	Solid Waste	$ 4,934.43	Recapped Tires for the garbage trucks 1050311361
11/26/2018	819069	Tire-Rama	Solid Waste	$ 2,621.00	Recapped tires for the garbage trucks 1050311551
11/26/2018	819069	Tire-Rama	Solid Waste	$ 4,535.50	Recapped Tires for the garbage trucks 1050311860
11/26/2018	819069	Tire-Rama	Solid Waste	$ 879.50	Reccaped tires for the garbage trucks 1050312082
11/26/2018	819069	Tire-Rama	Public Safety	$ 523.36	1050310582
11/26/2018	819069	Tire-Rama	Street/Traffic Oper	$ 912.20	1050311015
11/26/2018	819070	Town & Country Supply Association	Transit	$ 4,119.60	312928 PO NUM 307145
11/26/2018	819070	Town & Country Supply Association	Public Safety	$ 981.68	BLENDED DIESEL DELIVERED (400 GALLONS)
11/26/2018	819070	Town & Country Supply Association	Public Safety	$ 490.84	BLENDED DIESEL DELIVERED (200 GALLONS)
11/26/2018	819070	Town & Country Supply Association	Public Safety	$ 602.00	312935: FIRE 1 UNLEADED
11/26/2018	819070	Town & Country Supply Association	Public Safety	$ 736.27	312935: FIRE 1 DIESEL/BLENDED
11/26/2018	819070	Town & Country Supply Association	Public Safety	$ 564.47	312937 FIRE6: DIESEL / BLENDED
11/26/2018	819070	Town & Country Supply Association	Public Safety	$ 3,411.34	312936 FIRE2: DIESEL/BLENDED
11/26/2018	819071	TPG Pressure, Inc.	Water	$ 4,319.48	CD99000602; FIELD REP JOBSITE VISIT
11/26/2018	819072	Tractor & Equipment Co.	Solid Waste	$ 123.86	Parts for Landfill equipment BLCS0680560
11/26/2018	819072	Tractor & Equipment Co.	Solid Waste	$ 2,422.15	Parts for Landfill equipment BLCS0680997
11/26/2018	819072	Tractor & Equipment Co.	Solid Waste	$ 1,083.57	Parts for Landfill equipment BLCS0691019
11/26/2018	819072	Tractor & Equipment Co.	Solid Waste	$ 1,501.15	Parts for Landfill equipment BLCS0692116
11/26/2018	819072	Tractor & Equipment Co.	Solid Waste	$ 516.38	PARTS/LABOR FOR UNIT 0242
11/26/2018	819072	Tractor & Equipment Co.	Solid Waste	$ 621.00	PARTS/LABOR FOR UNIT 0242
11/26/2018	819092	Yellowstone County Treasurer	Gas Tax	$ 30.00	PW/Eng/PUD
11/26/2018	819092	Yellowstone County Treasurer	Water	$ 1,177.28	PW/Eng/PUD
11/26/2018	819092	Yellowstone County Treasurer	Wastewater	$ 20.00	PW/Eng/PUD
11/26/2018	819092	Yellowstone County Treasurer	Storm Sewer	$ 32.50	PW/Eng/PUD
11/26/2018	819092	Yellowstone County Treasurer	CDBG	$ 1,993.32	Comm Dev
11/26/2018	819092	Yellowstone County Treasurer	General	$ 97.50	Parks
11/26/2018	819092	Yellowstone County Treasurer	Parks Maintenance	$ 26.25	Parks
11/26/2018	819092	Yellowstone County Treasurer	Parks Maintenance	$ 37.50	Parks
11/26/2018	819092	Yellowstone County Treasurer	Public Safety	$ 49.16	Police
11/26/2018	819092	Yellowstone County Treasurer	General	$ 25.47	Finance

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: Zone Change 971 - Public Hearing and 1st Reading - Hawk Creek Planned Development

PRESENTED BY: Nicole Cromwell

Department: Planning & Community Services

Presentation: Yes

PROBLEM/ISSUE STATEMENT

This is a zone change request from Neighborhood Commercial (NC) to Planned Development with underlying NC, to allow 1 microbrewery license and 1 restaurant beer & wine license (no gaming) on a 3.6 acre parcel of land north of Grand Avenue and west of 54th Street West. Planned Development zone changes may include some standard zoning provisions for uses, setbacks and site development but generally each Planned Development zone change is tailored for specific uses on a specific parcel. The property is currently un-developed and sits adjacent to the Cottonwood Grove neighborhood to the north. The legal description of the parcel is Lot 4, Block 1 of the MK Subdivision. The property owner, MYK LLC (Patricia Kramer) is represented by Scott Aspenlieder of Performance Engineering. The prospective buyers are Michael and Tyler Schmechel who own and operate several similar businesses in Billings. A pre-application neighborhood meeting was held on August 27, 2018, at Grace Montessori School and a Preliminary Review meeting was held on September 26, 2018. The Zoning Commission conducted its public hearing on November 7, 2018, and is forwarding **no recommendation** on a vote of 1 in favor and 4 opposed to a motion to recommend approval and adoption of the findings of the 10 criteria for Zone Change 971.

Zone Change applications are reviewed using statutory criteria (MCA 76-2-304 and BMCC 27-1502.d) 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 types 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 (MCA 76-2-304 & BMCC 27-1502.d) as recommended by Planning Staff to 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.

Prior to making a decision on the proposed zone change, the City Council shall consider the findings of the 10 review criteria.

The Zoning Commission voted against a motion to recommend approval. The motion was made by Commission Member Larson, seconded by Commission Member Boyett and was based on

the Planning Staff's recommended findings of the 10 review criteria. The Zoning Commission members who voted against the motion did not articulate any specific changes to the proposed findings. Zoning Commission members made general statements about why they intended to vote against the motion to approve the zone change. The Zoning Commission therefore, has no recommendation on this request.

Zoning Commission Member Dennis Ulvestad stated he was voting against the motion because he believed the applicant was using deceptive practices to gain a capital advantage over the new restaurant, bar & casino (The Lion's Den) that will be opening soon directly south of the subject property. Commission Member Ulvestad stated there was property available for sale that is properly zoned for the proposed use. This properly zoned lot is on the corner at 54th St W and Grand Avenue just east of the new Lion's Den location. Commission Chairman Dan Wagner stated he lives in the West End, does not mind driving to get services or groceries or dine out, and he would not want this use anywhere near his neighborhood. Commission Member Mike Boyett stated he believed this would set a precedent to encourage more Planned Development zone changes to accomplish the "one-off" uses of land not normally allowed. Commission Member Michael Larson stated he was torn on this application. He stated he understood the neighborhood's hesitancy to accept this type of use and zone change. Commission Member Larson stated he had experienced a similar issue when he lived near Rehberg Lane and Grand Avenue in 1997. He stated MacKenzie River Pizza wanted to open a restaurant with a beer & wine license at 3025 Grand Avenue. He stated there was quite a bit of neighborhood concern at the time about increasing crime, drunk driving, robbery, trash and declining property values. Mr. Larson stated none of these predictions came true and he enjoyed being able to walk to a casual dining spot with his family. He stated he believed the same would happen here at 54th St W and Grand Avenue.

Commission Member Larson made a motion to recommend approval and adoption of the staff's proposed findings of the 10 review criteria and the motion was seconded by Commission Member Boyett. The Commission voted 1 in favor (Michael Larson) and 4 opposed to the motion. The Commission did not articulate any specific findings on the 10 review criteria other than the statements of the Commission members during the debate.

The findings of the 10 review criteria (MCA 76-2-304 & BMCC 27-1502.d) below are the proposed findings forwarded to the Zoning Commission by city staff.

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: **Community Fabric**:

- Developed landscape areas in commercial areas encourage more pedestrian activity and vibrant commercial activity
- Attractive streetscapes provide a pleasant and calming travel experience in urban and suburban neighborhoods
- Outdoor public spaces provide casual and relaxing gathering areas for people
- Planning and construction of interconnected sidewalks and trails are important to the livability of Billings

The proposed zoning will allow the owner to sell the property to the buyer who is interested in creating 2 new businesses with enhanced site development requirements to encourage pedestrian activity, enjoyment of outdoor spaces in a casual and relaxing atmosphere. The proposed PD will restrict uses that do not contribute or enhance these place-making activities.

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 requires provisions for all modes of travel to and from the property and site development requirements to increase outdoor activity.

Prosperity:

- A diversity of available jobs can ensure a strong Billings' economy;
- Retaining and supporting existing businesses helps sustain a healthy economy
- Successful businesses that provide local jobs benefit the community

The proposed zoning will allow the new owners, Michael and Tyler Schmechel, to locate within the city limits in order to sustain and grow their business. Craft brewing and family oriented restaurants that offer outdoor casual dining and activities are a growth business in Montana. The local economy benefits from a diverse offering of community and neighborhood services.

The proposed zone change is consistent with the following guidelines of the 2001 West Billings Neighborhood Plan:

- Promote efficient utilization of land within the West Billings planning area by promoting well designed, more pedestrian friendly, urban development patterns with a mix of uses and an efficient, creative use of land.
- Shorten automobile trips by locating non-industrial commercial development in close proximity to residential areas.
- Limit "community" commercial centers to appropriate intersections of arterial streets and spaced no less than approximately two miles apart. Community commercial centers should be compatible with the surrounding area and designed to serve the overall West Billings community unless otherwise approved by the governing bodies.

2. *Is the new zoning designed to secure from fire and other dangers?*
The new zoning, as do all standard zoning districts, requires separation between buildings and setbacks from property lines. This should 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 PD provides for limitations on potentially incompatible uses – auto supply stores, gas stations, convenience stores and similar uses currently allowed by the NC zoning district.

4. *Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?*
Transportation: The proposed zoning should not have any effect on the existing transportation system. An update of the existing TAS for the subdivision may be required by the City Traffic Engineer at the time a building permit is submitted.
Water and Sewer: The City provides water and sewer to the property. There will be no additional impacts to the system from the proposed zoning.
Schools and Parks: Schools and parks should not be affected by the proposed zoning.
Fire and Police: The subject property is 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 building separations to allow for adequate light and air.

6. *Will the new zoning effect motorized and non-motorized transportation?*
The new zoning should have no effect on transportation systems. The PD provides for an off system bike trail along the northern property line and requires bicycle parking facilities for each development within the PD.

7. *Will the new zoning promote compatible urban growth?*
The new zoning does promote compatibility with urban growth. The proposed zoning will allow this parcel to be developed with an in-demand type of dining and relaxation experience. Additional development within the 3-acre parcel will include other compatible uses.

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 tailors the underlying zoning of NC to provide 2 additional uses but prohibits many other uses normally allowed in the NC zone. The PD also has operational restrictions to respect and protect the adjacent neighborhood.

9. *Will the new zoning conserve the value of buildings?*
There are no buildings on the subject parcel. The value of surrounding buildings (north and south) may be improved by the proposed development. Marketability of adjacent property is <u>not</u> included within this review criteria.

10. *Will the new zoning encourage the most appropriate use of land throughout the City of Billings?*
The proposed zoning will encourage an appropriate use of land in this part of Billings.

FINANCIAL IMPACT

If approved, the property will likely be developed within the next 2-3 years. This will add value to the property tax base. It is not known at this time how much value this would add, but it will increase the property taxes and the city assessed fees based on a non-vacant parcel. This increase in property taxes and fees may be off-set by new service demands based on the new development. No city agency expressed concern with providing service to this property.

If the zone change is not approved, the property cannot propose another zone change for 12 months. The prospective buyer may not purchase the property, and the owner would put the property back on the market. No additional tax or fee revenue would accrue unless the property was sold and developed under its current NC zoning.

BACKGROUND

The proposed Planned Development (PD) zone would keep the underlying NC zoning, add the use to allow 1 microbrewery and 1 restaurant beer & wine license, restrict other uses as well as place strict requirements for landscaping, signage, operational requirements and buffering for adjacent residences on the future development of the property. The property does not have direct access to an arterial street but is within a commercially zoned subdivision consisting of Community Commercial (CC) zoned lots and NC zoned lots. There is a completed residential

subdivision to the north - Cottonwood Grove. It is also currently adjacent to land outside the city limits zoned Agriculture Open-Space (A-1). The adjacent county land is in the same ownership as the subject property.

Microbreweries (manufacturing less than 1,500, 31-gallon barrels per year) are only allowed by right in the Community Commercial (CC), Highway Commercial (HC), Central Business District (CBD), Controlled Industrial (CI), Heavy Industrial (HI), EBURD districts and South 27th Street Corridor zones. Microbreweries manufacturing more than 1,500, 31-gallon barrels per day require special review approval in the CC, HC, CBD and S. 27th Street Corridor zones. Microbreweries and other alcoholic beverage makers are regulated by the Montana Department of Revenue Liquor Licensing Division. State law allows microbreweries to have a "tap room" or sample room where patrons may consume up to 48 ounces of the brewer's product during limited serving hours (MCA Title 16, Chapter 3). There are 8 listed craft brewers in Billings and 3 distilleries. Montana is listed 3rd in the nation for number of craft brewers per capita according to the Brewers
Association, a U.S. trade group.

Restaurants that offer service of beer and wine are not allowed uses within the NC zoning district. These restaurants are only allowed in the CC, HC, CBD, CI, HI, EBURD Districts and the South 27th St. Corridor zone. These restaurants are also required to maintain a minimum separation of 600 feet (measured property line to property line) from churches, schools and public parks with playing fields or playgrounds. This location is not within 600 feet of any of these uses. Restaurant beer and wine licenses do not have any ability to add video gaming or gambling of any type.

The proposed PD zoning district will retain the underlying NC zoning and intends to allow only 1 (one) microbrewery license and only 1 (one) restaurant beer and wine license on the entire 3.6 acre parcel. The PD zone also proposes to restrict certain uses normally allowed in the NC zone including out-patient veterinary clinics, sand and gravel mining, all other food or beverage makers, pipelines and other utility transmission infrastructure including any wireless antennae, convenience stores or gas stations, auto supply stores, hotels, motels, or campgrounds, laundromats, dry cleaners, funeral homes, public parking lots (as a primary use) and modular built dwellings (Article II of the draft PD). The proposed PD limits the outdoor seating areas for both the microbrewery and the restaurant and dictates that all outdoor activities will cease at 9 pm. The PD proposes to prohibit all electronic message signs, neon signs, balloon signs, roof signs, and strings of pennants or flags. The PD states all signs except for 1 (one) sign must be wall signs placed on buildings. The 1 (one) freestanding sign is allowed for each developed parcel of land.

Site lighting and landscaping are also proposed for strict regulation including limiting all outdoor light standards to 15 feet maximum height and requiring full shields on all outdoor lights except street lighting. The PD dictates a minimum 25-foot wide landscaping buffer be maintained along the entire north property line adjacent ot Cottonwood Grove Subdivision. The landscaping requirements also include the use of 2-inch caliper trees, water saving drip irrigation, and reduced amounts of off-street parking (1 per 200 sf of floor area) to minimize asphalt areas.

The PD was presented to the surrounding property owners at a pre-application meeting on August 27, 2018. The application was received by the Planning Division in September and a preliminary review meeting with the applicant, the surrounding property owners, and other City staff was held on September 26, 2018. Meeting notes from the pre-application meeting and the public comments received via email and letter are included as attachments. Only city staff and

the applicant attended the Preliminary Review meeting on September 26, 2018.

Several surrounding property owners, as well as property owners in the general vicinity, have expressed concerns with the proposed PD. The primary concern appears to focused on the availability of alcohol at this location. Secondary concerns stated were about "bars" in general, gambling (casinos), crime generated by locations that serve alcohol and impaired or drunk drivers. Five of the 21 letters of comment were concerned with additional traffic generation, noise and lighting. Three of the 21 letters were either in support of the proposal or neutral. There were a few concerns about the effect of having a commercial-type land use adjacent to high value homes in lower density suburban neighborhoods. The letters of comment from surrounding owners are included as an attachment.

Traffic on Grand Avenue and 54th Street West is increasing as new city and county subdivisions are constructed in the area. Traffic counts in 2018 on these nearby arterial streets are about 8,700 vehicle trips per day on Grand Avenue and about 3,500 vehicle trips per day on 54th St. West. These are low traffic volumes for fully constructed arterial streets, however neither Grand Avenue nor 54th St. West are constructed to a full arterial street section. Both roads are partially within the city limits and have large sections that are still within the county's jurisdiction. This has historically made it difficult for either governing body to make substantial road improvements to handle increasing traffic volumes.

The most recent traffic study completed for the West End was the 2016 West Billings Multi-Modal Planning study to determine where existing traffic flow and safety is deficient and where improvements may be necessary in the future. The intersection of Rimrock Road and 54th Street West was determined to have an existing safety concern with the volume of traffic. This intersection is about 1 mile north of the subject property and a traffic light is now installed at this intersection to improve pedestrian and motorist safety and circulation. Two other nearby intersections at Grand and 48th Street West and Grand and 56th Street West were also identified as deficient and in need of a traffic signal improvement or a roundabout. The study also concluded most of the major streets in West Billings are not conducive to use by pedestrians or bicyclists due to narrow shoulders, no separated pedestrian or bicycle paths, and high travel speeds. The study identified 2 corridor improvement projects to complete the upgrade of Grand Avenue from Shiloh Road through to its intersection with 62nd St West. A short section of Grand Avenue corridor was improved and the traffic signal installation was completed on Grand Avenue at 54th Street West to coincide with the opening of Ben Steele Middle School at 5640 Grand Avenue. The 2016 study analyzed crash data in the area from 2010 through 2015. The study predicted current and future traffic patterns based on steady or aggressive growth and land use patterns. The executive summary of this plan is included as an attachment.

The property can be served by all city utilities and other city services exist in the area including police and fire. The West Billings Neighborhood Plan (2001) anticipated a "community center commercial node" for a proposed 4-way intersection at Grand Avenue and 56th St West. The northern leg of this 4-way intersection was abandoned and the intersection was split between 54th St. West (north of Grand) and 56th St. West (south of Grand). In this new configuration, a community center commercial node is no longer possible. The commercial node here is more oriented to neighborhood level commercial services with some provision on the east side of 54th St. West for community retail services such as the proposed Albertson's. The proposed PD zone change would introduce 2 uses in the existing NC zone that are not currently allowed but also eliminates currently allowed uses that could have a larger detrimental effect on the neighbors in the Cottonwood Grove Subdivision to the north. The PD also sets minimum standards for

landscaping, lighting and signage that are above the "standard" site development requirements for allowed uses in the NC zone.

The Planning staff reviewed the proposed final draft of the PD zone change and recommended approval to the City Zoning Commission. The Commission did not concur with this recommendation.The Zoning Commission voted 1 in favor and 4 opposed on a motion to recommend approval, therefore the ZOning Commission has no recommendation for the City Council. The Planning staff recommendation was based on a proposed finding the use and zone is compatible and conforming to the City's adopted 2016 Growth Policy, including the 2001 West Billings Neighborhood Plan. Staff found the proposed limitations in the PD would allow the proposed and potential uses of the property to fit in with the existing and future land uses in the area.

Limitations imposed in the Draft PD-NC zone include grocery or food retail stores, auto dealers or gas stations, hotels, rooming houses or modular dwellings of any kind. The PD also prohibits gambling, adult entertainment, laundromats or dry cleaners, auto repair or auto supply as well as neon lighting or electronic message center signs. The PD proposes operational restrictions so any outdoor activity at any location on the property must cease by 9 pm, and any outdoor pole lighting is fully shielded. The number of potential patrons on a daily basis to the microbrewery is an unknown at this point in time, however, state law limits how much beer can be sold or given away at any microbrewery sampling room. This limitation is meant to prevent sampling rooms from becoming a "bar", and would necessarily limit the number of patrons at the sampling room on a daily basis. Brewers may only serve what is produced on site or at an affiliated brewer's facility. Traffic volume to this location is not known due to the developing nature of the subdivision. A traffic impact study was submitted with the original MK Subdivision and would have to be updated based on the proposed uses. The original traffic study was based on the zoning and probable uses allowed within those zoning districts. Some uses "capture" drive by traffic and other uses create more traffic as destination points. The proposed uses will be destination points for calculating traffic and whether any addition traffic control measures are needed. All access to and from Grand Avenue and 54th Street West is already existing. No new access driveways to these 2 arterial streets will be allowed.

STAKEHOLDERS

The Zoning Commission conducted its public hearing November 7, 2018, and received the staff report, testimony from the agent, Scott Aspenlieder and prospective buyers, Michael and Tyler Schmechel. In addition to the written comments received, the Commission received public testimony from Terra Pierce, owner of the Lion's Den at 1411 Chy Way (under construction), Tiffany Wardell of 1309 Daybreak and Chair of the West End Task Force, and John Woods of 3521 Tommy Armor Circle. Ms. Pierce and Ms. Wardell testified in opposition and Mr. Woods testified in favor.

Mr. Aspenlieder stated the proposed zone change was to allow the proposed use for a microbrewery and family oriented restaurant on the west side of the property. He stated the Planned Development was intended to ensure the compatibility of any uses with the adjacent residents and land owners. He stated they received good comments and suggestions from those adjacent owners and made changes to the PD based on those comments. He stated the only suggestion they did not incorporate was to include a 10-foot high brick wall around the entire parcel. He stated the PD will require any new building to be on the southern 2/3 of the property including any other buildings besides the microbrewery and restaurant building. He stated the only area with alcohol sales or brewing will be for the site shown on the concept drawings. If the owner creates additional building lots, those lots are not entitled to additional

alcohol sales or brewing. Only 1 microbrewery and only 1 restaurant that serves beer and wine will be allowed on the 3.6 acre parcel. In response to a question from Commission Member Dennis Ulvestad, Mr. Aspenlieder stated the reason for choosing this lot and this location was due to the increasing number of residents in the West End (rooftops) and the area was already zoned in a commercial node. He stated the prospective owners were interested in this lot because it was away from the speeding traffic on Grand & 54th St W.

Mr. John Woods of 3521 Tommy Armor Circle testified in favor of the zone change. He stated the West End has waited a long time for local services, and he would like to have nearby casual dining as well as other commercial services in the area.

Michael Schmechel, prospective buyer, testified in favor of the proposed zoning. He stated this area is already a commercial node and the proposed PD was just to allow the 1 microbrewery and 1 restaurant that serves beer and wine. He stated millennials want walkable neighborhoods and with no or few services in the area, this would fill a need in the area. He stated the development of the rest of the lots in this commercial subdivision could be similar to what developed at Rehberg Lane & Grand Avenue. He stated the proposed use is not a bar, not a casino, and is oriented towards young families and outdoor activity. He stated the business would not be a late night activity and all service would be closed by 10 pm.

Terra Pierce, owner of the Lion's Den at 1411 Chy Way, testified in opposition. She stated all of Lot 4 is now owned by Patricia Kramer and the PD would only apply to that lot. She stated based on her experience, microbreweries and their tap rooms are in direct competition with bars, restaurants and casinos. She stated her business purchased the lot to south because it was already zoned for her proposed use. She stated they paid a premium price for the lot because of the allowed use. She stated she also could have purchased one of the NC zoned lots and paid much less and tried to do a zone change. She stated the microbrewery does not belong in a NC zone, it was more appropriate to a manufacturing or industrial zone. She stated it was absurd to allow a brewery next to a neighborhood. She urged the Commission to not approve the zone change. She stated the buyers have a chance to buy the corner lot that is already zoned for the proposed uses.

Tiffany Wardell of 13009 Daybreak testified in opposition. She stated she appreciated the applicant's efforts to reach out to the neighborhood and the West End Task Force. She stated the Task Force has not taken a formal position on this application, but she stated she talked to many people in the area and all were opposed to the zone change. She stated some people were not sure if making suggestions on changes to the PD document would be interpreted as supporting the zone change. She stated the Task Force was feeling inundated with zoning applications and new developments. She stated she understood the need for new services in the area but was concerned the proposed uses would be out of character with the neighborhood. She stated the area needs more family friendly businesses, not places to drink. She stated she moved west of Shiloh Road to get away from businesses and commercial areas. She stated she likes to drive to get her groceries and any services she needs.

Scott Aspenlieder provided rebuttal testimony. He stated he understood the difficulty of making these types of zoning decisions where new uses are proposed and the edges are filling in between the far flung subdivisions on Billings West End. He stated he has spoken with many West End residents who do want new services and commercial businesses. He stated to not approve the proposed uses and zoning would be a detriment to the city's infrastructure and finances. He stated the only way to ensure the West End is sustainable is to allow new developments.

Tyler Schmechel testified in rebuttal as well. He state he is also a partner in the proposed development and that he is a millennial. He stated this was ridiculous to think microbreweries "steal" business from bars, restaurants and casinos. He stated a successful microbrewery - Draught Works Brewing - in Missoula opened in a vacant area in 2012 and has spurred all kinds of new development since then. He stated most microbreweries are becoming family friendly places for a short relaxation period after work and school and before dinner either at home or at nearby restaurants. He stated Ms. Pierce and the Lion's Den are not victims, and he will not be stealing any of their business.

The Zoning Commission is forwarding no recommendation on a vote of 1 in favor and 4 opposed to a motion to recommend approval and adoption of the findings of the 10 criteria for Zone Change 971.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The Consistency with Adopted Policies or Plans is discussed in the Alternatives Analyzed section above.

RECOMMENDATION

The Zoning Commission is forwarding **no recommendation** on a vote of 1 in favor and 4 opposed on a motion to recommend approval and adoption of the findings of the 10 criteria for Zone Change 971.

APPROVED BY CITY ADMINISTRATOR

Attachments

PD Agreement
Zoning Map and Site Photos
Applicant Lettter and Pre App Materials
Comments through Oct 26
Concept Site Plan
West End MultiModal Traffic Study Executive Summary
Brewery License FAQs
Restaurant Beer & Wine License FAQs

Return to:
City Clerk
City of Billings
PO Box 1178
Billings, MT 59101

PLANNED DEVELOPMENT AGREEMENT

LOT 4, BLOCK 1, MK SUBDIVISION IN THE CITY OF BILLINGS, MONTANA

THIS AGREEMENT is made and entered into this _____ day of _____, 2018, by and between **MYK Enterprises, LLC,** whose address for the purpose of this agreement is 218 Brookshire Blvd Unit 2, Billings, MT 59102, hereinafter referred to as "Owner," and **City of Billings,** Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the Owner owns approximately 3.6 acres of real property in Billings, Montana specifically described as Lot 4, Block 1 of the MK Subdivision. The foregoing property shall be known as "Hawk Creek Planned Development," or a related name that may be assigned later.

WHEREAS, the Hawk Creek Planned Development will consist of a mixture of commercial, retail, professional, medical and related uses.

WHEREAS, the Owner desires to place certain building and use restrictions on the property, specify certain land uses, and create a pattern of development that promotes community service, economic activity, convenience, and amenity for the Hawk Creek Planned Development and surrounding neighborhoods.

WHEREAS, the aforesaid Owner and the County desire to ensure the Hawk Creek Planned Development will be developed and maintained consistent with the standards described in this agreement.

THEREFORE, the undersigned hereby establish and declare the following plan for the Hawk Creek Planned Development as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

AGREEMENT

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

All persons, corporations, or other entities, who shall hereafter acquire any interest in and to the above described property, in whole, or in part, shall be taken and held to agree, to conform to, and observe the following land uses, restrictions, and other stipulations as to the use thereof, and as the construction of improvements thereon.

II. LAND USES AND BUILDING RESTRICTIONS

Unless expressly designated below, all other standards or requirements of the Zoning Regulations for the City of Billings shall be followed for the type of use within each of the areas described herein.

A. Restricted Uses for Underlying City Zone: Neighborhood Commercial – NC

No land may be used for purposes that include gaming (casinos) or adult entertainment or sexually oriented businesses. No variances or special review approvals may be requested or granted for those businesses.

All allowed land uses as outlined within the City of Billings Zoning regulations for the underlying zone shall be allowed within the Planned Development**,** with the following exceptions:

Exceptions (uses not allowed):

Division A: Agriculture, Forestry, and Fishing
Group 07 – Agricultural Services
- Veterinary services for Animal specialties – Outpatient Only

Division B: Mining
- Construction sand and gravel mining (1442)

Division D: Manufacturing
Group 20 – Food and Kindred Products
- All sub-groups except offices

Division E: Transportation, Communications, Electric, Gas and Sanitary Sewer
Group 46 – Pipelines, except natural gas
Group 48 – Communications
- All uses except offices

Group 48 – Commercial Antenna Support Structures
Group 49 – Electric, Gas, and Sanitary Services
- Transmission and distribution, electric and gas

Division G: Retail Trade
Group 54 – Food Stores
- Convenience Store with Gas Pump Islands

Group 55 – Automotive Dealers and Gasoline Service Stations
- All uses

Division I: Services
Group 70 – Hotels, Rooming Houses, Camps, and Other Lodging Places
- Rooming, boarding houses; organization hotels and lodging houses, on a membership basis (702, 704)

Group 72 – Personal Services
- Coin-operated laundries and dry cleaning (7215)
- Funeral service and crematories (726)

Group 75 – Automotive Repair, Services, & Parking
- Automobile parking (752)

Division K: Non-Classifiable Establishments
Dwellings – Modular Homes

Allowances:

The subject property shall be allowed use of one (1) cabaret license and one (1) brewing/taproom license. Subsequent subdivision of the subject parcel shall not increase the number of licenses allow for use within the Planned Development.

III. OPERATIONAL RESTRICTIONS – Alcoholic Beverage Manufacturing and Cabaret License

The Developer and City recognize the sensitive location of the Hawk Creek Planned Development and the need to include specific operational restrictions and site requirements not normally required for the uses listed above.

A. Developer Agrees to the Following:

a. Any outdoor seating areas associated with the brewing/taproom or cabaret operations shall be located on either the east, west or south elevations of the structures. Under no circumstances shall seating areas with either taproom or cabaret operation be located off of the north elevation of the structure(s).

b. Any seating area outside of any enclosed building for use by the patrons of the alcoholic beverage manufacturer or cabaret operation shall have a fence

installed at least 42-inches in height enclosing the outdoor area. There shall be no entry to the outdoor seating area for patrons except through the operating building.

c. Any music or entertainment, including any permanent or temporary speakers, outside of an enclosed building shall only be installed/located along the western or southern elevations of the structure.

d. Any outdoor activities associated with operation of the facilities shall cease by 9 pm.

e. Operating hours for the taproom and cabaret license shall be dictated by Montana State Law outlined in the MCA 16.3.2 and MCA 16.4.1, respectively.

IV. SIGNAGE AND LIGHTING

The intent of signage and lighting design regulation is to encourage the use of signage and lighting as a design component to enhance buildings, landscaping, or other site features while not detracting from the aesthetics of adjacent neighborhoods. Developers should encourage night sky's visibility to reduce the general illumination of the sky in the surrounding area. Design elements should reduce horizontal light glare and vertical light trespass from a development site onto adjacent parcels. Developers should encourage the judicious use of lighting in conjunction with other security methods to increase site safety.

A. Signage

a. Signage should be provided in accordance with the PDA, with the intent to compliment the pedestrian-oriented environment. The signage requirements included in Article 27-700 of the United Zoning Regulations and any subsequent amendments thereto shall govern the regulation of signage in Hawk Creek Planned Development so far as they are not inconsistent with the Planned Development Agreement and the below standards.

b. All signs shall comply with the design guidelines below:

- **i.** All signs, except for neighborhood identification signs, shall be placed flat against a building or designed as part of an architectural feature thereof.
- **ii.** No electronic message displays or signs are allowed.
- **iii.** No neon signs are allowed.
- **iv.** No balloon signs as defined by the City of Billings Code are allowed.
- **v.** No string of pennants, flags, or other similar types of non-informative non-holiday decorations are allowed.
- **vi.** One (1) free-standing sign is allowed indicating the name and/or nature of the occupancy for each developed parcel/tenant. Signs may not exceed fifteen (15) feet in height and fifteen (15) feet in width.

vii. No rooftop signs are allowed.

B. Exterior Lighting

a. Developers shall provide adequate lighting levels in all areas used by pedestrians or automobiles, including building entries, walkways, parking areas, and circulations areas.

b. All exterior lighting must be installed or shielded to minimize light intrusion into residential units in adjacent neighborhoods.

i. All outdoor pole lighting shall be fully shielded and mounted at heights no greater than fifteen (15) feet above grade.

ii. All outdoor lighting, except street lighting, shall be aimed or shielded so as to minimize stray light trespassing across property boundaries.

V. LANDSCAPING REQUIREMENTS

All landscaping and performance standards as outlined within section 27-1101 of the City of Billings Zoning ordinance shall be followed as required within the underlying City zone. Additionally, all development must comply with the requirements outlined in this Section of the Planned Development.

A. General Landscape Area Requirements

a. A palette of regionally appropriate drought and climate tolerant plant materials is required to be used.

b. The use of drip irrigation and/or other irrigation systems is required.

c. All development should create a pedestrian-friendly environment on the street and connect to adjacent developments as identified in the conceptual master plan.

d. A variation of elements should be provided along public frontage; no less than two (2) types of trees may be used in a single development lot.

e. One (1) 2-inch tree is required per 2,000 sf of total landscape area per development lot or parcel.

f. One (1) large shrub (mature height over three feet) is required for every 500 sf of total landscape area per development lot or parcel.

g. Trees and shrubs should be grouped for aesthetic and irrigation purposes.

h. Lawn must have a minimum width of six (6) feet.

i. Plant materials must be maintained and dead plants must be replaced in a timely manner.

B. Landscaped Green Belt Improvements

a. A minimum 25-foot landscaped green belt, which may be incorporated into any required building setbacks, shall be landscaped and maintained along the northern property boundary.

b. Developers shall be responsible for installation and maintenance of the landscaped green belts in accordance with Section V.A of this document.

c. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt or the setback.

d. All improvements shall comply with The City of Billings and Yellowstone County's clear vision standards.

C. Parking Lot Landscaping

a. All parking lot landscaping may be included as part of the landscaped area as calculated in Section V.A of this document.

b. Trees shall be planted and incorporated into parking lot layouts at a density of one (1) 2-inch tree for every sixteen (16) parking spots.

VI. SITE LAYOUT AND ORIENTATION

All development must comply with the site layout and orientation requirements outlined in this Section of the Planned Development.

A. Building Requirements

a. Buildings shall be located in the south two-thirds of the lot allowing for parking or green space on the north third of the lot.

b. Buildings can be located directly against sidewalk with no front lot setback requirements.

c. Sidewalks shall be a minimum of 5-feet wide and a minimum of 7-feet wide when directly adjacent to parking areas.

d. Building height shall be no greater than 34-feet from grade.

e. No more than fifty (50) percent lot coverage is allowed by the building.

f. Buildings containing the use of either a brewery/taproom or cabaret license shall be designed with a likeness to traditional agricultural structures in both elevation and profile views.

g. All dumpsters shall be contained within a privacy fence that aligns the architecture features of the building.

h. All development shall provide for bike parking and non-motorized accessibility.

B. Parking Requirements

a. Parking shall be provided at a one (1) parking spot for every 200-square-feet of building.

b. Reciprocal parking access shall be provided for all businesses within the development.

c. Parking lots must be a minimum of 30-feet from the northern boundary with the landscaped green belt counting towards the setback requirement.

d. Bike parking shall be provided at a one (1) parking spot for every 2,000-square-feet of building with a minimum of two (2) spaces for each building.

VII. MODIFICATION OF THE APPROVED PLANNED DEVELOPMENT

Any modification of the approved development plan shall be processed using the same procedures for a new application, as set forth in the City of Billings Zoning regulations. However, minor modifications may be approved by the zoning coordinator if he/she makes the following findings:

No change in the overall character of the development;

No increase in the number of residential units greater than two (2) percent;

No additional allowed uses;

No reduction in open space greater than two (2) percent; and

No change in the approved minimum setbacks, maximum lot coverage or maximum allowed height.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"OWNER" **Patricia Kramer**

By: _____

MYK Enterprises, LLC
Managing Member

STATE OF MONTANA)
: ss
County of Yellowstone)

On this _____ day of _____, 20___, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of **Patricia Kramer, Managing Member of MYK Enterprises, LLC** who executed the foregoing instrument and acknowledged to me that he/she executed the same.

_____
Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 20___.

"CITY" **CITY OF BILLINGS, MONTANA**

Mayor

By: _____
Mayor

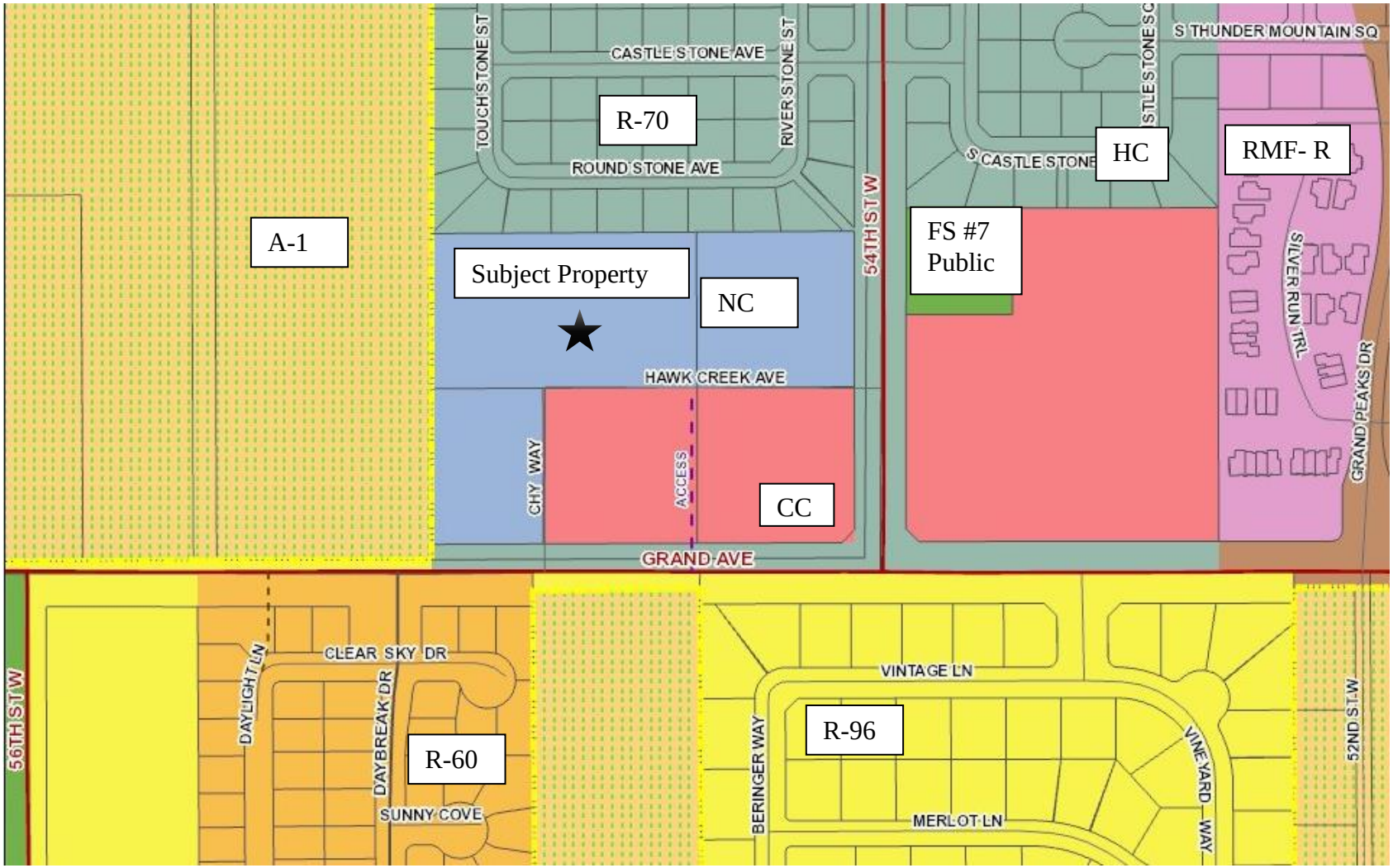
Attest: _____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this _____ day of _____, 20___, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the Mayor of the City of Billings, Montana, whose name are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

_____
Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

Surrounding Zoning
Zone Change 971 – Hawk Creek PD



ZC 971 - Hawk Creek PD

Subject Property Photos

Subject Property – from Chy Way

View east along front of new construction on Grand Avenue

Subject Property Photos

New 2-tenant building (The Den) on Grand Avenue & Chy Way

View north and west across subject property

Subject Property Photos

View north across subject property from Hawk Creek Avenue

View north and east across subject property

Subject Property Photos

View south across Hawk Creek Avenue

View east along Hawk Creek Avenue

Applicant Letter and Pre app materials
Zone Change 971 – Hawk Creek PD

RECEIVED
SEP 04 2018
PLANNING & COMMUNITY SERVICES DEPARTMENT

APPLICATION FORM

P2-18-00142

CITY ZONE CHANGE **Billings Zone Change #** 971 **- Project #** ~~18-058~~

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning: Neighborhood Commercial

Proposed Zoning: PD-Neighborhood Commercial with the allowance of one cabaret license and one brewery/taproom license

Tax ID # A31805C CITY ELECTION WARD # WARD IV

Legal Description of Property: MK Sub, Section 31, Township 01N, Range 25E, Block 1, Lot 4

Address or General Location (If unknown, contact County Public Works): Grand Avenue & 54th Street West Hawk Creek Ln & Chy Way

Size of Parcel (Area & Dimensions): 3.6 ACRES (522 FT X 304 FT)

Present Land-Use: Undeveloped

Proposed Land-Use: Commercial

Covenants or Deed Restriction on Property: Yes_____ No X

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application

Owner(s): MYK Enterprises, LLC
(Recorded Owner)
218 Brookshire Blvd Unit 2, Billings, MT 59102
(Address)
406-860-1967 kramerpatsy@gmail.com
(Phone Number) (Email)

Agent(s): Scott Aspenlieder
(Name)
7100 Commercial Ave., Suite 4, Billings, MT 59101
(Address)
406-384-0080 scott@performance-ec.com
(Phone Number) (Email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: Patricia A Kramer Manager Date: 9/4/18
(Recorded Owner)

1. **In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?**

The tract of interest is currently zoned Neighborhood Commercial. The Growth Policy has several goals that would be met by changing the zoning of the property from Neighborhood Commercial to Planned Development-Neighborhood Commercial. The issues that will be addressed are described below.

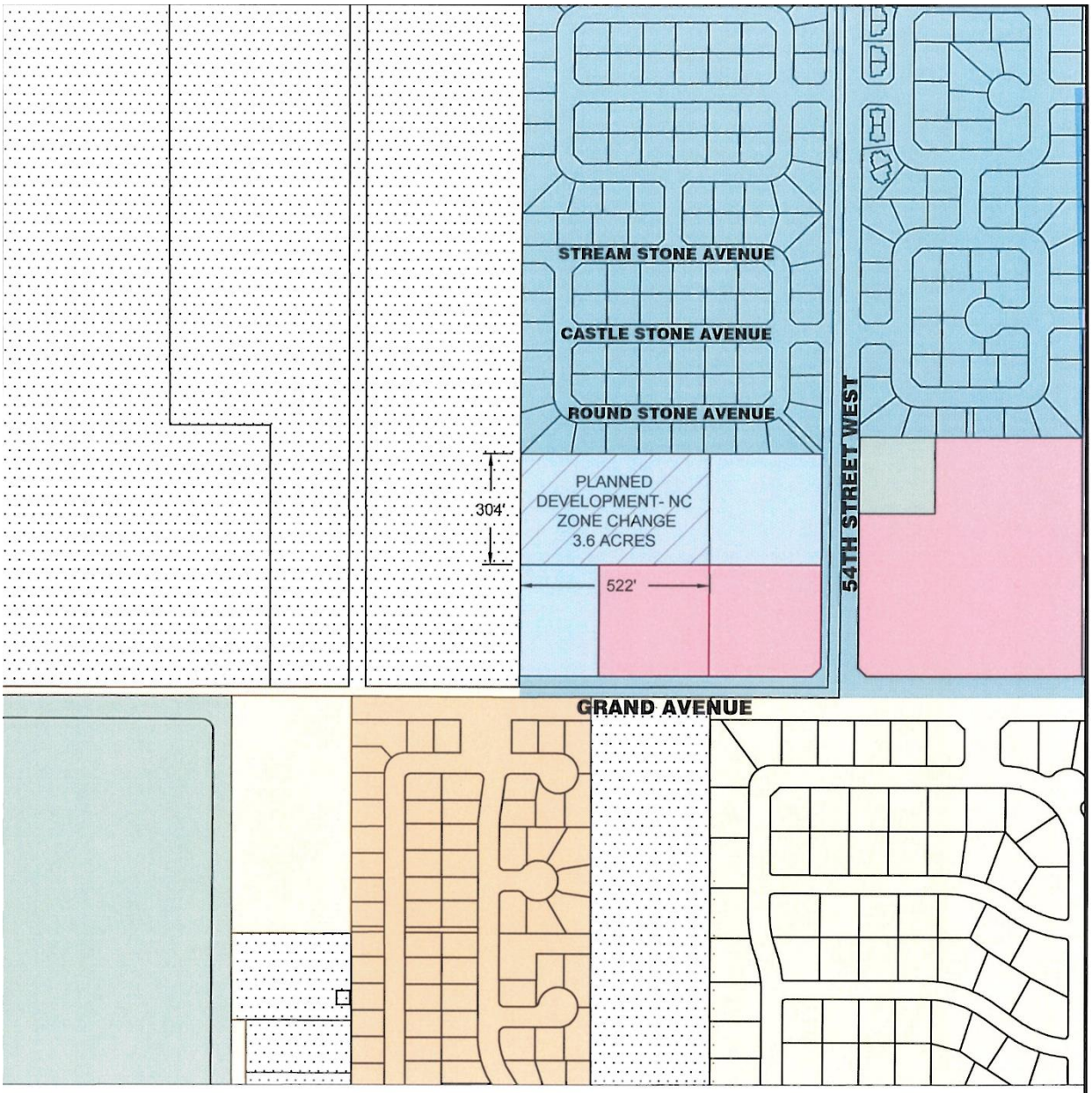
Implementation of the Infill Policy is important to encourage development of underutilized properties. The proposed zone change will fit with the City's Infill Development Policy by reducing the cost of basic City services, providing local neighborhood services, encouraging walkable communities, and adding new energy to existing neighborhoods. Commercial businesses will help to offset the cost of services to the neighborhood by increasing the tax base in the area and adding rate paying customers to City services such as water, sewer and solid waste.

The Growth Policy calls for commercial development at the nodes of two arterial roads, in this case 54th Street West and Grand Ave. This property is within the commercial node outlined in the Growth Policy and West End Plan and falls within the types of businesses desired for commercial nodes. The allowance of a cabaret and taproom license on the proposed lot allows for a much needed restaurant or dining facility to locate within the west end neighborhood. This creates a local feel for the neighborhood and allows for access to dining without driving over 2 miles into the City.

Predictable, reasonable City taxes and assessments are important to Billings' taxpayers. The creation of new commercial businesses within the City of Billings will add to the assessments the City collects and increase the City's tax base.

2. **Explain your need for the intended zone change and why the property cannot be used under the existing zoning. Explain how the new zoning will fit in with the existing zoning and land uses of the immediate area.**

The proposed development plan is to construct a facility restaurant and taproom facility allowing for on-site sale of beer and wine. State law restricts hours of operation for taproom facilities enforcing a end of sales at 8 pm, similarly cabaret facilities must end all alcohol sales at 10 pm. Both are well within the reasonable hours of operation for businesses and will not conflict with residential neighborhoods in the area. The proposed PD-Neighborhood Commercial zoning will fit well with surrounding commercial zoning and could likely encourage more development of commercial property in the area by providing for eatery options in the area. The proposed PD documents provide for a myriad of landscaping, parking, noise, lighting, and architectural restrictions to best fit the neighboring properties and minimize any potential negative impact while still adding value to the community and City.



LEGAL DESCRIPTION

LOT 4, BLOCK 1,
MK SUBDIVISION
BILLINGS, MT

LEGEND

- PLANNED DEVELOPMENT - NEIGHBORHOOD COMMERCIAL
- AGRICULTURAL OPEN
- COMMUNITY COMMERCIAL
- NEIGHBORHOOD COMMERCIAL
- PUBLIC
- RESIDENTIAL 7000
- RESIDENTIAL 9600
- RESIDENTIAL 15000

PROJECT TITLE
MK
SUBDIVISION

SHEET TITLE
ZONE CHANGE MAP

DRAWN BY: DTG
DATE: Jul-18
CHECKED BY: CPD

CLIENT
MYK
ENTERPRISES
218 BROOKSHIRE BLVD UNIT 2
BILLINGS, MT 59102

PERFORMANCE ENGINEERING
7100 COMMERCIAL AVE., SUITE 4
OFFICE - 406-384-0080
BILLINGS, MT 59101
www.performance-ec.com

EXHIBIT
1

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Pre-Application Statement of Owner(s) or Agent(s)

The owner(s), contract purchasers (if any) and agents (if any) are required to submit this completed form and any attachments along with a completed zone change application packet, including any required fees, for a zone change to be processed by the Planning Division.

1. **Present Zoning**: Neighborhood Commercial

2. **Written description of the Zone Change Plan** including a square footage or acres of proposed new zoning: The zoning proposal will change 3.6 acres of undeveloped, Neighborhood Commercial to Planned Development- Neighborhood Commercial to accommodate one brewery/taproom and one cabaret license.

3. **Subject Property Map**: See Attachments

4. **Legal Description of Property**: MK Sub, S31, T01 N, R25 E, Block 1, Lot 4

5. **Neighborhood Task Force:** West End Task Force comments not received as of submittal

6. **Roster of persons who attended the pre-application neighborhood meeting**: See Attachments

7. **A copy of the meeting notice**: See Attachments

8. **A brief synopsis of the meeting results**: See Attachments

9. **The undersigned affirm the following**:

    1) The pre-application neighborhood meeting was held on the 27th, day of August, 2018.
    2) The zone change application is based on materials presented at the meeting.

Owner (s): MYK Enterprises, LLC Telephone: 406-860-1967

Address: 218 Brookshire Blvd, Unit 2 Email:kramerpatsy@gmail.com

Billings, MT 59102

Agent (s): Scott Aspenlieder Telephone: 406-384-0080

Address: 7100 Commercial Ave., Suite #4 Email: scott@performance-ec.com

Billings, MT 59101

PERFORMANCE ENGINEERING

August 27th 2018 6:00pm
Grace Montessori Academy

Meeting Notes
MYK Enterprises, LLC Development of Block 1 of Lot 4

Representative: Scott Aspenlieder

Points of Discussion

Brief review of Project Development
Requesting comments from Home / Property owners
Addressed Comments/ Concerns from Home/ Property owners
Review Timeline for Planned Development of Project

Project Development

Microbrewery/Tap Room and one cabaret license
Hours of operation: Microbrewery /Tap Stops selling liquor by 8:00pm and closed by 9:00pm. Cabaret 10:00pm closure time.

Home / Property Owners Comments

1. How many buildings
2. Difference between Brewery and Full liquor licenses
3. Limited Licenses
4. Serving of Food
5. City Council member brought up the " Creeping of Liquor"
6. Zoning future changes – and the 60 acres of land developed by the school
7. What happens if this doesn't pass – What can go through
   - Offsite liquor sales
   - Restaurants without beer and wine license
   - Fast foods restaurant
   - Chiropractor offices
   - Insurance offices
8. What is Law enforcement view – speculation of better together

PERFORMANCE ENGINEERING

Home / Property Owners Guidance of Suggestions

1. Restrictions of the business
2. Lighting
3. Parking
4. Patio Area Location
5. Building Height
6. Deck Side operations
7. Landscaping – Trees, Shrubbery

Home / Property Owners Concerns

1. Having a bar/ Brewery in their back yard
2. Property Values
3. Peace and Quiet place to live
4. Wanted to feel like living in the country but close to city services
5. Drunk Drivers and DUI's in this State
6. Close to School
7. What does task force think
8. Not Happy with The Den moving into the area

Comment from The Den owners

They are not a fan of the microbreweries- they take away from the bar business.

Timeline for Planned Development

1. Application – Home/Property owners need to get all requests in as soon as possible before the first application goes in Tuesday. Send all Letters to Scott and/or Nicole Cromwell.
2. Working Session with Planning Board and Public – To be held at the Library End of September
3. City Council – Voting process –Public Welcome - November

All three timeline options are for people to express comments and concerns.

Meeting Adjourned 6:35pm.

(1)

Scott Aspenlieder

From: Greta Bailey <gretajbailey@gmail.com>
Sent: Tuesday, August 28, 2018 10:36 AM
To: Scott Aspenlieder
Subject: Fwd: ZONING

---------- Forwarded message ---------
From: **Greta Bailey** <gretajbailey@gmail.com>
Date: Tue, Aug 28, 2018 at 10:32 AM
Subject: ZONING
To: <Scott@performance-wc.com>

Hello,

I am just writing to inform you that I am definitely opposed to the proposed Zoning Change to BLOCK 1 OF LOT 4 OF THE MK SUBDIVISION IN SECTION 31, TOWNSHIP 1 NORTH, RANGE 25 EAST IN YELLOWSTONE COUNTY TOTALING 3.6 ACRES. My husband and I purchased our home off of 54th and Grand 3 years ago and paid a higher dollar amount for the main reason of living close to the city but still having the country feel. If I wanted to live near Casino's, bars, restaurants then I would of paid less and bought in town. I do not feel it is necessary to put more establishments in the middle of a very nice subdivision that serve alcohol and promote gambling. Billings has enough of that already. This only increases the risk for drunk drivers and with this being right smack in the middle of a subdivision and near a middle school increases risk for accidents, theft etc.

Thank you for your time,
Greta Parkins

(2)

Scott Aspenlieder

From: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Sent: Tuesday, August 28, 2018 1:23 PM
To: Scott Aspenlieder
Subject: FW: Brew Pub on West End

From: brian parkins [mailto:brianfkparkins@yahoo.com]
Sent: Tuesday, August 28, 2018 10:56 AM
To: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Subject: Brew Pub on West End

Good morning,
I just wanted to point out that I was one of the individual that spent my Saturday gathering signatures against the Den at the time. I think I personally got 100 signatures myself from the homes that I went too. We did a rough calculation and it was about 98% of property owners didn't want the Den so I pretty sure that the same would be for the brew pub. **We bought our homes on the west end to get away from all this stuff**. Why can't they keep all this commercial building on Shilo???? There is way to much traffic with just the school being built out there. Safety should be a main concern with all the drinking and driving and the schools on the west end. Please don't allow anymore casinos and liquor on the 54th and Grand. I can drive 2.5 miles and be at 5 casinos and I live right off of 54th and Grand. (5309 Sundance Mountain Circle to be exact) The owners of the Den are pushing really hard to not have this come in also but that is because they don't want any competition for their business and they were at a meeting that I was at and I told them that they are hypocritical because **98%** of the homeowners **didn't** want their business out there as well.

Brian Parkins
406 321 0518

Please no more casinos or liquor on Grand past Shilo!!!!! We can drive 2.5 miles to get to them if we want them!!!!

(3)

Scott Aspenlieder

From: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Sent: Thursday, August 30, 2018 8:22 AM
To: Scott Aspenlieder
Cc: Plecker, Monica; Vieg, Jeannette; Husman, Karen
Subject: FW: Proposed Zoning Change at 54th and Grand

Hello Scott,
In preparation for our meeting at 11 am.
Thanks,
Nicole

From: Patrick B [mailto:brunsvoldpr@gmail.com]
Sent: Thursday, August 30, 2018 8:16 AM
To: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Subject: Proposed Zoning Change at 54th and Grand

Council member Cromwell,
I am writing this message to express my concerns about the proposed zone change at 54th and Grand. This is especially concerning given the close proximity to our new middle school, as well as the close proximity to homes and walking/bike paths. As you are aware, this proposal is to change the zoning in the area to allow for two businesses, in addition to the casino under construction, to be built in this area with beer/wine licenses (Taproom/Cabaret). Let me first state I am against this zoning change. Please take my reasons into consideration.

Billings, as a city, is continuing to experience growth. There is considerable growth on the West end of Billings. Many residents are buying/building houses in this part of town to escape some of the noise and problems in other parts of Billings. There are many families and children that are investing in property in this part of town. I am concerned about their safety as well as the property values of these families. People who frequent establishments that serve alcohol are consuming alcohol and then driving their vehicles. People who use walking paths, children who are walking home from school, and any other traffic in and around the area are immediately put at risk. With the addition of two more business to the eyesore that will be the Den Casino, we are increasing this risk exponentially.

I am also against the construction because of the potential reductions of property values. The surrounding residents who live near this area will be dealing with increased traffic as well as potentially loud, intoxicated, individuals at all hours of the night. With the potential for patios etc. this issue only gets worse. The potential of 3 alcohol serving establishments within walking distance of each other will cause many issues to surrounding homeowners. Bright signs and neon lights will only compound the issues. There are many residents that are against the construction of the "Den Casino". Many residents reached out to the council and expressed their concerns. The council still allowed construction of the casino. I have witnessed firsthand how a parking lot near a casino or a bar is a perfect place to exchange cash for drugs. Neighborhoods around casinos and bars become targets for robbery's and theft. Not to mention the number of people who leave the casino after having too many drinks putting pedestrians at risk of being hit by a drunk driver. The city of Billings has far too many casinos as it is. They become nothing but an eyesore to surrounding neighborhoods and communities. Why would we want to tarnish this prospering part of town with yet another bar/bars?

I would ask you to consider our impressionable middle school students if additional bars are erected right across

the street from their school. I would also ask you to consider the families who have built homes and started families in a part of town that is, for the most part, free of the problems that bars bring with them.

The council has a real chance to set the tone for the future of Billings. Do we want to be a city of bars and casinos? Do we want to plop a bar on every street corner? Please consider the concerns of the residents of this area above any "promised" benefits from the potential tenants and keep the zoning as it is. These residents, after all, make our city great.
Thank you,
Patrick Brunsvold

(4)

Scott Aspenlieder

From: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Sent: Thursday, August 30, 2018 3:32 PM
To: Scott Aspenlieder
Subject: FW: 54th Street Brew Pub proposal

Another

From: SHARON SCHAROSCH [mailto:scharosch_4@msn.com]
Sent: Thursday, August 30, 2018 3:23 PM
To: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Cc: SHARON SCHAROSCH <scharosch_4@msn.com>
Subject: 54th Street Brew Pub proposal

Nicole Cromwell,
I would like to say that I am very much opposed to the plan to allow a pub/patio to be built to the north of the Den structure on 54th and Grand. I live in the neighborhood and I feel the increase of traffic would be prohibitive. Also the noise to the neighborhood environment would be totally disruptive.

Thank you for registering my comments against this proposal.

Sharon Scharosch
1503 Granite Peak Trail
Billings, 59106

5

Scott Aspenlieder

From: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Sent: Friday, August 31, 2018 6:53 AM
To: 'DeAnn Cates'; Scott Aspenlieder
Subject: RE: possible Zoning change 54th and Grand

Thank you for your letter of comment. It will be added to the public record if/when a zone change is presented to the Planning Division for consideration.
Sincerely yours,

Nicole Cromwell
Zoning Coordinator
Code Enforcement Supervisor
Planning & Community Services
2825 3rd Ave N, 4th Floor
Billings, MT 59101
(406)247-8676 –phone
(406)247-8662- phone
(406)657-8327 - FAX
Follow Us on Facebook:
https://www.facebook.com/Billings-City-County-Planning-Division-1738982159659260/

From: DeAnn Cates [mailto:deanntofte@msn.com]
Sent: Thursday, August 30, 2018 9:02 PM
To: Cromwell, Nicole <CromwellN@ci.billings.mt.us>; scott@performance-ec.com
Subject: possible Zoning change 54th and Grand

Hello-

I attended the neighborhood informational meeting regarding the Zoning petition for Neighborhood Commercial at 54th and Grand Ave.

First of all, tap rooms and restaurants with a cabaret license are NOT neighborhood commercial, and should not be considered as neighborhood commercial. The corner of 54th and Grand is 3 Subdivisions (Vintage Estates, Grand Peaks, and Cottonwood).. unfortunately, the 4th corner is the Den. We as neighbors are not happy with the placement of bar in our neighborhood, but we know there is nothing we can do about that establishment at this point.

When we chose to move the far west end of Billings, we were attracted by the fact we were moving to a safer, quieter, and more tranquil area of Billings. We understand Commercial will be built on the front lots of 54th and Grand, and we are not trying to stop progress. But, we chose to not live next door to casinos, bars and restaurants like we did when we lived in town. We lived near 16th and Yellowstone Avenue, and had lots of

foot traffic, vandalism, theft, sirens, casino robberies, wrecks, and a drunk driver that drove into our front yard and not stopping until hitting are 100 year old tree head on. Not that crime can't happen where we live now, but we knew by paying a higher dollar for our lot, and moving to a Subdivision, our property and our lives would be safer.

Please consider NOT allowing Tap Rooms and Restaurants be allowed to be built directly next door to Neighborhoods/Subdivisions. This should not happen in Billings. This should be regulated.

To us, when we were told the front lots on Grand and 54th were zoned commercial, we were told Neighborhood friendly commercial (dentist, chiropractor, ice cream shop, dry cleaner, car wash, coffee shop).. these are what we consider neighborhood commercial and the type and quality of neighborhood commercial we want as neighbors.

With this all being said, if there is no stopping this, these businesses need to have very strict Zoning requirements. Please consider the people who have invested their life savings into building their homes and have to live next to establishments that serve alcohol day in and day out.

1. 30 foot minimum buffer - concrete wall dividing business from Vinyl fence (Cottonwood homes closest to Grand Ave).
2. Outdoor seating only on West Side of building and not in the back, closest to Cottonwood homes or not near 54th Street West.
3. Parking lot lighting- minimum as possible. Only certain hours of operation should they be allowed on and not directly in line with homes where their windows will face these establishments.
4. Entire row of Trees next to Concrete wall dividing the businesses from houses and house vinyl fence.
5. Shrubbery, grass, rock borders, tall grasses .. upscale landscaping
6. 1 story building only (2 story not allowed).
7. NO dumpsters will be parked in back of building closest to the neighbor houses. Dumpsters must be near building, not at the back of the lot by the Cottonwood houses.
8. Colors of Business exterior blend into natural landscape. Rock exterior border. Upscale looking building .. Beige, Taupe, natural "rim colors" to match neighboring houses and area of Billings
9. 1 Building, not 2 separate building for 2 businesses. 1 parking lot
10. No outdoor concerts, contests, block/deck parties, etc .. ever on property.
11. Tap room must close business at 10pm if food is served. Must close at 8pm if full menu is not available at Tap room. Must not open before 11am.
12. Cabaret license. must close at 10pm. no later. no later hours on weekends, etc. Must not open before 11am.

Please, please consider and write in these suggestions when filing for this zoning. Better yet, please do not allow these type of businesses to be built next door to a neighborhood and across the street from 2 more subdivisions.

Thank you for your time.

DeAnn and Lorin Cates
5341 North Castle Stone Square

Billings, MT 59106

DeAnn Cates
deanntofte@msn.com

6

Scott Aspenlieder

From: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Sent: Friday, August 31, 2018 6:53 AM
To: Scott Aspenlieder
Subject: FW: 54th and Grand

Another.

From: Kimberly [mailto:kchouinard@msn.com]
Sent: Thursday, August 30, 2018 4:13 PM
To: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Subject: 54th and Grand

Hi there,

My home is in the Grand Peaks subdivision. There has been many discussions about the zoning around our neighborhood. Thank you for rejecting the proposal on 50th and Grand near Grace Montessori Academy.

Please do not approve anymore Brew Pubs, casinos, commercial businesses on the land near 54th and Grand either. The Lion's Den is highly concerning as a parent and home owner.

We have one of the highest suicide rates, alcohol abuse rates, and vehicle death rates across the nation. Billings has a drug epidemic that has increased violence and home robberies.

This land is near our schools. Please protect our kids and our homes. We have a safe, family oriented neighborhood. Please help us keep it that way. Billings already does not have enough police manpower, lets not make their jobs that much more difficult.

Thank you for your consideration.

Kim Chouinard
(406)855-1135

Sent from my Verizon, Samsung Galaxy smartphone

(7)

Scott Aspenlieder

From: Judy fisher <judy1217@hotmail.com>
Sent: Friday, August 31, 2018 10:51 AM
To: Scott Aspenlieder
Subject: zoning

Scott -
I am writing in regard to the zone change on 54th and Grand Avenue. I am completely against the building of a tap room and a cabaret business near my neighborhood and a middle school and a church.
Thank you -
Judy Fisher

8

Scott Aspenlieder

From: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Sent: Friday, August 31, 2018 5:04 PM
To: Scott Aspenlieder
Subject: FW: 50th & Grand - Zoning Change

another

From: Whitney Kross [mailto:whitney.kross@gmail.com]
Sent: Friday, August 31, 2018 4:13 PM
To: Cromwell, Nicole <CromwellN@ci.billings.mt.us>
Subject: Fwd: 50th & Grand - Zoning Change

Nicole,

I was just informed that yet another bar/brew pub has put in an application to be located in my neighborhood just north of the Den. As with the proposal for a zoning change at 50th and Grand I am opposed to this with many of the same reasons from before (see below).

Please include my previous email with my vote in opposition of this development.

Thank you,

Whitney K.

Sent from my iPhone

Begin forwarded message:

> **From:** Whitney Kross <whitney.kross@gmail.com>
> **Date:** August 28, 2018 at 8:07:34 AM MDT
> **To:** "Cromwell, Nicole" <cromwelln@ci.billings.mt.us>
> **Subject: 50th & Grand - Zoning Change**
>
> Nicole,
>
> I strongly oppose the zoning change at 50th Grand. Though I would love to have my voice heard in person I work 8-5 Monday through Friday and this meeting is conveniently scheduled for 9 am. It was said at the last meeting by Scott Aspenleider with Performance Engineering that due to the small number of attendees the people in the area are in favor of the proposed zone change. That could not be more false. We "the people" have chose to move to the far west end to avoid all the commercial development. To get away from the casinos and bars that seem to run the development of this City. I am all for growing and bettering the City of Billings but this type of development, particularly when it is placed in the middle of residential homes, is not the type of growth this City needs or its communities want. We in this neighborhood are already having to deal with the Den being placed in our backyards, withing walking distance from our homes, a church and a school. We do not want this to happen again. The following are additional concerns:

1) Drainage - There is very poor drainage in this area. The detention ponds built for neighborhoods fill on a regular basis and do not drain down within the allotted 72 hours required by the City. By increasing the paved area, drainage is going to get worse and where does the City plan on this runoff going? Since the construction of The Den has began, runoff from the site has increased dramatically down grand avenue and to the surrounding area. For the first time in the four years that I have owned my home, there is standing water in the backyard and the field almost everyday. Even in the hottest parts of summer I could walk out in the afternoon and be stepping in soppy grass. I should add my backyard is not shaded at all and yet the grounds remained supersaturated.

2) Traffic - Being told traffic will not increase because of the zone change does not sit lightly. The zone change is a catalyst to commercial development which will 100% increase traffic. I have to make a left onto Grand Ave from 48th Street West everyday when returning from work. Prior to Ben Steele being built this was never more than few second wait per car. I now sit for multiple minutes everyday with traffic piling up behind me and people making unsafe right turns to avoid waiting behind those with the left. These planned developments will only continue to make this worse.

3) Appearance - This will completely change the look of the area, the reason the people already established out here moved here. If I wanted to live in a location near a casino or bar there are plenty of locations to choose from. But those of us who did not want that chose our neighborhoods because they were getting away from those types of establishments. With this change the City will be bringing them right to us.

4) Crime - There has already been a significant increase in crime in my neighborhood with vehicle break-ins and at least two known home break-ins. This too will undoubtedly increase when alcohol and gambling are added to the mix.

Please listen to the voices of the people this will directly effect and realize there would be a lot more voices of opposition if this was scheduled at a time not during the average Americans working hours.

Thank you,

Whitney Kross
1544 Silver Run Trail

(9)

Scott Aspenlieder

From: Denise Morrison <brettnzdenise@hotmail.com>
Sent: Friday, August 31, 2018 8:53 PM
To: Scott Aspenlieder
Subject: Rezoning on Grand and 54th

Attention: Scott Aspenlieder

Re: Proposed Zoning Change
Block 1 of Lot 4 of the MK Subdivision in Section 31, Township 1 North, Range 25 East in Yellowstone County totaling 3.6 acres

I am emailing with the purpose of raising concerns with the application of intention for the above proposed change. I live in the Foxtail neighborhood. It was just recently that as neighbors we attended a Billings City Council meeting to express the same concerns as I do now for the Casino, The Den, which is now under construction. By the time many in the area were aware the Den had been approved to build on the current site it was already a done deal. However, a number of us attended and views were voiced. For the most part it seemed to me that the council members were uninterested in our concerns, and almost bored listening to their community members. One council member asked if we understood this would be a low key casino. Yet here we are again, having to detail the same concerns. A woman representing the owners spoke and announced that they have met all the requirements in terms of zoning and so forth and they wanted to be good neighbors. I have to state that good neighbors do not put establishments that allow patrons to drink and leave their premises when children are walking to school and home. We are all aware of the proximity of Ben Steele middle school. I also have a son who walks to school and home and am already concerned about an intoxicated driver in the area at any given time. There are children coming and going from adjoining neighborhoods and will have to pass The Den and any further approved establishments that serve alcohol. This is a huge safety concern. Behind the Den and the proposed microbrewery/taproom are a number of family homes. Has anyone considered these families? I have a very close friend who lives directly behind this property. She is a young widow. Her husband died of cancer and she is raising her children on her own. At the time the Den was up for debate, she informed me that she had only just started to sleep through the night and not be afraid she is on her own. Now that has changed. I like to walk in the evenings around the neighborhood but will now have to be concerned with drunk people roaming or driving and will no longer have the security I do now. These establishments also give those who may have unseemly intentions towards women or children, a reason to be hanging around our family neighborhoods. While the brewery may meet the required distance from properties in question, it still does not make this a responsible decision for those of us who live within proximity of these establishments. The woman who was representing the land owners for the Den appears to be the same woman who was at the meeting on August 27th. Did she not take into account any of our concerns as families? I arrived at the meeting when it had already concluded because I had other obligations and so was not present but others who had left the meeting advised me to come inside and sign the form which I did. I am not one to object strongly and from shyness did not speak at the aforementioned council meeting. However, there is a huge issue of feeling safe and being safe in our community. If these further establishments are approved I can only hope the police in the neighboring station on 54th will be waiting to pick up any intoxicated drivers or note any suspicious persons hanging around the neighborhoods. Submitted for your consideration.

Sincerely,

Denise Morrison
Brett Morrison

Cromwell, Nicole

(ID)

From: Kirstina Hedges <kirstinahedges@aol.com>
Sent: Friday, August 31, 2018 7:12 PM
To: Cromwell, Nicole
Subject: Zoning change 54th and Grand

Follow Up Flag: Follow up
Flag Status: Flagged

Hi, I am emailing you regarding the zoning application for the proposed businesses at 54th and Grand. I am against any businesses building or operating in this area. I would only like to see single family residents in this area. I moved out here to get away from businesses. Thank you for taking the time to read this email.

Kirstina Hedges

5245 S Thunder Mountain Square
Billings MT 59106
4068615479

Sent from AOL Mobile Mail
Get the new AOL app: mail.mobile.aol.com

(11)

Scott Aspenlieder

From: Joyce Christensen <rejoyce@bresnan.net>
Sent: Monday, September 03, 2018 8:42 PM
To: Scott Aspenlieder
Subject: Zone Change

I have been informed that there is a zoning request for the area around the "DEN" at 54th and Grand to be changed to a category of commercial so that another two bars can be put in that location. As a resident near this area I am greatly against this changed zoning and I hope you will consider the West End Plan mission statement that responsible development be allowed. I don't believe changing it to commercial zoning would be best for the residents.

(12)

Cromwell, Nicole

From:	renoton@aol.com
Sent:	Monday, September 3, 2018 11:27 AM
To:	scott@performance-ec.com
Cc:	Cromwell, Nicole
Subject:	Zoning Request Change at 54th & Grand
Follow Up Flag:	Follow up
Flag Status:	Flagged

Dear Planning Commission:

We are homeowners in the Mont Vista subdivision on 54th Street on the West End. We bought our home in this location in 2017 believing we would be living in an excellent community and safe location.

We are very opposed to the Zoning Request Change at 54th & Grand for a change to Commercial because:

1. It can affect the safety of the children who attend Ben Steele Middle School, a very short distance west of 54th & Grand, and who walk or ride bikes to school. Would you like your children or grandchildren exposed to this environment?

2. It can have a negative affect on home prices in this largely residential area. Many of us also walk or ride bikes in this area regularly. This change will affect the safety of us and increase congestion in this beautiful area.

Please vote NO to this proposed Zoning Request Change.

Sincerely;

Ron & Mary Lou Noton
5238 Amherst Dr.
Billings, MT 59106
406-200-7235

13

Cromwell, Nicole

From: Scott McMillin <sscottm4@gmail.com>
Sent: Monday, September 3, 2018 10:54 AM
To: Cromwell, Nicole
Subject: Fwd: Zone change

Follow Up Flag: Follow up
Flag Status: Flagged

---------- Forwarded message ---------
From: **Scott McMillin** <sscottm4@gmail.com>
Date: Mon, Sep 3, 2018, 10:50 AM
Subject: Zone change
To: <scott@performance-ec.com>, <cromwelln@ci.mt.us>

I understand a new zoning change is being requested tomorrow for the area around the "DEN" which is currently being built on 54th and Grand that would allow additional bars in that same location. My first reaction when I knew the "DEN" was going in is how Billings Zoning board would ever allow in the first place being a new middle school just down the street. With the new school plus the one on around 48th and Grand no way should you allow additional liquor establishment to be placed in basically residential area. If you allow, it would be obvious that the zoning boards heads are somewhere other than on their shoulders . Scott McMillin resident of Mt Vista Sub Division

14

Scott Aspenlieder

From: Nan McMillin <nanmcmill9@gmail.com>
Sent: Monday, September 03, 2018 10:26 AM
To: Scott Aspenlieder
Subject: 54th & Grand zoning

I think it would be detrimental to the neighborhoods in our area to allow three businesses to provide alcohol. There is a school in close proximity plus so many people walk, jog, bike ride along the path. They would be in jeapordy with impaired drivers in the area. I am a senior citizen that opposes this re zoning.

(15)

Cromwell, Nicole

From: Karen Freeman <kafreeman2017@gmail.com>
Sent: Monday, September 3, 2018 10:18 AM
To: scott@performance-ec.com; Cromwell, Nicole
Subject: NO NO NO

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Scott and Nicole,
In case you aren't hearing the West End neighbors, we DO NOT want another zoning change that puts more alcohol near the Den. The West Billings Plan has the goal to "meet the community's SHARED vision for the future of the West End and for RESPONSIBLE development"
The majority of the community does NOT want more zoning changes that involve alcohol on the West End. It's not what we want.
Thanks

Karen Freeman
876-1931

(16)

From: Clark Johnson [mailto:clark@videosoflife.com]
Sent: Monday, September 10, 2018 11:00 AM
To: Scott Aspenlieder <scott@performance-ec.com>
Subject: 54th and Grand Pub

I personally am fine with having a bar and dining place there.

But don't let gaudy signage be placed there. A good business does not need that.

Absolutely NO casino signage, the blight of Billings.

Clark Johnson

--
Clark

Clark Johnson
clark@VideosOfLife.com

(504) 416-0954

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(17)

Cromwell, Nicole

From: Jessica Taylor <jestaylorcolorado@gmail.com>
Sent: Monday, September 17, 2018 3:09 PM
To: Cromwell, Nicole; scott@performance-ec.com
Subject: Block 1 of Lot 4 (North of The Den on Westend)

Good Afternoon,

You may or may not have heard that news of the plans for a microbrewery/tap room and cabaret license has been posted on NextDoor to the NW Billings area residents who are on that website/app.

Your email was posted by the chair of the West End Task Force as who to contact for objections and/or suggestions to make this business fit the character of the neighborhood.

I wanted to write to let you know I am in full support of additional businesses in this part of town. I trust in the city of Billings to be judicious in approving plans for these types of establishments in the more suburban areas of Billings. I have a child at Ben Steele Middle School and have no concerns about an establishment serving alcohol within walking distance. Heck, I'm just excited about a new craft brewery and food going up closer to us (I'm in the Copper Ridge neighborhood, for what it's worth). The only concern I would have is ensuring it is aesthetically pleasing to the area, as well as ensuring it doesn't add traffic congestion on that part of Grand; though we really don't need another casino, especially on Grand!

Thank you for your involvement in the continued growth of our great city.

Jessica Taylor

Cromwell, Nicole

18

From: John&Barb Mulvaney <jandbmul@gmail.com>
Sent: Thursday, September 20, 2018 11:40 AM
To: Cromwell, Nicole
Subject: 54th and Grand

Regarding the brewery/ cabaret , it seems to me it would be better located in The vicinity of Grand and Shiloh, rather than in the center of 8 family type Neighborhoods within the 6 block area that is being requested. We are really In need of a family style restaurant where we could enjoy family meals with Families and friends. I sincerely hope the purposed business request will
Be withdrawn. Thank you.

Sincerely, Barbara Mulvaney, West End Task Force

Sent from my iPad

Cromwell, Nicole

(19)

From: Janet Stearns <tregolily@yahoo.com>
Sent: Friday, September 21, 2018 9:26 AM
To: Cromwell, Nicole
Subject: zoning request by Wells on approx. 50th and Grand

Dear Nicole: I am not sure when you meet with the engineer on that project, but he asked for suggestions at one meeting I attended and I don't feel that a cabaret/brewery are appropriate use of that location smack in the middle of 6 - 8 neighborhood developments consisting of folks who chose that area for its family-friendly environment. Just a short distance away, at 54th and Grand, there are proposed businesses and would be a more appropriate location. Billings has an abundance of businesses geared to alcohol consumption, gambling, and other lifestyle choice services.....those are the types that I would suggest "fit" in a neighborhood.

Janet Stearns West End Task Force and sixty plus year resident of Billings/Yellowstone County

20

Cromwell, Nicole

From: Terra Pierce <t.pierce@bresnan.net>
Sent: Tuesday, September 25, 2018 12:27 PM
To: Cromwell, Nicole
Subject: City Zone Change 971

Good Afternoon,
I would like to express my opinion on the requested zone change from NC to Planned Development with underlying NC, to allow one microbrewery license and one beer and wine license on Lot4, Block 1 of MK Subdivision. My husband and I recently bought and are developing the lot directly south of the proposed zone change. The lot that we purchased is zoned community commercial, we had to submit a special review to allow gaming. We were met with a lot of opposition from surrounding neighbors concerned about both alcohol and gaming. Ultimately, we passed with the concession that we comply with several of the recommendations from the commission. One of which says, we can only occupy 5000sq ft. of our building.

If a brewery were to come in and purchase a 3 acre parcel of land, you know that their building would be larger than 5000sq. feet. And as a bar owner in Billings, I have watched these breweries creep into our industry over the last 10 years and continue to steel business during our peek hours of 4pm-8pm. If the neighbors were not happy about my business being located there, they should be really unhappy with a brewery right in their backyard.

This property is zoned NC to protect the neighbors, it literally back right up to several back yards. I am not opposed to the property being developed, I just feel that is should remain NC and be used for its intended purpose.

I might add, also that because it is NC is priced much lower per sq ft. than what we paid for CC. If the proposed developer is really interested than he should be shopping lots that are zoned community commercial.

Thank you,
Terra Pierce

21

From: Tiffany Wardell [mailto:wardelltiffany@gmail.com]
Sent: Thursday, September 20, 2018 3:59 PM
To: Scott Aspenlieder <scott@performance-ec.com>
Subject: Re: West End Task Force Request

Scott:

I assume that what keeps some people from making suggestions for planned developments are two things. First, they think that if they add input, they are pleased, or at least un-opposed, to said development. Second, so many are new to planned developments that they are unsure what can or cannot be added to it. These are assumptions based on my own feelings. So, before I dive into my own suggestions for this particular planned development, I need to say, that I'm opposed to the possibility of there being all alcohol/liquor sales on this particular corner. I'm opposed to the businesses because they aren't family-friendly in an area that is more rural and suburbia. Also, I need to say that I'm new to planned developments and have therefore decided to look at the Canyon Creek PD you referenced as a starting point.

Now to my input for the Hawk Creek/Chy Rd. Planned Development.
Businesses I'd like to see exempted from the development:
Automotive dealers/gas stations
Hotels, camps, rooming houses
Massage parlors/spas
Multi-family dwellings
Casinos/gaming
Event Space/rental

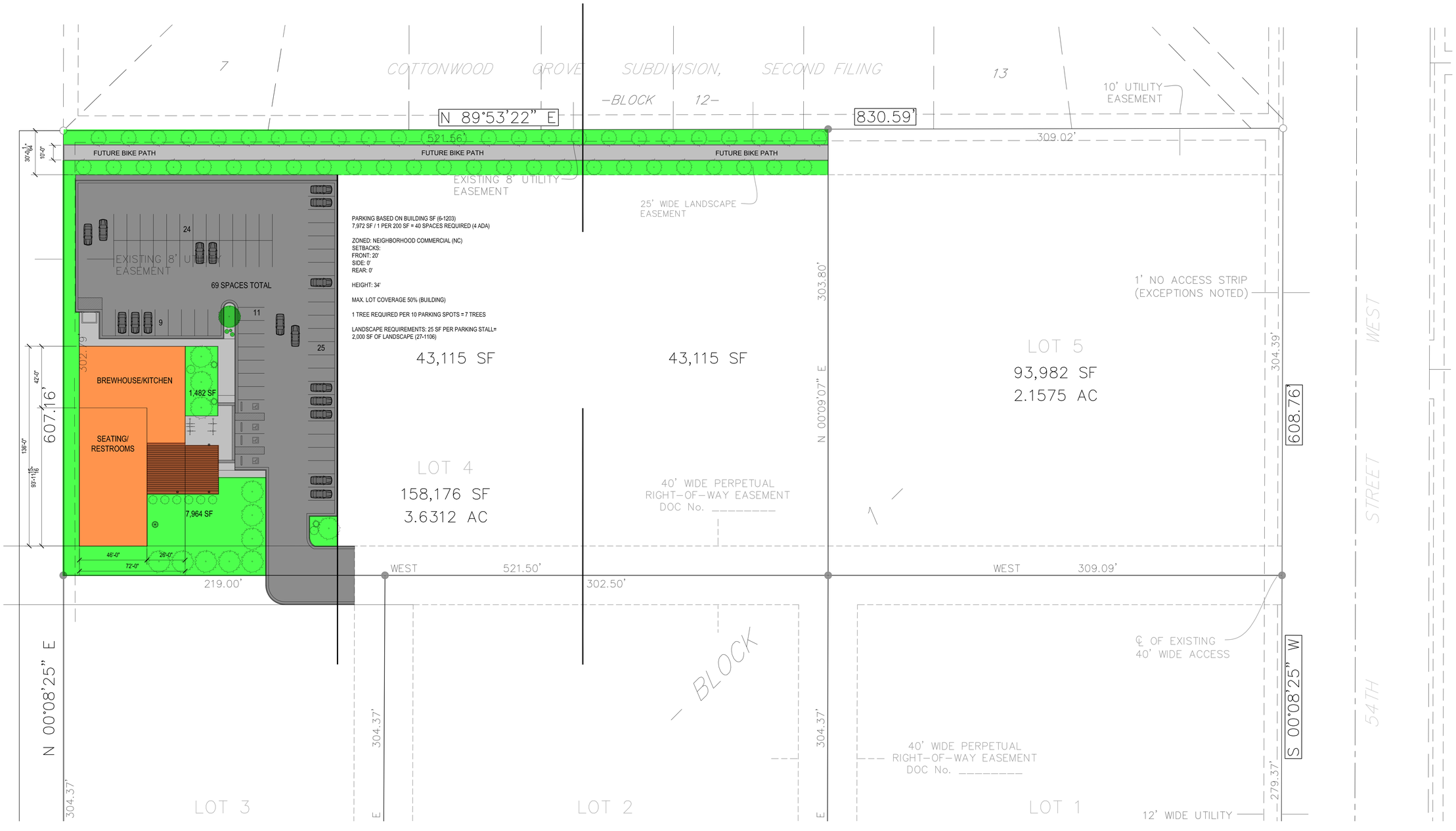
Businesses I'd like to see included:
Professional Offices
Garden/lawn supply stores
Florist
Photography Studios
Library
Yogurt/ice cream shop
Art studio/gallery
Yoga/Pilates studio
Book Stores
Novelty/Gift shop
Children's play-place/museum
Drafting Services
One (1) cabaret business with a restaurant

Operational Restrictions
Only one (1) brewery and one (1) cabaret business
No outdoor eating area for the brewery and one outdoor eating area allowed for the restaurant (cabaret business) on the East side of the building with a 6-ft-high fence along the North side as sound barrier.
No outdoor music or entertainment
Evergreens must be planted along the entire North and West sides of PD to act as visual separation between business and residences.
Lighting in parking area should be no higher than 15 ft and should be shielded to prevent light reaching neighboring homes. Outdoor lights should be off when the business closes.
Lighting on building should be architectural in design. No neon.

As to the rest of the PD, I'd like to mimic what is in the Canyon Creek PD.

Please email/call me with questions or clarifications.

Tiffany Wardell
406-690-6244



9 FLOOR PLAN
A2.1 : A2.1 SCALE: 1/32" = 1'-0"

P:\18074.00\Drawings & Models\AutoCAD\Barn Brewery_A2.1.dwg Sep 17, 2018 - 3:40pm

sheet FLOOR PLAN
project BARN BREWERY
owner

project # 18049.00
revision date

phase

a&e ARCHITECTS
BILLINGS | BOZEMAN | MISSOULA

issue date
06.01.2018

A2.1

EXECUTIVE SUMMARY

The West End Multi-Model Planning Study is the result of a collaborative effort between the Billings-Yellowstone County Metropolitan Planning Organization (MPO), the City of Billings, Yellowstone County and the consultant Project Team (Sanderson Stewart and Fehr & Peers). The purpose statement for the study is as follows:

To evaluate the cumulative effect of ongoing and projected future land development and population growth on the multi-modal transportation system for the area of Billings west of Shiloh Road

This document provides guidance in terms of cost and prioritization for multi-modal transportation system projects in the study area based on a pair of land development projection scenarios for the 20-year period leading up to the study Horizon Year of 2035.

Study Area

The study area for the West End Multi-Modal Planning Study is depicted at right in **Figure ES1**. The areas shown in light blue are in the City of Billings, while all other areas have not yet been annexed. The areas shaded in red have been identified for potential annexation by 2018, while the areas in yellow-orange have been identified for potential longer-term annexation. The orange dotted line represents the MPO planning jurisdictional boundary.

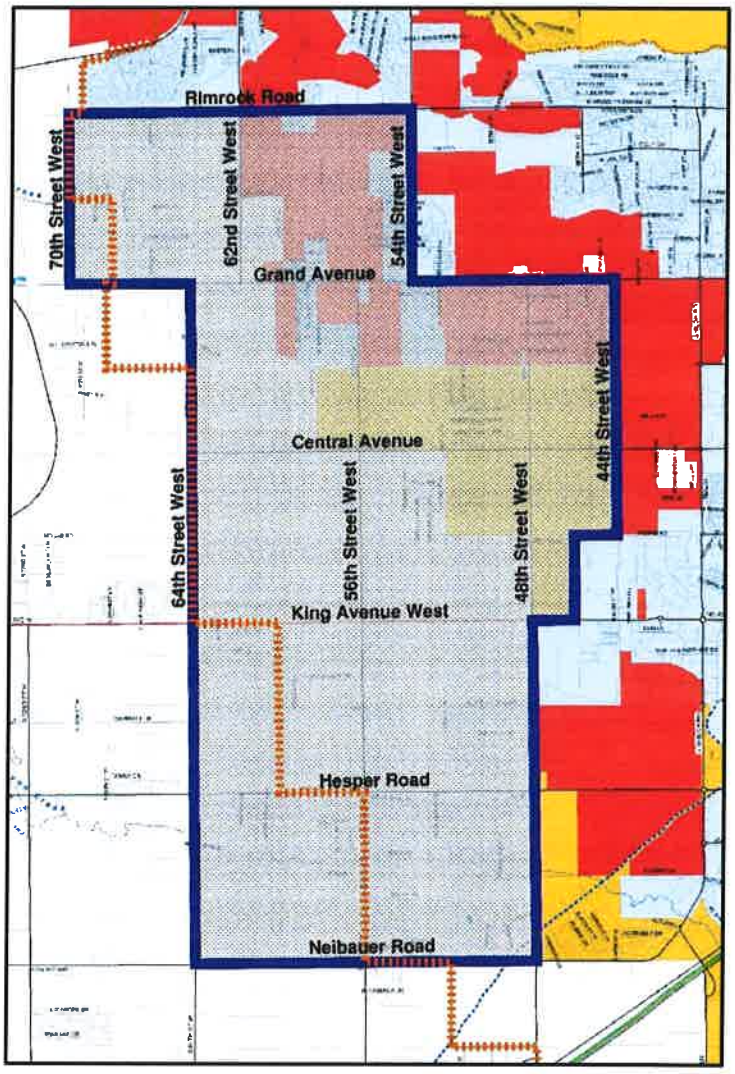


FIGURE ES1. STUDY AREA

Methodology

The Project Team inventoried existing multi-modal transportation system features within the study area, collected traffic counts and crash history data and performed a comprehensive analysis of existing conditions to utilize as a baseline for the study. In addition to evaluating operations and safety for vehicular travel, the team evaluated conditions for the bicycle and pedestrian environment using latent demand and level of traffic stress (LTS) metrics.

Two (2) Horizon Year (2035) land development projection scenarios were calculated; one that approximated a continuation of recent historical development in the area, including a mixture of City and County subdivisions; and a second scenario that projected more aggressive annexation of study area property, thereby resulting in denser development and growth.

The parameters for the two growth scenarios were provided to the Montana Department of Transportation (MDT) for analysis in the Transcad transportation model for Yellowstone County. MDT returned link-specific average daily traffic (ADT) volume projections for both scenarios to be utilized for the Horizon Year (2035) analyses.

The Project Team analyzed future multi-modal operations for both of the growth scenarios. Based on the results of those efforts and the crash history analysis for the study area, the team developed a series of prioritized short-term and long-term project recommendations with high-level approximate construction cost ranges estimates.

Analysis Results

Existing Conditions

For the Existing Conditions (2015) scenario, all of the study area intersections and street corridor segments were found to operate at acceptable levels of service (LOS) during all periods of a typical day. However, an evaluation of crash history for study area intersections for the 5-year period from 2010-2014 revealed that there are seven (7) intersections with crash rates higher than 1.0 crashes/million vehicles entering (MVE), which is a threshold number that MDT uses to determine when an intersection may be of concern. The following three (3) of those intersections exhibited crash rates greater than 1.50 crashes/MVE:

- Rimrock Road & 62nd Street West
- Neibauer Road & 48th Street West
- Neibauer Road & 56th Street West

There were no fatalities reported as a result of any of the crashes during the 5-year analysis period. However, crash severity, which takes into account how many injuries and/or fatalities have occurred as a result of a sample of crashes, was found to be elevated for six (6) intersections. The two Neibauer Road intersections listed above had the highest crash severity rates.

From an active transportation (bicycle/pedestrian) standpoint, the availability of sidewalks, side paths, trails, or bike lanes in the study area is very limited with the exception of sidewalks internal to masterplanned communities. In general, the study area lacks connectivity to low stress bike/pedestrian facilities. A level of traffic stress (LTS) analysis showed that all of the major streets in the study area exhibit the highest LTS scores, thereby making them uninviting to typical bicyclists and pedestrians. This is generally due to the high speeds and narrow or non-existent shoulders in the study area.

Future Conditions (2035)

Under land use growth Scenario 1 (typical growth), most roadways in the study area continue to experience a LOS D or better. However, three of the primary east-west arterials (Rimrock Road, Grand Avenue, King Avenue West) are not projected to meet that standard. Of the north-south arterials, only 62nd Street West, north of Rimrock Road, is projected to operate below LOS D. **Figure ES2** on the following page provides a graphical illustration of the corridor LOS conditions for Scenario 1. Figure ES2 also shows the intersections that are projected to operate below an acceptable LOS C during one or both peak hour periods for Scenario 1.

Under the higher-growth Scenario 2 (aggressive growth), Central Avenue joins Rimrock Road, Grand Avenue and King Avenue West in having one or more segments exhibiting LOS E or worse conditions. For the north-south corridors, 62nd Street West, north of Rimrock Road degrades to LOS F, while 54th Street West is projected at LOS D north of Rimrock Road and LOS E south of Rimrock Road. **Figure ES3**, also on the following page, illustrates the corridor LOS analysis results for Scenario 2 and also shows graphically which intersections are projected to fail under that scenario.

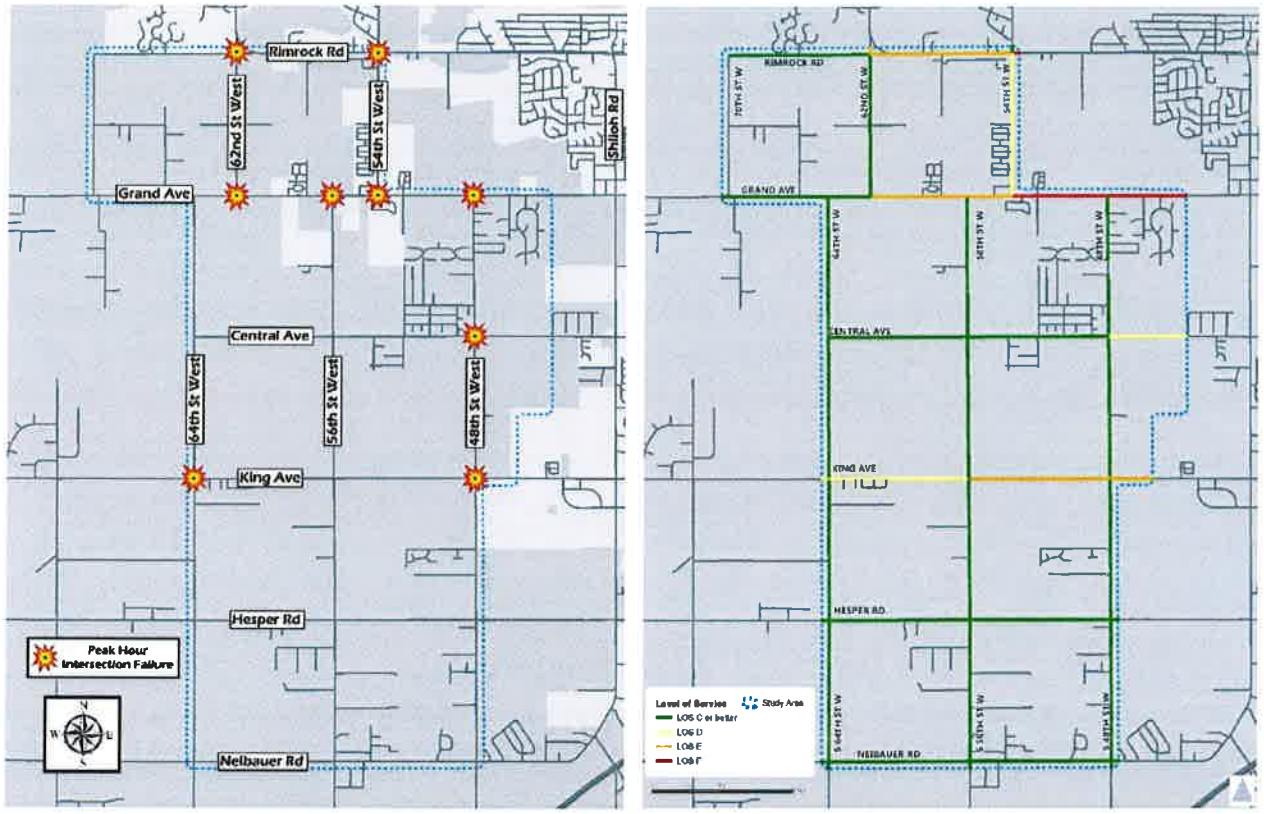


FIGURE ES2. SCENARIO 1 (2035) INTERSECTION AND CORRIDOR LOS ANALYSIS RESULTS

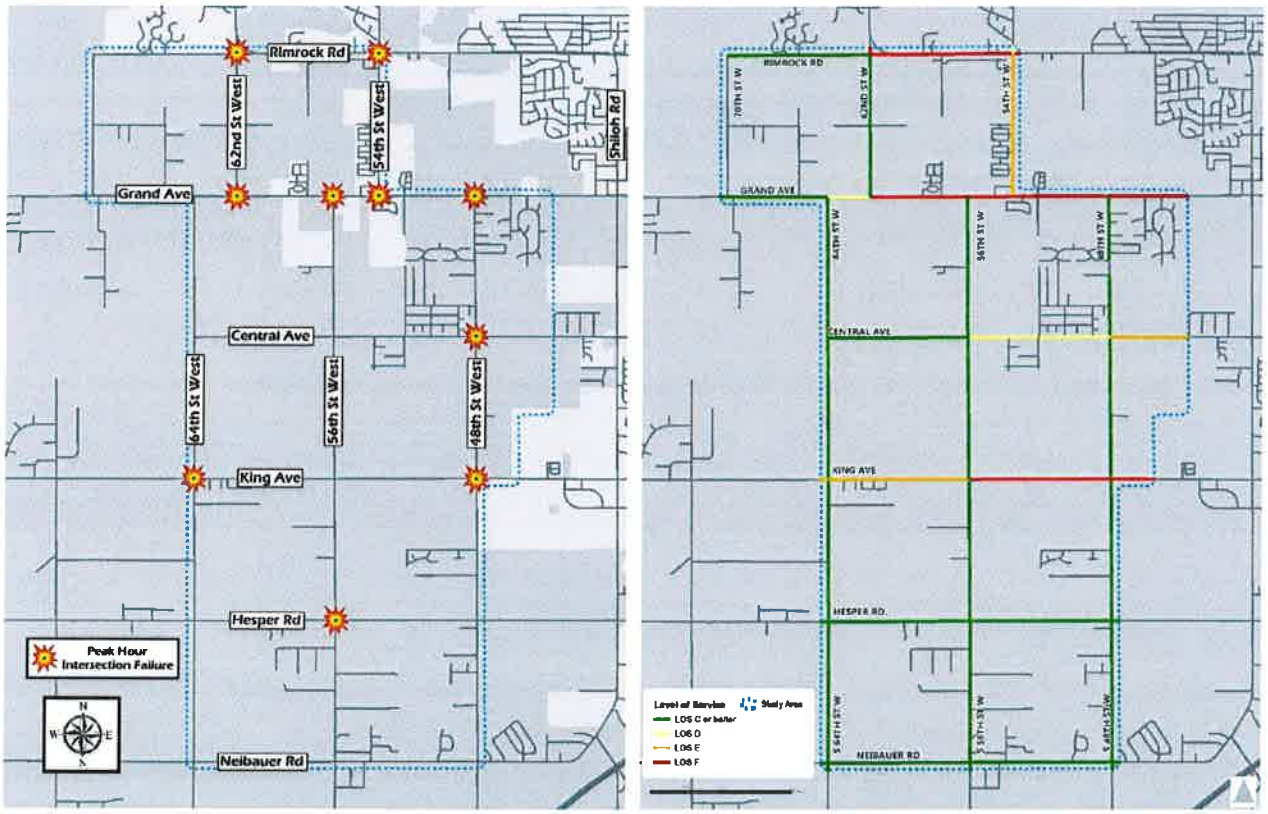


FIGURE ES3. SCENARIO 2 (2035) INTERSECTION AND CORRIDOR LOS ANALYSIS RESULTS

A Latent Demand Model was used to provide a logical analysis framework to prioritize attention and investment for active transportation. Based on the growth projections, demand for active transportation is expected to increase significantly. Most of the study area north of King Avenue and east of 56th Street will generate demand, with the highest concentrations along 54th Street and Grand Avenue. **Figure ES4** below illustrates the projected change in active transportation demand from Existing Conditions (2015) to Scenario 2 (2035)

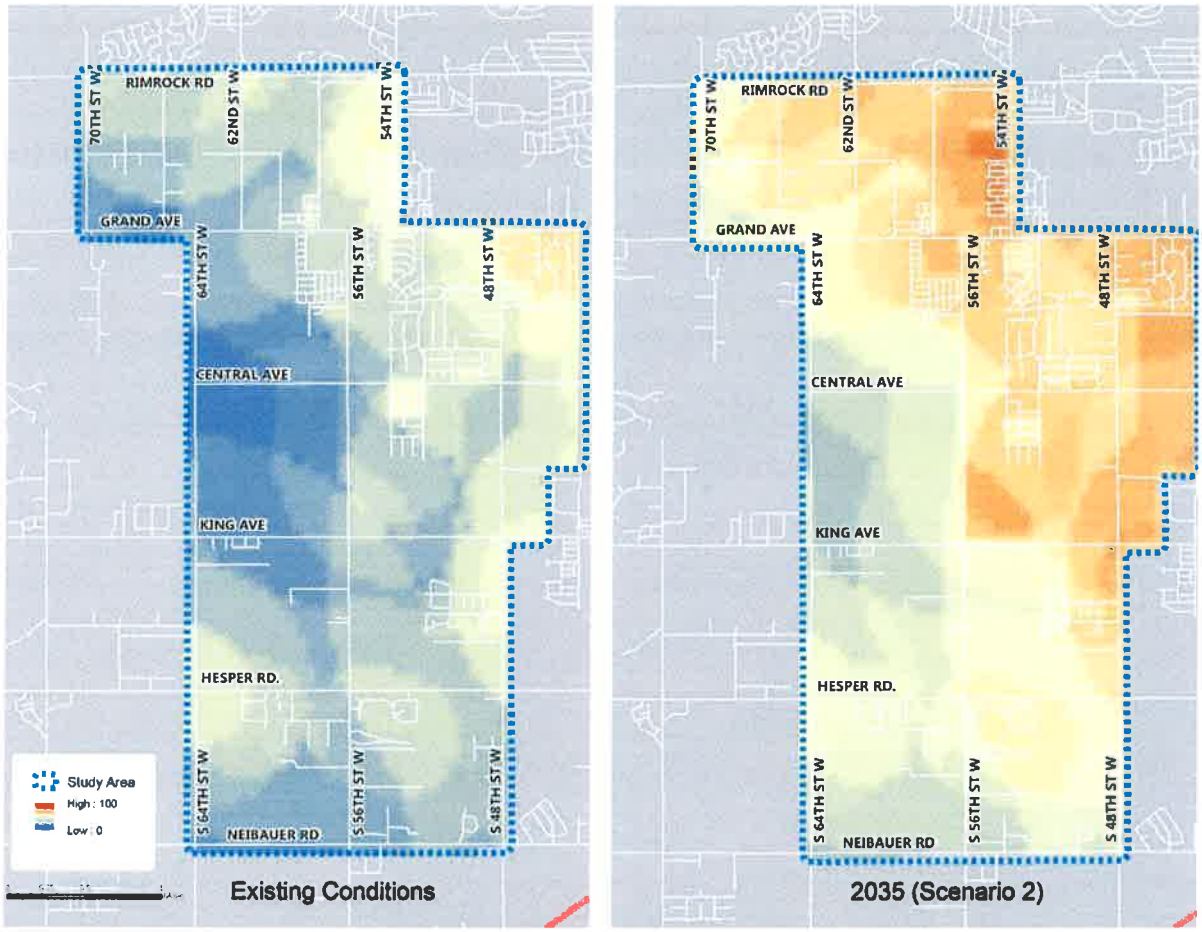


FIGURE ES4. LATENT DEMAND MODEL ANALYSIS RESULTS

Study Recommendations

Streets & Intersections

The priority project recommendations for this study were broken down into short-term and long-term categories. Short-term priority projects are those that could be necessary in order to maintain safe and efficient operations during the first half of the 20-year study period. Long-term priority projects are more likely to be needed during the second half of that period. However, it should be noted that there are many factors related to land development that could change the priority, location and cost considerations that are summarized in these recommendations. As such, the recommendations are to be utilized as a guideline for planning and not as a hard and fast committed projects list.

Tables ES1-ES4 and **Figure ES5-ES6** on the following pages list and illustrate the short term and long-term priority project recommendations for street and intersection improvements. In addition to details about each recommended project, the tables provide estimated construction cost ranges. The estimated costs do not consider right-of-way, irrigation systems modifications or street lighting other than as associated directly with traffic signals or roundabouts.

TABLE ES1. SHORT-TERM INTERSECTION PROJECT RECOMMENDATIONS

Priority Ranking	Project Location	Project Type	Estimated Cost
1	Neibauer Rd. & 56th St. West	All-Way Stop Control/OH Flashing Beacons/Transverse Rumble Strips	$120,000-$200,000
2	Neibauer Rd. & 48th St. West	OH Flashing Beacons/Transverse Rumble Strips	$120,000-$200,000
3	Rimrock Rd. & 54th St. West	Traffic Signal or Roundabout	$400,000-$1,500,000
4	King Ave. West & 64th St. West	Auxiliary Turn Lanes	$400,000-$600,000
5	Grand Ave. & 48th St. West	Traffic Signal or Roundabout	$400,000-$1,500,000
6	Molt Rd./Rimrock Rd./62nd St. West	Design Study	$20,000-$30,000
7	Grand Ave. & 56th St. West	Traffic Signal or Roundabout	$400,000-$1,500,000

TABLE ES2. SHORT-TERM CORRIDOR PROJECT RECOMMENDATIONS

Priority Ranking	Project Location	Project Type	Estimated Cost
1	Grand Ave. - Shiloh Rd. to 52nd St. West	Widening/Reconstruction (3-lane section)	$2,800,000-$4,500,000
2	Rimrock Rd. - 50th St. West to 54th St. West	Widening/Reconstruction (3-lane section)	$1,000,000-$1,600,000
3	King Ave. West - MT Sapphire Dr. to 48th St. West	Widening/Reconstruction (3-lane section)	$1,300,000-$2,000,000
4	Grand Ave. - Wilderness Dr. to 62nd St. West	Widening/Reconstruction (3-lane section)	$900,000-$1,400,000

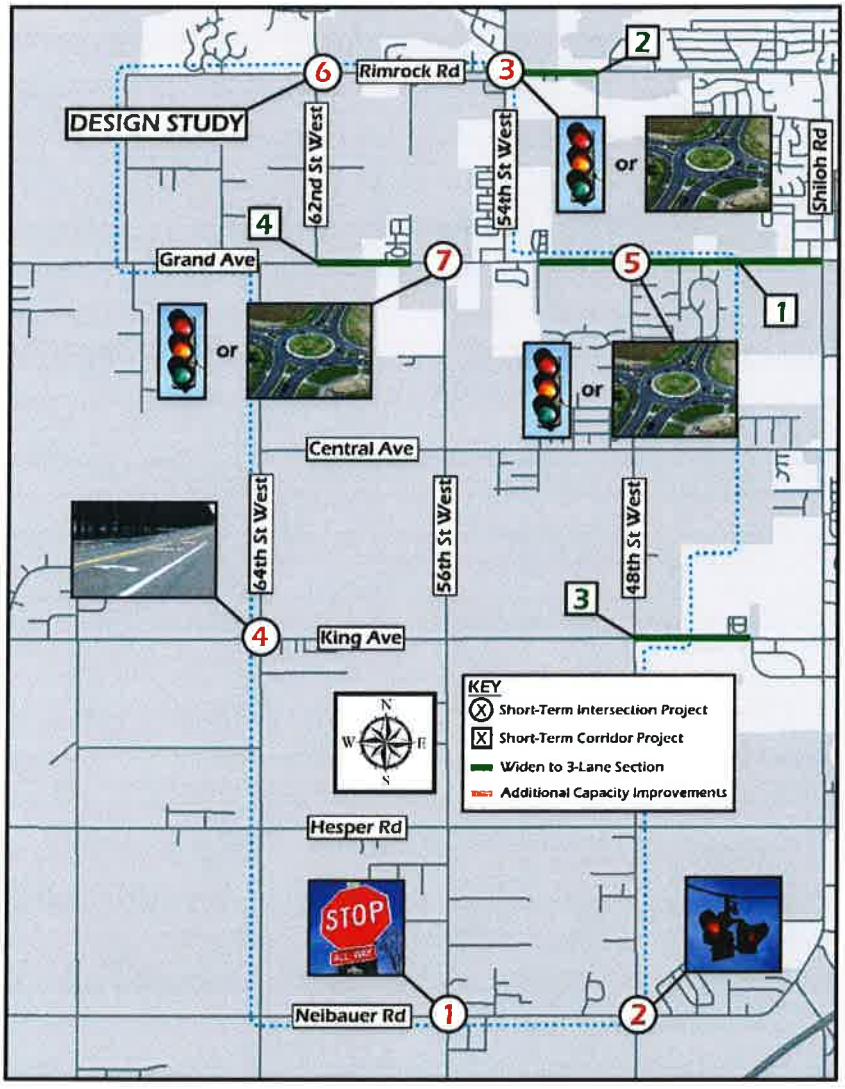


FIGURE ES5. SHORT-TERM INTERSECTION & CORRIDOR PROJECT RECOMMENDATIONS

TABLE ES3. LONG-TERM INTERSECTION PROJECT RECOMMENDATIONS

Priority Ranking	Project Location	Project Type	Estimated Cost
1	Molt Rd./Rimrock Rd./62nd St. West	Traffic Signal or Roundabout	$400,000-$1,500,000
2	King Ave. West & 48th St. West	Traffic Signal or Roundabout	$400,000-$1,500,000
3	Central Ave. & 48th St. West	Traffic Signal or Roundabout	$400,000-$1,500,000
4	King Ave. West & 64th St. West	Traffic Signal or Roundabout	$400,000-$1,500,000
5	Grand Ave. & 62nd St. West	Traffic Signal or Roundabout	$400,000-$1,500,000
6	Hesper Rd. & 56th St. West	All-Way Stop	$4,000-$200,000

TABLE ES4. LONG-TERM CORRIDOR PROJECT RECOMMENDATIONS

Priority Ranking	Project Location	Project Type	Estimated Cost
1	Grand Ave. - Shiloh Rd. to 62nd St. West	Widening/Reconstruction (5-lane section)	$7,500,000-$11,000,000
2	Rimrock Rd. - Shiloh Rd. to 62nd St. West	Widening/Reconstruction (5-lane section/3-lane section)	$6,900,000-$10,300,000
3	King Ave. West - MT Sapphire Dr. to 64th St. West	Widening/Reconstruction (5-lane section/3-lane section)	$6,100,000-$9,300,000
4	54th St. West - Grand Ave. to Rimrock Rd.	Widening/Reconstruction (3-lane section)	$2,100,000-$3,300,000
5	Central Ave. - Shiloh Rd. to 48th St. West	Widening/Reconstruction (3-lane section)	$2,000,000-$3,100,000
6	62nd St. West - Rimrock Rd. to Western Bluffs Dr.	Widening/Reconstruction (3-lane section)	$700,000-$1,100,000

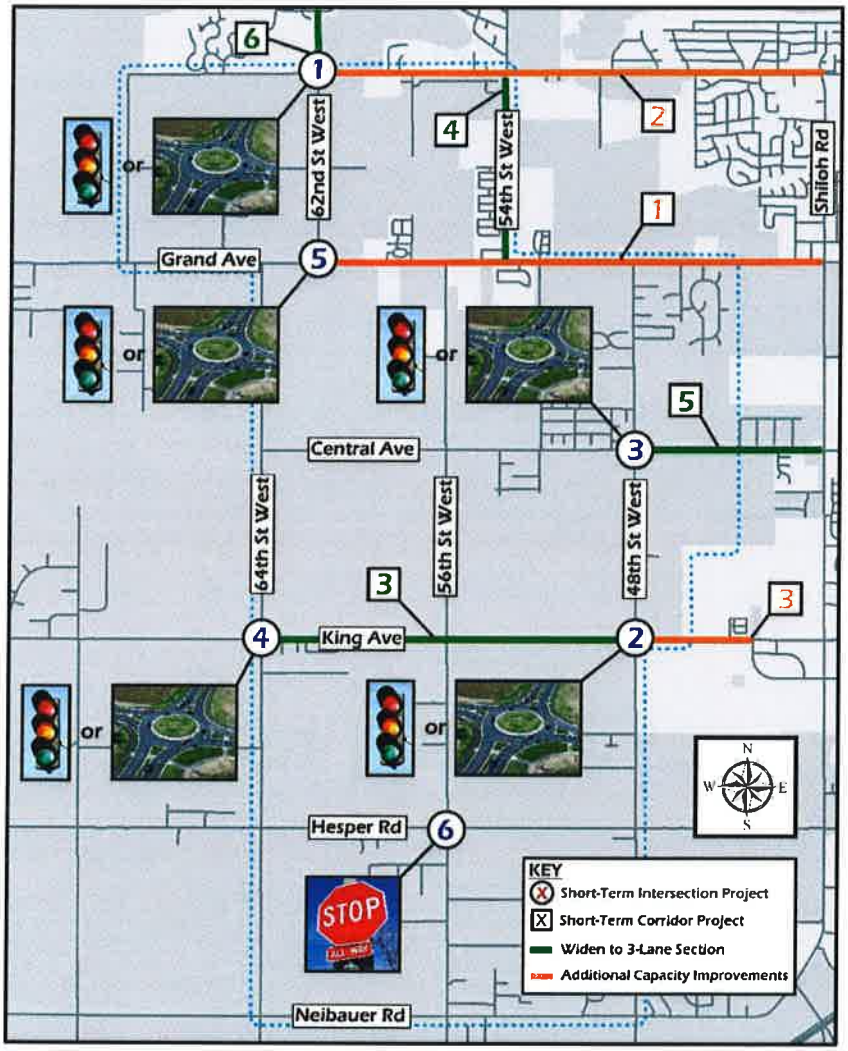


FIGURE ES6. LONG-TERM INTERSECTION & CORRIDOR PROJECT RECOMMENDATIONS

The City and County should also strongly consider the implementation of access control as a tool for extending the life (in terms of capacity) for roadway corridors in this area. Closely spaced driveways with no restrictions on turning movements can greatly degrade the throughput capacity for an arterial. A well-conceived access control plan can improve arterial capacity and also provide safety benefits by reducing conflict points in high-mobility corridors.

Active Transportation Systems

The Project Team recommends the implantation of short-term bicycle facility improvements in the following locations:

- 54th Street from Rimrock Road to Grand Avenue
- 48th Street from Central Avenue to Grand Avenue
- Grand Avenue from 58th Street to Shiloh Road
- Central Avenue from 56th Street to Shiloh Road

Specific improvements could include shoulder widening to provide ridable space (5-8 ft of pavement outside of the shoulder stripe), protected bike lanes ("cycletrack"), and sidewalks or sidepaths. The provision of parallel multi-use pathways designed to serve both pedestrians and bicycles should also be a focus to better accommodate the needs of multiple user groups.

Near-term improvements for pedestrian facilities should focus on improving sidewalk connectivity with neighborhoods and providing crosswalks and related signage to make drivers aware of crossing locations. The following locations should be considered in the short-term for crossing improvements:

- Grand Ave/54th St: crosswalk enhancements, possibly a traffic signal, to improve pedestrian safety near school zone
- Grand Avenue midway between 56th Street West and 58th Street West: pedestrian actuated mid-block beacon, possibly a pedestrian hybrid beacon ("HAWK signal") or rectangular rapid flashing beacon (RRFB)
- 54th Street West at terminus of multi-use path (north end of Cottonwood Park): pedestrian actuated mid-block beacon, possibly a pedestrian hybrid beacon ("HAWK signal") or rectangular rapid flashing beacon (RRFB)
- Rimrock Road/54th St: crosswalk enhancements, possibly a traffic signal, to connect multi-use paths

The following corridors should be considered in the short-term for sidewalk or multi-use path improvements:

- Multi-use path on Grand Ave from 52nd Street West to west boundary of Trails West Subdivision
- Sidewalk on Grand Ave from west boundary of Foxtail Subdivision to HAWK signal
- Multi-use path from Grand Avenue to north boundary of Cottonwood Park along west side of 54th Street West
- Sidewalk along east side of 54th Street West from Grand Avenue to north boundary of Grand Peaks Subdivision

Figure ES7 on the following page illustrates the recommended locations for short-term active transportation system improvements.

Longer-term, it is recommended that a "layered network" principle be implemented as a way as to provide comfortable and efficient bike and pedestrian connectivity via lower-stress streets instead of force-fitting all modes onto the arterial corridors. Since many of these future collector corridors are platted but not built, it is an ideal time to establish the roadway standards that incorporate bike lanes, sidewalks and modest speed limits. A key consideration regarding this concept is cooperation between the City of Billings and Yellowstone County in terms of developing and implanting development requirements that will require construction of well-planned and consistent facilities as property develops in the study area. In the event that some of the major arterials become more urbanized over time, with speed limit reductions and bike facilities they could also become useful low-stress bikeways.

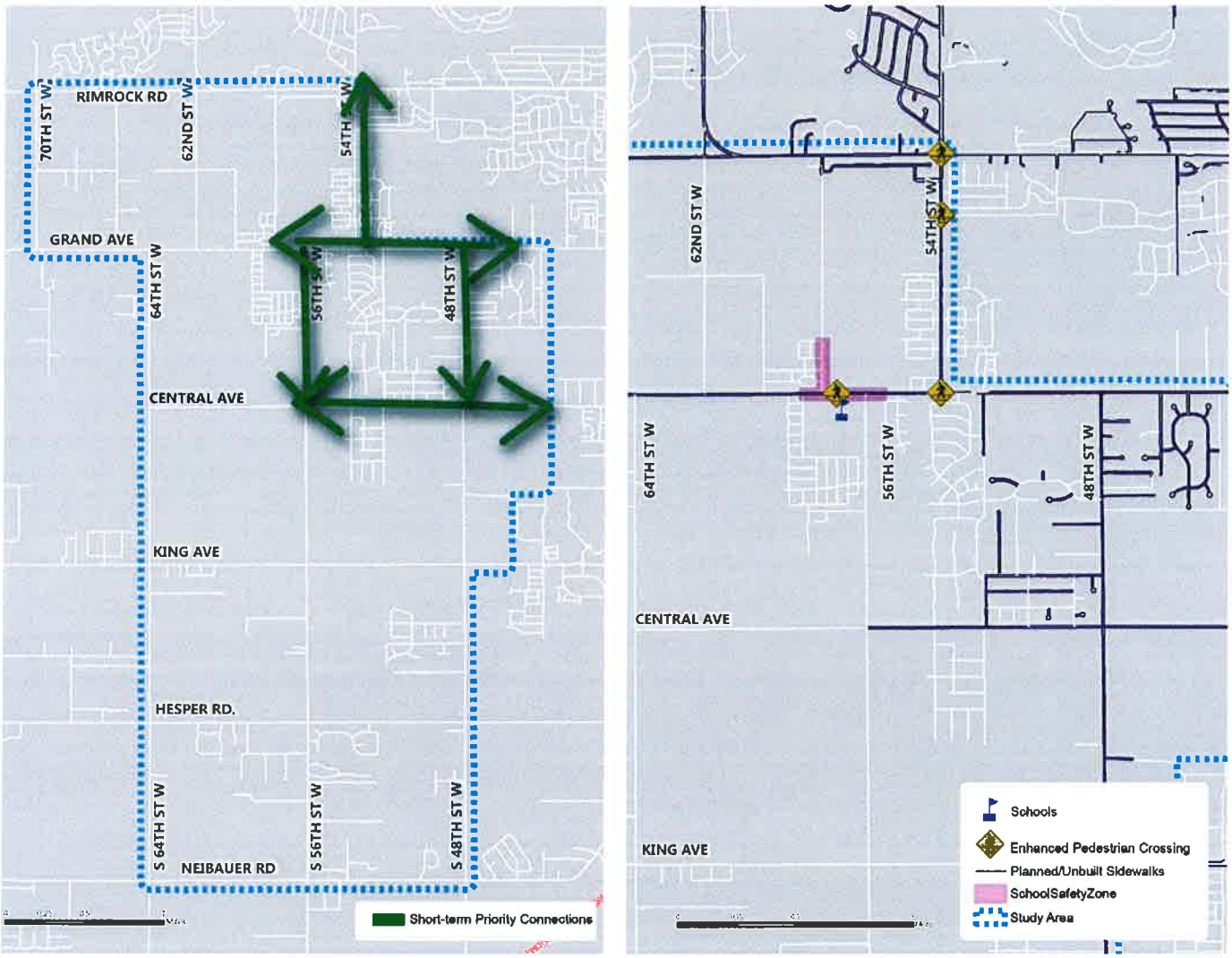


FIGURE ES7. SHORT-TERM IMPROVEMENTS FOR ON-STREET BICYCLE AND PEDESTRIAN FACILITIES

Recommended long-term low-stress corridors include:

- 58th Street West - Rimrock Road to Grand Avenue
- 66th Street West - Rimrock Road to Grand Avenue
- 60th Street West
- 52nd Street West
- Monad Road
- Broadwater Avenue
- Colton Boulevard

Future pathway segments should be prioritized based on the proximity to high demand areas and the ability of the segment to provide connectivity through barriers and gaps in the street system. **Figure ES8** on the following page illustrates the locations for recommended long-term active transportation projects. For more detail on all of the project conclusions and recommendations, please see the report body.

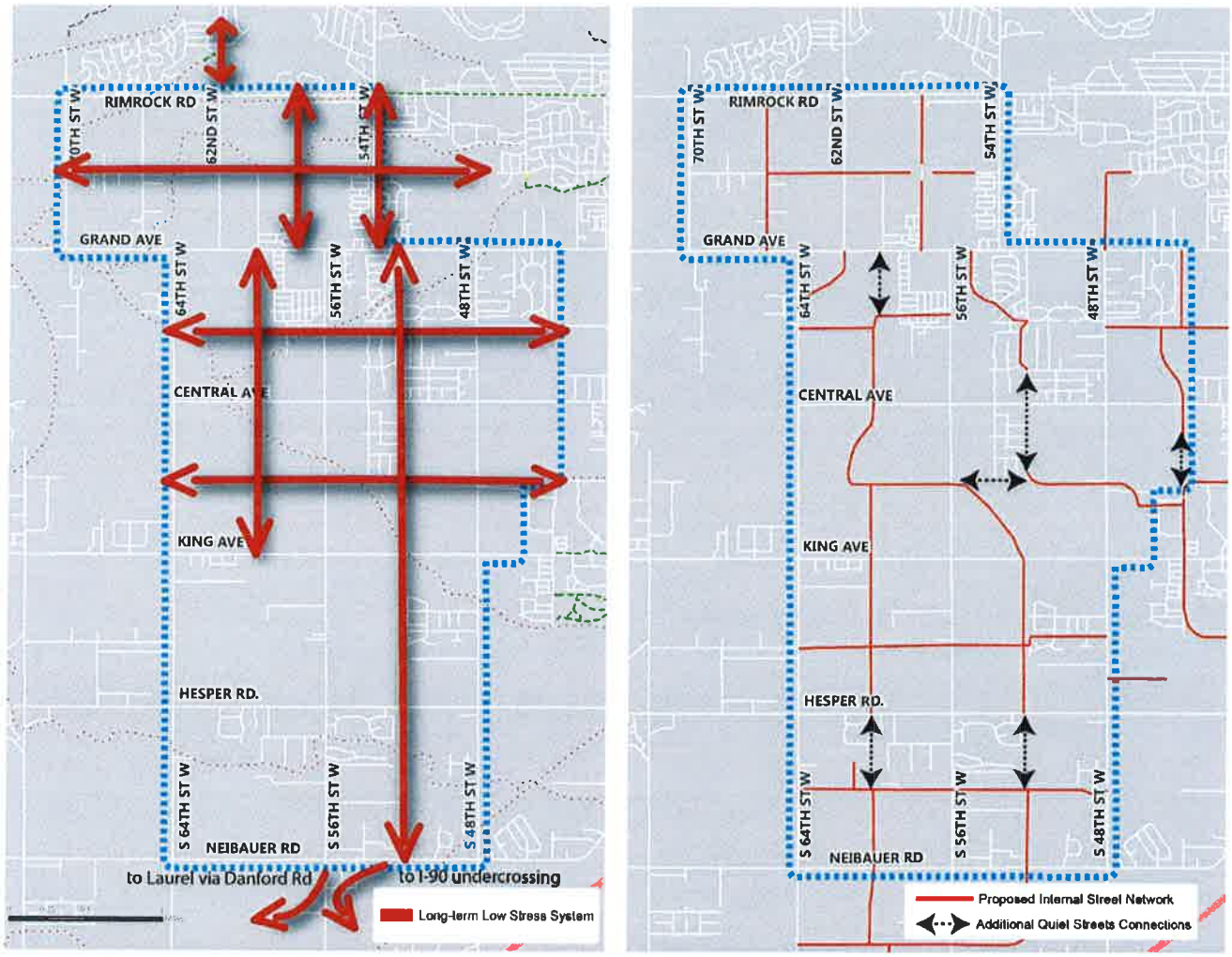


FIGURE ES8. LONG-TERM ACTIVE TRANSPORTATION STRATEGIES

Montana Department of REVENUE

LIQUOR CONTROL DIVISION
Frequently Asked Questions
Brewery Licensees

Types of Breweries

Domestic Nano Breweries are very small brewery operations, located in Montana, producing less than 100 barrels.
Domestic Small Breweries or "Microbreweries" are breweries, located in Montana, that produce over 100 but less than 10,000 barrels.
Domestic Breweries are breweries, located in Montana, that produce over 10,000 barrels.
Foreign Breweries are breweries located outside the State of Montana.

Production Levels, by barrels, will determine what you are permitted to do as a licensee:

Less than 100	100 – 10,000	10,001 or more	60, 000
Provide samples without charge between 8 a.m. and 2 a.m. No limit.	Provide samples with or without charge between 10 a.m. and 8 p.m. No more than 48 oz.	Provide samples without charge between 8 a.m. and 2 a.m. No limit.	May not provide samples.
Sell for off-premises consumption between the hours of 8 a.m. and 2 a.m.	Sell for off-premises consumption between the hours of 8 a.m. and 2 a.m.	Sell for off-premises consumption between the hours of 8 a.m. and 2 a.m.	May not sell for off-premises consumption.
Sell and deliver beer to wholesalers, licensed retailers (using own trucks, equipment, employees), or the public.	Sell and deliver beer to wholesalers, licensed retailers (using own trucks, equipment, employees),or the public.	Sell and deliver beer to wholesalers, licensed retailers (using own trucks/equipment/ employees), or the public.	Must sell and deliver only to a licensed beer wholesaler.
May not use a common carrier for delivery to the public or retailers.	May not use a common carrier for delivery to the public or retailers.	May not use a common carrier for delivery to the public or retailers.	May not use a common carrier.

Sample Room, Hours of Operation and Off-Premises Sales

Q. Where can a brewery provide samples?

A. A brewery can provide product samples only in the sample room as shown on the floor plan which has been submitted and approved by the department.

Q. Are there restrictions on when a brewery may provide samples?

A. Yes and No. There is a restriction for a "small brewery" that may only provide samples with or without charge between 10 a.m. and 8 p.m. Patrons may consume their samples until 9 p.m.(16-3-213, MCA) All other domestic breweries must adhere to the statutory requirements of only providing alcohol between the hours of 8 a.m. and 2 a.m.

Q. Are there limits on how much beer can be sold or served in a sample room for on-premises consumption?

A. Yes. A "small brewery" is limited to no more than 48 ounces to each individual customer during a business day (16-3-213, MCA). All breweries must be aware of the laws and rules relating to service of alcohol to intoxicated persons.

Q. Can a brewery add a deck or patio to their sample room?

A. Yes, as long as the deck or patio is immediately adjacent to the brewery sample room and can only be accessed from the sample room. The deck or patio must be enclosed in such a manner as to restrict its access and view from the general public on the street or sidewalk.

Q. Can a brewery sell beer it produces for off-premises consumption in their sample room?

A. Yes. A brewery may sell beer in produces in the original packages to the public for off-premises consumption. This could include 6-packs, individual servings, growlers, kegs. (16-3-214, MCA)

Q. What is a growler?

A. A growler is any refillable, resealable container that a brewer fills on the brewery premises for off-premises consumption.

Q. What hours can a brewery sell for off-premises consumption?

A. A brewery must adhere to the statutory requirement that all establishments licensed to sell alcohol be closed between the hours of 2 a.m. and 8 a.m.

Q. Can a brewery utilize self-service open shelving or reach-in coolers for off-premises sales?

A. Yes, if they have a separate off-premises sales area that is contiguous with the sample room, but is physically separated with walls.

Donations, Special Events and Tastings

Q. What is the difference between a tasting and a sampling?

A. A tasting is an event where products are sold or given away to the public by a licensed manufacturer or retailer. A sampling is an event where products are provided by the manufacturer of the products to a licensed wholesaler or retailer solely for the purpose of soliciting sales of the product.

Q. Can a brewery hold a beer tasting at a licensed retail location or catered event?

A. Yes. However, the brewery must sell the product to the retail licensee and only the retail licensee or the licensee's employees are authorized to sell and serve the alcoholic beverages on their premises. (ARM 42.12.128 & 42.12.313)

Q. Can a brewer donate product to a public non-profit event?

A. Yes. If the non-profit organization has a Special Permit issued by the Department of Revenue.

Q. How can a special permittee obtain product from a brewery for a special event?

A. The brewer can deliver directly to the event or they can pick up the product directly at the brewery by producing a copy of the Special Permit.

Q. Can a brewer donate or give away product to the public?

A. Yes.

Q. Can a Beer Wholesaler donate a brewer's product to a non-profit event?

A. Yes and No. The wholesaler may not sell the product to the special permittee for less than what the brewer charges the wholesaler and the wholesaler must SELL the product to the special permittee for some consideration. This could be for $1. If agreed upon, the brewer can reimburse or credit the wholesaler for the product already in inventory.

Trade Events and Industry Samples

Q. What is the difference between a tasting and a sampling?

A. A tasting is an event where products are sold or given away to the public by a licensed manufacturer or retailer. A sampling is an event where products are provided by the manufacturer of the products to a licensed wholesaler or retailer solely for the purpose of soliciting sales of the product.

Q. Can a brewer host a trade event?

A. Yes. Brewers are allowed to host trade events where they pour and serve beer

samples to licensed retailers and their employees only. These events must be held either at a licensed on-premises retail location or at a location not otherwise licensed that is catered by an on-premises retail licensee. The brewer is allowed to provide all products for this event from their inventory if the product falls into the category of a sample (not purchased by the retailer within the last 12 months, in limited quantities: 3 gallons of beer). However, all product samples must be removed from the retail premises at the conclusion of the event. If the brewer wishes to have samples of products available at the event that do not fall into the category of a sample (products that are regularly available at that retail establishment), they must purchase the product from the retailer at the ordinary retail price.

Q. Can a brewer provide licensed retailers with beer samples for no consideration?

A. Yes. Brewers may provide licensed retailers with beer samples for no consideration if the product has not been purchased by the retailer within the last 12 months, in limited quantities: 3 gallons of beer. These samples are intended for business purposes only between industry members and may not be sold. Business purposes include negotiating a sale, promoting the product and determining the quality and character of the product.

Q. Can brewers pour and serve samples at a retail location for the purpose of promoting beverages?

A. Yes and No. Brewers may pour and serve in de minimis quantities samples of beer to on-premises retail licensees and their employees for the purpose of promoting the beverages. Brewers may not pour and serve samples at an off-premises licensed premises.

Labeling

Q. Are brewers required to obtain label approval before selling beer?

A. Yes unless it is not required under TTB. A brewery is required to provide labels for each brand to the department for approval prior to selling or distributing within the state. All label changes must be preapproved for both in-state and out-of-state brewers or importers. (ARM 42.13.203)

Q. How can brewers provide labels to the department for approval?

A. Brewers can request approval for labels by registering for Taxpayer Access Point (TAP). Once registered for TAP, brewers can manage their existing labels, request approval for new labels, file and pay taxes, as well as file and pay their annual renewal.

Q. When are label approvals not required?

A. When the products are not involved in interstate commerce or when a brewer or importer of malt beverages is not subject to the labeling provisions in the regulations of the Tobacco Tax and Trade Bureau (TTB), United States Department of Treasury as

set forth in 27 CFR, as revised on April 1, 2009.

Production Threshold and Taxes

Q. Is the 10,000 barrel limit calculated on a calendar or fiscal year?

A. The 10,000 barrel limit is calculated on the state's fiscal year, July 1 through June 30.

Q. Who tracks the production threshold for each brewery in the state?

A. The Department of Revenue tracks production thresholds through information provided by the brewers, either through tax returns, renewal applications or written notification. Ultimately the brewer is responsible for notifying the department and its wholesalers in writing by the end of the month in which it exceeds a production threshold. (ARM 42.13.701)

Q. What if a "small brewery" exceeds 10,000 barrels in nationwide production?

A. If a "small brewery" exceeds 10,000 barrels in nationwide production, they are no longer allowed to charge for samples of beer in a sample room. (16-3-214, MCA)

Q. If production either drops below 100 barrels or goes over 10,000 barrels, at what point would the brewery have to stop charging for samples?

A. The brewer must stop charging for samples by the end of the month in which the production threshold changed.

Q. Who pays the tax on products distributed in the State of Montana?

A. Any licensed Montana beer wholesaler or licensed brewery who delivers products to licensed retailers or sells to the public is required to pay the tax on such products.

Delivery and Distribution

Q. Can a brewery sell to retailers?

A. Yes. A brewery may sell and deliver beer produced by the brewery from its storage depot or brewery to licensed retailers if the brewery uses its own equipment, trucks and employees to deliver the beer and the beer does not exceed 8 barrels to each retailer a day and total amount per year delivered to retailers does not exceed 10,000 barrels. (16-3-214, MCA)

Q. Can a brewery use a common carrier to deliver beer to the public or to licensed retailers?

A. No. (16-3-214, MCA)

Q. Can a brewery use a licensed beer wholesaler to deliver beer to a licensed retailer?

A. Yes. The brewery and beer wholesaler must have a written agreement of which complies with 16-3-222, MCA on file with the department prior to shipment.

Q. Can a brewer conduct a dock sale at their licensed premises to a wholesaler or a retailer?

A. No. A brewer must sell and deliver to the wholesaler and retailer using their own equipment, trucks and employees.

Q. Could you please clarify the wording in 16-3-214, MCA in regard to selling to "(iii) the public"?

A. This means the brewer, under the sample room exception, can sell products they manufacture to the public for on-premises consumption at the brewery. The brewer can also sell and deliver to the public for the purchaser to consume at the purchaser's location, a place which is not under control of the brewer or the brewer is not in charge of the event. (ie. their home, wedding, etc.)

Brew-On Premises

Q. Can a brewery operate a brew-on-premises business?

A. Yes. All beer produced at a brew-on-premises business located at a qualified brewery premises is taxable, must be labeled with all information required by 27 CFR part 25, including the government warning and is subject to record keeping and other requirements.

Miscellaneous Questions

Q. Can a brewery sells its product label and recipe to another brewery and the purchasing brewery pay the selling brewery a royalty based on sales?

A. Yes. If the purchasing brewer actually produces the beer, bottles and retails the product under their brewery, counting towards the purchasing brewers 10,000 barrel limit.

Q. Can a brewery bring beer they manufacture to a "Brew Fest" off the licensed premises and serve and sell samples?

A. Yes. A brewery may sell and deliver beer to the public. (16-3-214, MCA)

Q. Can a brewery contract with another brewery to brew their products?

A. Yes, however, the contracting brewery may not serve those products manufactured at another facility in their sample room.

Q. In a contract brewing situation, can the contracted brewer offer those products in their sample room and distribute those products?

A. Yes.

Q. Can a brewer bottle or can another brewer's product for them?

A. Yes.

The Restaurant Beer & Wine License

What is it?
How do I get one?
What can I do with it?

Montana Department of REVENUE

Liquor Control Division

What is a restaurant beer and wine (RBW) license?

An RBW license allows a restaurant to serve beer and wine to customers who order food. Gambling is not allowed in conjunction with an RBW license.

Restaurants with an RBW license can request a catering endorsement that allows the licensee to provide food, beer and wine at special events within 100 miles of the licensed premises.

The following definitions apply:

Restaurant: means a public eating place where:

- the staff prepares and serves individually priced meals that customers eat on the premises.
- at least 65% of the establishment's annual gross income is from the sale of food.
- the space includes a dining room and a kitchen.
- there is a sufficient number and variety of employees needed to prepare, cook and serve meals and to satisfy the department that the space is intended as a full-service restaurant.
- dinner is served four days a week for at least two hours, between 5 p.m. and 11 p.m.

Fast-food restaurant: means an establishment that serves a majority of its food and drink in throw-away containers and does not qualify as a restaurant for the purpose of this license.

Where do I start?

The Department of Revenue issues a limited number (quota) of RBW licenses which is determined by the population of the city or town in which the license operates. An RBW license is issued inside or within five miles of the limits of an incorporated city or town. To see RBW licenses that are available, contact the Department of Revenue toll free at (866) 859-2254 or in Helena at (406) 444-6900 or visit http://revenue.mt.gov/home/liquor/resources#Useful%20Links to view the quota sheet.

If a license is available, you can begin the application process. If a license is not available, you may be able to purchase an existing license. Check with a local real estate agent or the Montana Tavern Association.

You can file your application electronically at https://revenue.mt.gov/apply-electronically.

What are the associated costs?

- One-time RBW license processing fee: $400.
- Annual RBW license fee: $400.
- Annual catering endorsement fee (if applicable): $200.
- Fingerprint card fee for each individual with 10% or more interest in the business. Price subject to change.
- One-time seating fee for restaurants with seating for 60 people or less: $5,000 (20% = $1,000).
- One-time seating fee for restaurants with seating between 61 and 100 people: $10,000 (20% = $2,000).
- One-time seating fee for restaurants with seating for 101 people or more: $20,000 (20% = $4,000).

Applicants have to pay 20% of the seating fee at the time they submit an RBW application. The remaining balance is due before approval of the application. Seating fees apply only to newly-issued licenses. The other fees apply when buying an existing license and are in addition to the cost of buying the license from a third party.

How Do I Apply?

When applying for an RBW license, you need to provide the following:

- A completed alcoholic beverage/gambling operator combined license application.
- A completed liquor authorization to disclose tax information form.

- A floor plan that includes the business name, physical address, areas where you intend to serve or store alcoholic beverages, seating areas, service bar, external dimensions, entry ways and any patio area. Do not send in the original blueprints, only a copy of the floor plan.

- A certified survey affidavit from the local county or city surveyor identifying the exact location, the address and quota area (city or county), of the premises.

Financial records showing the purchase of the license and/or building, including:

- Copies of loan agreements, contracts, notes and all related security agreements. If you didn't take out a loan, please provide copies of your bank statements.

Note: You must file the non-institutional loan (NIL) form with the application if any lenders or other sources of financing are not state or federally regulated financial institutions, including gifting statements.

- Authorization for examination and release of information for each NIL.
- Personal criminal history statement form for each NIL.
- Two fingerprint cards and fees for each NIL.
- Copies of lease, rent, purchase options, financing agreements or other evidence showing possessory interest in the building.
- Financial statements, such as a balance sheet, income statement or tax return for the business.
- Franchise agreement.
- Purchase/transfer documents for the license, (a buy/sell agreement, contract for deed, warranty deed, bill of sale).
- Copy of business's bank signature card.

Ownership information (if applicable), including:

- Copy of partnership agreement documentation.
- Copy of Articles of Incorporation and amendments or addenda.
- Copy of Bylaws and amendments or addenda.
- Copy of Certificate of Fact (for LLCs and LLPs).
- LLC organizational information.
- Copy of stock certificates and corporate minutes.
- Stock ledger or register.

- Copy of Certificate of Existence (for instate corporations)
- Copy of authority to conduct business in Montana (for out-of-state corporations).
- Copy of documentation from the Secretary of State verifying that the assumed business name (ABN) has been approved.
- Copy of federal employer identification number (FEIN) verification from IRS.
- Completed personal history statement form for each individual with 10% or more interest in the business.
- Two fingerprint cards and fees for each individual with 10% or more interest in the business.

Management information, including:

- Personal criminal history statement form for each location manager.

- Two fingerprint cards and fees for each location manager.

Miscellaneous information, including:

- A copy of the restaurant's menu showing that the restaurant serves an evening meal.

- A document stating the restaurant's hours of operation.

What are the steps in the application process?

- The application process takes about 90 days and begins when the Department of Justice, Gambling Control Division (GCD), receives a complete application package and all supporting documents.

- The applicaiton is reviewed by the Department of Revenue, Liquor Control Division (LCD).

- GCD sends a letter to the applicant requesting any additional documents needed.

- After GCD receives all documents, LCD publishes a legal notice in a newspaper circulated in the city, town or county in which the license would be issued. The notice informs readers of the applicant's intent to acquire a license and where readers can send any objections to the license issuance.

- LCD notifies local agencies with jurisdiction over the area (e.g. law enforcement, fire department, health department, etc.) of any deficiencies in the application.

- After the objection deadline and the completion of the audit review, LCD and GCD conduct a final review of the application. If necessary, any additional documents will be requested.

- If one or more people filed an objection, LCD schedules a hearing with the applicant and the person(s) who filed the objection.

- The application process is paused until the hearing examiner makes a ruling on the application.

- Once the hearing examiner makes a ruling, LCD promptly issues a final decision.

What are the rules for an RBW license?

- All licensees, their agents, and employees must conduct the licensed premises in compliance with all:

    - alcohol-related provisions of the laws of Montana and the United States.

    - county and city or town ordinances.

- Indian alcohol beverage laws applicable within the areas of Indian country.

- rules of the department.

An RBW license can:

- serve beer and wine on your patio, deck or lawn if:

  - it was designated on the floor plan you submitted with your application.

  - it is immediately accessible from the interior premises.

  - building, health and fire approval is obtained.

  - it has a perimeter barrier.

A perimeter barrier is a barricade that encloses the perimeter of a patio/deck. The barrier shall be constructed in a manner that impedes foot traffic and clearly defines the boundary of the exterior portion of the premises. The barrier shall be a solid structure that is at least three feet high. Th barrier may have a single six-foot entrance permitting public access from an unlicensed area to the patio/deck. The barrier may be constructed of materials such as lattice or wrought iron that do not form a solid structure, have a portion of it be water and have additional entrances permitting public access to the patio/deck.

- serve or provide samples, with or without charge, of beer and wine to customers who are seated for table service.

- serve beer and wine from 11 a.m. to 11 p.m. You may stay open after 11 p.m. or open before 11 a.m. as long as you do not serve beer and wine during that time.

- allow customers to consume beer and wine in a "smoking hut" if the hut is part of the approved premises on file with the department. Check local laws regarding open containers.

An RBW license cannot:

- allow anyone (licensee, employee, customer) to consume any alcoholic beverage on the licensed premises between 11 p.m. and 11 a.m.

- allow customers to bring their own beer or wine onto the premises.

- cook with distilled spirits, since you can only receive, accept or store those alcoholic beverages for which your establishment is specifically licensed for.

An RBW license must:

- serve dinner four days a week for at least two hours, between 5 p.m. and 11 p.m.

- ensure that all employees serving alcoholic beverages are 18 years or older.

- include all beer and wine purchases on the food bill. Beer or wine may not be purchased separately.

- notify the department when there is a change in manager for the location.

- ensure that all employees who serve or sell alcoholic beverages and their immediate supervisors:

    - obtain state-approved training within 60 days of hire.

    - complete renewal training every three years.

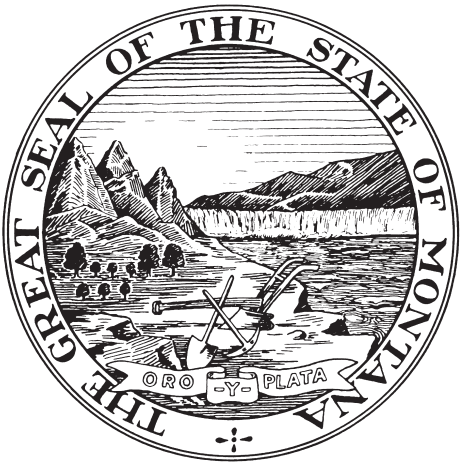
You can find a list of approved training providers at www.AlcoholServerTraining.mt.gov.

Miscellaneous:

- If you decide to remodel your establishment, you will need to send an alteration request form to the department along with a copy of the existing floor plan and a proposed floor plan showing the alterations. Once the department reviews and approves the request, you may begin the alteration without it affecting your license.

- An establishment—such as a dude ranch, resort, park hotel, tourist facility or similar seasonal business, who would like to operate its license on a seasonal basis, must send a written request that includes the type of business, justification for operating seasonally and the general dates of operation.

If approved, the license closure is effective from the date of the authorization letter through the end of the specified period. Once approved, the licensee must notify the department before changing general dates of operation.



Department of Revenue

Liquor Control Division
2517 Airport Road
P.O. Box 1712
Helena, MT 59624

Phone: (406) 444-6900
Fax: (406) 444-0718
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Cost Disclosure Here

Updated 6/2017 LEU-12

Regular City Council Meeting

Meeting Date: 12/17/2018
TITLE: One Big Sky District Final Draft Plan
PRESENTED BY: Kevin Iffland, Assistant City Administrator
Department: City Hall Administration
Presentation: Yes

PROBLEM/ISSUE STATEMENT

At its April 9, 2018 meeting, the City Council approved a Memorandum of Understanding with several local organizations to fund the master development plan, conceptual design and engineering plans for major development in the One Big Sky District. The other local organizations, collectively called the Strategy Partners, are Big Sky Economic Development, the Chamber of Commerce, the Tourism Business Improvement District and the Downtown Billings Partnership.

At its June 11, 2018 meeting, the City Council approved the Development Plan Agreement with Landmark Development Services Company, LLC. The Big Sky Economic Development Corporation (EDC) agreed to be the representative for all the Strategy Partners in the execution and implementation of the Development Plan Agreement. One Big Sky District is a comprehensive development plan, which includes up to four districts with catalytic anchor projects in each district. The development plan has the following goals:

- Goal 1: Create new jobs and engage an inspired workforce
- Goal 2: Provide meaningful economic and fiscal impacts to the City, County and State
- Goal 3: Increase visitation for the City, Region and State
- Goal 4: Create a “Lifestyle” city centered on health, wellness and recreation

ALTERNATIVES ANALYZED

City Council is not being asked for any specific action on the One Big Sky District Development Plan at this time.

FINANCIAL IMPACT

There is no financial impact at this time.

RECOMMENDATION

Staff recommends supporting State Legislative efforts to further the One Big Sky District Development Plan.

APPROVED BY CITY ADMINISTRATOR

Regular City Council Meeting

Meeting Date: 12/17/2018
TITLE: Ward II Councilmember appointment
PRESENTED BY: Kevin Iffland, Assistant City Administrator
Department: City Hall Administration
Presentation: No

PROBLEM/ISSUE STATEMENT

Ward II Council member Larry Brewster resigned his Council seat effective on November 30, 2018. The City Charter requires that the Mayor appoint a replacement within 30 days or a special election must be held to fill the position. The Mayor's appointment requires City Council consent/approval. Mayor Cole reviewed applications from the 8 applicants, the public and Council members had input opportunities and the Mayor will announce his appointment at or before the December 17, 2018 City Council meeting.

ALTERNATIVES ANALYZED

City Council may:

- Approve the Mayor's appointment for Ward II Council member to replace Larry Brewster, who resigned on November 30, 2018, or
- Disapprove the Mayor's appointment and provide him with feedback regarding the appointment and acceptable alternatives, or
- Disapprove the Mayor's appointment and call for a special election to fill the vacant Ward II Council member seat.

FINANCIAL IMPACT

This action has no financial impact to the City of Billings unless a special election is needed. The cost of a special election, but based on past election costs, it could exceed $20,000.

RECOMMENDATION

Staff recommends that Mayor Cole appoint a replacement for Ward II Council member Larry Brewster and that the City Council confirm the appointment .

APPROVED BY CITY ADMINISTRATOR

Regular **5.**

Regular City Council Meeting

Meeting Date: 12/17/2018

TITLE: 2019 State Legislative Priorities

PRESENTED BY: Kevin Iffland, Assistant City Administrator

Department: City Hall Administration

Presentation: Yes

PROBLEM/ISSUE STATEMENT

The City Council usually sets its legislative priorities before each legislative session. The 2019 session will begin on January 7 and is expected to end on May 1. Setting priorities helps the City's lobbyist, Greg Dorrington with Crowley and Fleck, staff and Council members as they are asked to respond to legislation being planned or after it is introduced. The anticipated legislative issues were discussed with the Council and staff on November 28. The legislative priorities are broader policy statements that encompass the issues that Council discussed and ones that will probably surface during the session. Greg Dorrington will be available throughout the legislative session, either by phone or in person, to discuss specific bills and what positions the Council would like to take on them. One of the policy statements is to support, where possible, our local partners' legislative platforms. The suggested legislative priorities will be provided in the Friday packet.

ALTERNATIVES ANALYZED

City Council may:

- Approve the 2019 legislative priorities or;
- Modify and approve the priorities, or;
- Disapprove the priorities. This will hamper Greg Dorrington's effectiveness because he won't have the broad policy guidance that allows him to work with our Legislators as they propose legislation and attempt to understand how legislation affects the City.

FINANCIAL IMPACT

The policies do not have a direct financial impact. The FY 2019 Legislative lobbying budget is $40,000. The Legislature's actions can cost or benefit the City of Billings millions of dollars per year.

RECOMMENDATION

Staff recommends that the City Council adopt the City of Billings 2019 Legislative Priorities.

APPROVED BY CITY ADMINISTRATOR